



# REQUEST FOR PROPOSAL (RFP)

## for Legal Services for FERC Relicensing of EBMUD’s Lower Mokelumne River Project (FERC License No. 2916).

### **CONTACT**

Karen Donovan, Attorney  
Office of General Counsel, EBMUD  
(510) 287-0169  
[karen.donovan@ebmud.com](mailto:karen.donovan@ebmud.com)

### **RESPONSE DUE**

January 31, 2024  
4:00 p.m.

### **SUBMIT ELECTRONICALLY TO**

Alicia Rucobo  
Office of General Counsel, EBMUD  
[alicia.rucobo@ebmud.com](mailto:alicia.rucobo@ebmud.com)

**OR**

### **SUBMIT BY MAIL TO**

<p><b>RESPONSE DELIVERED BY SERVICE (UPS, FedEx, DHL, etc.) to:</b> <i>Alicia Rucobo</i> EBMUD–Office of General Counsel 375 11th Street, MS 904 Oakland, CA 94607</p>	<p><b>RESPONSE DELIVERED BY MAIL (USPS) to:</b> <i>Alicia Rucobo</i> EBMUD–Office of General Counsel 375 11th Street, MS 904 Oakland, CA 94607</p>
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**REQUEST FOR PROPOSALS FOR  
LEGAL ASSISTANCE RELATED TO FERC RELICENSING  
OF THE LOWER MOKELUMNE RIVER PROJECT**

**Contact:**               **Karen Donovan, Attorney – Office of General Counsel,  
EBMUD**

**Response Due:**       **January 31, 2024**

The East Bay Municipal Utility District (District or EBMUD) Office of General Counsel, issues this Request for Proposals (RFP) for the provision of legal services to assist the District in the relicensing of the Lower Mokelumne River Project (FERC License No. 2916) (Project), pursuant to the processes described by Federal Energy Regulatory Commission (FERC) in 18 CFR Part 5. Firms or Persons responding to this RFP are referenced herein as Proposers.

**I.       INTRODUCTION**

EBMUD is a public utility formed under the California Municipal Utility District Act in 1923 to provide water supply to municipalities in the East San Francisco Bay Area. The District currently serves an area covering approximately 332 square miles in Alameda and Contra Costa Counties, supplying water to approximately 1.4 million residents. On average, approximately 90 percent of the District’s water supply comes from the Mokelumne River. The District’s existing Lower Mokelumne River Project (P-2916) is a multipurpose system of surface reservoirs and aqueducts owned and operated by the District. The Project is operated for purposes of water supply, flood control, hydropower production, and recreation.

The facilities include Pardee Dam and Powerhouse (construction completed in 1929) and Camanche Dam and Powerhouse (construction completed in 1964). Both are owned and operated by the District, and the District owns the surrounding lands. FERC issued a licensing order to the District for the Project on March 10, 1981, and the license will expire on March 31, 2031.

In the early 1990s, FERC began a proceeding to determine whether modifications to the facilities or operations of the Project were needed for the conservation of fish and wildlife resources. The outcome of this was a Joint Settlement Agreement between the District, the California Department of Fish and Wildlife, and the U.S. Fish and Wildlife Service that was executed in 1998. The Joint Settlement Agreement, which was subsequently included as an amendment in the Project license, committed the District to implement new instream flows and to undertake certain non-flow measures to protect the fishery resources of the lower Mokelumne River.

While the District currently plans to continue its existing operations with minimal changes as part of the relicensing, it is likely that there may be operational changes to protect and enhance fishery resources proposed as a result of other ongoing regulatory processes.

## **II. SCOPE OF WORK AND SERVICES REQUIRED**

The District is requesting proposals for legal services to assist with the relicensing process with FERC. It is expected that the duties may include the following:

- i. General legal advice on the hydropower relicensing process and related issues.
- ii. Advice regarding the appropriate means of communicating with FERC and other agencies during the relicensing process.
- iii. Advice regarding the most effective and appropriate ways to involve and interact with key federal and state regulatory agencies, tribes, non- governmental organizations and other stakeholders in the relicensing process.
- iv. Review of draft notices and study plans prepared by the District prior to issuance and review of submittals from participants in the licensing process.
- v. Advice on compliance with the National Historic Preservation Act, especially Section 106 and requirements for designation and protection of historic landmarks and structures.
- vi. Assistance with developing and conducting meetings with participants in the licensing process and negotiating and drafting of Settlement Agreements.
- vii. Review of license application materials and associated documents and assistance in developing responses to comments on documents prepared and submitted during the process.
- viii. Assistance with the preparation of associated documents, including biological assessments and environmental studies, and assistance with the license application and drafting of license articles and any needed post-filing documents.

## **III. QUALIFICATIONS**

The District is seeking outside legal counsel with the following qualifications:

- i. Experience providing legal services to water suppliers or public utility clients as part of a federal hydropower licensing or relicensing proceeding with FERC, particularly in the Western U.S. Knowledge of past, present and future trends in FERC hydropower relicensing is essential.
- ii. Expert knowledge of and experience with the Federal Power Act, 16 USC §791a et seq., and with FERC regulations governing hydropower relicensing.

- iii. Experience working on tribal consultations and tribal issues, including issues related to tribal beneficial uses and cultural practices, in the U.S., particularly in California or other areas of the West.
- iv. Experience consulting with federal and state resource agencies and regulators in the context of hydropower relicensing and hydropower operations, as well as water supply planning and water rights.
- v. Experience with other regulatory processes that may impact the Project relicensing process, including but not limited to the following:
  - NEPA/CEQA
  - Clean Water Act 401 Certification
  - Endangered Species Act
  - National Historic Preservation Act
  - Fish and Wildlife Coordination Act
  - Wild and Scenic Rivers Act

#### **IV. PROPOSAL CONTENT**

##### **A. Experience and Qualifications**

- The District will accept proposals from individual attorneys as well as from law firms that possess the qualifications that we are seeking. The successful proposer must have extensive knowledge and experience in the subject areas listed in Section III and demonstrate that it has the capability and available staffing to perform the expected duties described in Section II.
- Proposers should describe the qualifications and experience of the specific individuals who will provide advice under this contract. The lead attorney(s) for the contract should also be specifically identified.
- The proposal should also identify the attorney/firm's principal place of business and identify the location from which the attorney/firm would provide the legal services under this contract.
- Proposers should disclose any potential or actual conflicts of interest. "Conflict of interest" shall have the meaning as described in the relevant California laws and the California Rules of Professional Conduct.
- The proposal should include information on the firm's processes, policies, and/or procedures on handling confidential and sensitive information during and after the term of the engagement.

## **B. Fees**

The proposal should list the hourly rates of each attorney who will provide service under this contract, and the hourly rates of any paralegals and/or any other personnel.

## **C. Diversity Statement and Programs**

The District is committed to creating a diverse workplace that is representative of the community that we serve. The Office of General Counsel is interested in partnering with counsel who are committed to creating measurable leadership opportunities for women, minorities, LGBTQ individuals and people with disabilities. Any firm providing services to the Office of General Counsel must be in compliance with all laws prohibiting discrimination in employment. There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender, including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability, (including HIV or AIDS), medical condition (including genetic characteristics or cancer), genetic information, or sexual orientation.

All contractors must abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of the contract. Moreover, these regulations require that covered contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status, or disability.

All proposers shall fill out and submit with the proposal the appropriate forms.

The Contract Equity Program guidelines and forms can be downloaded from the District's website at the following link:

<https://www.ebmud.com/business-center/contract-equity-program>

If you have questions regarding the Contract Equity Program, please call (510) 287-0114.

Firms will be expected to take out and maintain during the life of the agreement all insurance required (See template Agreement, Attachment A).

## **V. CRITERIA FOR REVIEW**

All RFPs will be evaluated by a panel of attorneys and selection will be made in accordance with the evaluation criteria set forth in this RFP. The District reserves the right to award to a single or multiple firms and reserves the right to reject any and all proposals and decline to

award a contract for any reason. Attorneys and firms responding to this RFP are responsible for all costs incurred in preparing a response. Proposers should recognize that materials and documents submitted will become property of the District and submittals may be subject to public review upon request, unless exempted.

## **VI. RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION**

RFP responses should be emailed in pdf format to [alicia.rucobo@ebmud.com](mailto:alicia.rucobo@ebmud.com) or mailed/delivered to:

EBMUD – Office of General Counsel  
ATTN: Alicia Rucobo  
RE: RFP for Legal Services for FERC Relicensing  
375 11th Street, MS 904  
Oakland, CA 94607

The District's email has limitations on attachment size. If emailing your response, make sure the file is less than 25 megabytes. If the file exceeds the limit, you will need to send multiple emails. Proposers are solely responsible for ensuring timely delivery of proposals. You may call 510-287-0173 to check the receipt of a proposal.

Oral interviews of the highest ranked proposers may be conducted prior to final selection.

## **VII. EXECUTION OF AGREEMENT**

After selecting the apparent successful proposer, the attorney or firm will be required to execute a professional services agreement with the Office of General Counsel, in a form attached as Attachment A. Proposed changes to the agreement are not encouraged and may be rejected. Any proposed alterations to the District's standard agreement should be identified in the proposal.

## **VIII. SOLICITATION PROCESS REQUIREMENTS**

### **A. Communications**

Any questions or communications regarding the legal services required in this RFP must be directed to the representative named below:

Karen Donovan – (510) 287-0169 – [karen.donovan@ebmud.com](mailto:karen.donovan@ebmud.com)

Unless authorized by the District's representative named above, no other District official or employee is empowered to speak for the Office of General Counsel with respect to this RFP. Proposers are advised that the Office of General Counsel shall not be bound by information, clarification, or interpretation from other District officials or employees.

**B. Schedule**

RFP Released	December 13, 2023
Proposals due	January 31, 2024, 4:00 PM PST
Interviews (at EBMUD's option)	Weeks of February 12 & February 19, 2024
Selection	February 26, 2024

{00090434}

**“ATTACHMENT A” TO RFP**

**AGREEMENT FOR SPECIAL COUNSEL SERVICES BETWEEN  
THE EAST BAY MUNICIPAL UTILITY DISTRICT AND  
[FIRM/ATTORNEY]**

THIS AGREEMENT, effective this \_\_\_ day of \_\_\_\_\_, 202\_, is by and between [FIRM/ATTORNEY] (“Attorney”) and the **EAST BAY MUNICIPAL UTILITY DISTRICT**, a public body of the State of California (“EBMUD”);

**WITNESSETH:**

WHEREAS, Attorney is specially trained, experienced, and competent to perform the specialized legal counsel services required by this Agreement; and

WHEREAS, Attorney is willing to render such specialized services on the following terms and conditions; and

WHEREAS, EBMUD wishes Attorney to perform such specialized services.

NOW, THEREFORE, Attorney and EBMUD agree as follows:

1) Scope of Service. Attorney agrees to act on a consultative basis and provide legal services to EBMUD’s Office of General Counsel described in Exhibit A. The manner and timing of such services are to be determined by the General Counsel or any attorney on the General Counsel’s staff designated in writing to act for the Office of General Counsel (“OGC Attorney”).

2) Compensation.

a) All charges under this Agreement require prior written approval of the Office of General Counsel.

b) Unless special rates are negotiated for particular matters, fees are to be charged at the rates set forth in attached Exhibit B, and are subject to change only upon the mutual written agreement signed by both EBMUD and Attorney.

c) Charges for Attorney services provided will be based on actual time or based on increments that are no greater than six minutes.

d) Excluded Charges.

i) Attorney will not charge for travel time or travel expenses except where expressly authorized in writing in advance by the Office of General Counsel.

ii) Except as specifically authorized in advance by the OGC Attorney, Attorney shall not bill for:



person;

- (1) Duplicate services performed by more than one
- (2) Services to correct Attorney errors or oversights;
- (3) Time spent to acquaint member of Attorney's firm with the assigned matter due to personnel reallocations within the firm.

iii) Attorney shall bill only for one participant for conferences and consultations between members of Attorney's firm or, except as specifically authorized in advance by the OGC Attorney, attendance at client meetings, depositions or hearings.

iv) No separate charges shall be paid for such office expenses as the following ordinary costs of doing business: computerized research service provider charges, routine photocopying, telephone charges, facsimile charges, postage, meals, messenger delivery, clerical staff work, supplies, and word processing.

e) When approved in advance by the Office of General Counsel, EBMUD agrees to reimburse the following extraordinary office expenses incurred by Attorney: copies prepared by outside reproduction service, messenger, delivery, and special postage services. In order to reduce these costs, Attorney will work with EBMUD to use EBMUD photocopy, delivery and facsimile capabilities whenever practicable. EBMUD agrees to reimburse filing fees, where applicable, deposition fees, reporting services, and charges for service of process incurred by Attorney in the performance of this Agreement. All costs must be supported by copy of an invoice or receipt attached to Attorney's invoices for work performed under this Agreement.

f) Attorney agrees to use every appropriate method to contain its fees on this matter.

g) The above-stated billing rules may be amended in accordance with the contract modification guidelines set forth in this agreement.

### 3) Billings.

a) Attorney shall submit to the Office of General Counsel monthly bills for the assigned matters describing services provided during the previous month. Monthly bills shall be in accordance with the Checklist re Billing for Legal Services form, a copy of which is attached to this Agreement as Exhibit C.

b) Attorney shall bill separately for each matter on which Attorney works. "General Advice" may be considered a single matter for billing purposes.

c) Attorney's monthly bills shall include the following information for each specific matter to which such services or costs pertain: the name of the matter; a brief description of the legal services performed; the date the services were performed; and the amount of time spent on each date services were performed and by whom. Any invoices or receipts reflecting separate charges for costs must include copies of the

invoices for such costs. In addition to providing copies of all documents as specified, Attorney shall provide any information which will assist EBMUD in performing any audit of the billings.

4) Consultants, Experts, and Subcontractors. All consultants, experts and subcontractors engaged to provide services to Attorney in the performance of this Agreement, and the scope of those services, shall first be approved by the OGC Attorney. This approval shall take into account EBMUD's Policy 1.03, encouraging balanced opportunities for business owners of all races, ethnicity and genders who do business or wish to do business with EBMUD. All consultant, expert and subcontractor invoices shall be submitted to the Office of General Counsel for payment.

5) Independent Contractor Status. It is expressly understood and agreed by both parties that Attorney, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of EBMUD. Attorney expressly warrants not to represent, at any time or in any manner, that Attorney is an employee or servant of EBMUD.

6) Advice and Status Reporting.

a) Attorney shall promptly advise EBMUD orally or in writing, of all significant developments arising during performance of the services.

b) Attorney shall provide copies of all pleadings, motions, discovery, significant correspondence, and other documents, including research memoranda, prepared by Attorney, in electronic format, compatible with EBMUD's computer system. All such documents received by Attorney shall also be provided to the Office of General Counsel unless they have been otherwise separately provided to the Office of General Counsel.

7) Communications. Attorney will communicate primarily with the General Counsel or the OGC Attorney designated for each specific assignment. All other communications with EBMUD personnel and consultants or experts providing services to Attorney in the performance of this Agreement shall be first approved by the OGC Attorney. Attorney may respond to inquiries from the press regarding the assigned matter only after making every effort possible to contact the Office of General Counsel.

8) Designation of Primary Provider of Services.

a) This Agreement contemplates the service of Attorney, **[NAME OF FIRM/ATTORNEY]**.

b) The primary providers of the services called for by this Agreement shall be \_\_\_\_\_, who shall not be replaced without the written consent of EBMUD's General Counsel or the General Counsel's designee. Attorneys not named in the previous sentence or specifically on Exhibit B may not bill for work performed without prior written authorization from the OGC Attorney. This written authorization may be in the form of an e-mail and must include the billing rate for the new individual.

c) Any questions to Attorney regarding the administration of this Agreement shall be directed to [NAME].

9) Non-Assignment. It is recognized by the parties to the Agreement that a substantial inducement to EBMUD for entering into this Agreement was, and is, the professional reputation and competence of Attorney. No part of this Agreement may be assigned by Attorney without the prior written approval of the Office of General Counsel.

10) Insurance Requirements. Insurance Requirements are as stated in Exhibit D, Insurance Requirements.

11) Indemnification - Attorney's Responsibility.

a) Attorney has the professional skills necessary to perform the work under this Agreement; EBMUD relies upon the professional skills of Attorney to perform Attorney's work in a skillful and professional manner; and Attorney agrees to so perform the work.

b) Acceptance by EBMUD of the work performed by Attorney does not operate as a release of Attorney's professional responsibility for the work performed. Attorney is aware of the scope of the work to be performed under this Agreement and Attorney agrees that the work can and shall be performed in a fully competent manner.

c) Attorney expressly agrees to indemnify, defend, and hold EBMUD, its Directors, officers, agents, and employees harmless from and against any and all loss, liability, expense, claims, suits, and damages arising out of or resulting from Attorney's, its associates', employees', subcontractors', or agents' negligent acts, errors or omissions, or willful misconduct, except for any such claim arising solely out of the active negligence or willful misconduct of EBMUD, its Directors, officers, agents, or employees.

12) Licenses. If a license or registration of any kind is required of Attorney, its employees, agents, or subcontractors by federal or state law, Attorney warrants that such license or registration has been obtained, is valid and in good standing, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

13) Termination. This Agreement may be terminated by EBMUD upon written notice with or without cause. In the event of termination, Attorney shall be entitled to compensation for services performed to the effective date of termination; provided, however, that EBMUD may condition payment of such compensation upon Attorney's delivery to EBMUD of any and all documents, drafts, photographs, computer software, video and audio tapes, and other materials provided to Attorney or prepared by or for Attorney or EBMUD in connection with this Agreement.

14) Notices.

a) Notices required by this Agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Attorney:

[name]

[street]

[city, state, zip]

Tel: [number]

To EBMUD:

Office of General Counsel

East Bay Municipal Utility District

P.O. Box 24055, MS 904, Oakland, CA 94623-1055

375 – 11th Street, Oakland, CA 94607

(510) 287-0174; Fax (510) 287-0162

Attention: Karen Donovan

b) Each party shall provide the other party with telephone and written notice of any change in address as soon as practicable.

c) Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

15) Ownership of Materials. Any and all documents, or materials prepared or caused to be prepared by Attorney pursuant to this Agreement shall be the property of EBMUD at the moment of their completed preparation, and shall be provided to EBMUD in both hard paper format, and in their original native electronic format compatible with EBMUD's system.

16) Amendments. This Agreement may be modified only by a written amendment signed by the parties, except as specifically addressed elsewhere in this Agreement and except that the Agreement ceiling may be unilaterally increased by written notice to Attorney from the Office of General Counsel.

17) Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

18) Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be reasonably interpreted to give effect to the intentions of the parties.

19) Controlling Law. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

20) Conflict of Interest. Attorney warrants and covenants that Attorney presently has no interest in, nor shall Attorney require any interest in, any matter that will

render the services required under this Agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless arise, Attorney shall promptly notify EBMUD of the existence of such conflict of interest so that EBMUD may determine whether to terminate this Agreement. Attorney further warrants its compliance with the Political Reform Act (Gov. Code sec. 81000 et seq.) respecting this Agreement.

21) Copyright. Attorney shall execute appropriate documents to assign to EBMUD any copyright to work created pursuant to this Agreement.

22) Time is of the Essence. Attorney agrees to diligently perform the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence.

23) Confidentiality. Attorney agrees to maintain in confidence and not disclose to any person, association, or business, without the Office of General Counsel's prior written consent, any trade secret, confidential information, knowledge or data relating to the products, process, or operation of EBMUD. Attorney further agrees to maintain in confidence and not disclose to any person, association, or business any data, information, or material developed or obtained by Attorney during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.

24) Whole Agreement. This Agreement constitutes the entire understanding and Agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous Agreements between the parties with respect to all or any part of the subject matter hereof.

25) Multiple Copies of Agreement. Multiple copies of this Agreement may be executed by the parties and the parties agree that the Agreement on file in EBMUD's Office of General Counsel is the version of the Agreement that shall take precedence should any differences exist among counterparts of the document.

26) No Discrimination.

a) There shall be no discrimination in the performance of this contract, against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. Attorney shall not establish or permit any such practice(s) of discrimination with reference to the contract or any part. Attorneys determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

b) **Attorney shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination**

**against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

c) Attorney shall include the nondiscrimination provisions above in all subcontracts.

IN WITNESS WHEREOF, Attorney has executed this Agreement, and EBMUD, by and through the Office of General Counsel, duly authorized to act, has executed this Agreement.

**[Attorney]**

By \_\_\_\_\_  
[Name, Position]

**EAST BAY MUNICIPAL UTILITY DISTRICT**

By \_\_\_\_\_  
Derek McDonald, General Counsel

## EXHIBIT A

### SCOPE OF SERVICES

#### 1. SCOPE OF WORK AND SERVICES REQUIRED

The District is requesting proposals for legal services to assist with the relicensing process with FERC. It is expected that the duties may include the following:

- i. General legal advice on the hydropower relicensing process and related issues.
- ii. Advice regarding the appropriate means of communicating with FERC and other agencies during the relicensing process.
- iii. Advice regarding the most effective and appropriate ways to involve and interact with key federal and state regulatory agencies, tribes, non-governmental organizations and other stakeholders in the relicensing process.
- iv. Review of draft notices and study plans prepared by the District prior to issuance and review of submittals from participants in the licensing process.
- v. Advice on compliance with the National Historic Preservation Act, especially Section 106 and requirements for designation and protection of historic landmarks and structures.
- vi. Assistance with developing and conducting meetings with participants in the licensing process and negotiating and drafting of Settlement Agreements.
- vii. Review of license application materials and associated documents and assistance in developing responses to comments on documents prepared and submitted during the process.
- viii. Assistance with the preparation of associated documents, including biological assessments and environmental studies, and assistance with the license application and drafting of license articles and any needed post-filing documents.

EXHIBIT B

**HOURLY RATES**

SUBJECT TO CHANGE ONLY UPON WRITTEN MUTUAL AGREEMENT

1. Attorney and EBMUD agree the hourly rates for worked performed by \_\_\_\_\_ shall be \$ \_\_\_\_.
2. Attorney shall bill for work performed by persons other than \_\_\_\_\_ only after receiving prior approval as provided in Section (8) of this Agreement. If approved, such persons may bill at the rate authorized by EBMUD. Attorney's current rates for each category of persons are set forth in the following table:

Shareholders	\$
Associates	\$
Of Counsels	\$
Paralegals and Law Clerks	\$

3. The Schedule of Rates will be reviewed and may be modified with prior notice to, and approval of, EBMUD, pursuant to Section 2.b of this Agreement.



## EXHIBIT C

### BILLING FOR LEGAL SERVICES CHECKLIST

**Rates:**

Are the hourly fees charged consistent with the rates set forth in the current Agreement between your firm and EBMUD?

**Incremental Hourly Charges:**

Are you listing actual time spent on matters under this agreement or based on increments no greater than six minutes?

**No “Block Billing”:**

Does this bill provide an adequate and brief description of the legal services performed, the date such services were performed, the amount of time spent on that date and for each service performed, and by whom?

**Unauthorized Billing:**

Have you remembered not to bill for:

- Duplicate services;
- Services to correct errors or oversights;
- Time spent to acquaint an attorney or staff member with the assigned matter or because of personnel changes;
- Meetings or conferences attended by more than one attorney from the firm without authorization from OGC? Billing for one attendee is allowed absent prior authorization.

**Documents and Memoranda:**

If you prepared pleadings, discovery, significant correspondence, research memoranda or other significant documents, have you provided them to OGC both in native electronic format and in hard copy?

**Local Travel Time and Meals:**

Have you remembered not to charge for travel time and meals related to Bay Area depositions, court appearances and meetings, unless authorized by OGC in advance?

**Travel Time and Expenses Outside Bay Area:**

Have you remembered not to charge for other travel time and expenses outside of the Bay Area without first obtaining OGC approval?

## **OUTSIDE CONSULTANTS AND EXPERTS**

### **Fees and Expenses for Consultants:**

If you have retained a consultant, expert or subcontractor, have you:

- Obtained prior approval by OGC;
- Obtained OGC approval of the contract form for each retained consultant, expert or subcontractor?

If you are seeking reimbursement for fees and costs of consultants, experts or subcontractors, have you:

- Attached a copy of the invoice to this bill;
- Confirmed the invoice adheres to the retainer agreement for the consultant, expert or subcontractor;
- Confirmed the invoice includes the billing and expense information required by OGC?

## **COSTS AND EXPENSES**

### **Non-Reimbursable Costs:**

Have you remembered not to include ordinary costs such as:

- Computerized research;
- Routine photocopying;
- Telephone charges;
- Facsimile charges;
- Postage;
- Messenger delivery;
- Clerical staff work?

### **Reimbursable Costs – Invoices and Receipts:**

If you are charging for reimbursable extraordinary office expenses, have you included an invoice or receipt?

Reimbursable expenses include:

- Copies prepared by outside reproduction services approved in advance by OGC;
- Filing fees;
- Deposition fees;
- Reporting services;
- Expert witness fee;
- Charges for Service of Process;
- Messenger, delivery or special postage services as approved in advance by OGC.

## EXHIBIT D

### INSURANCE REQUIREMENTS

#### **I. Provisions Applicable to All Required Insurance**

A. Prior to the beginning of and throughout the duration of Services, and for any additional period of time as specified below, Attorney shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below.

B. Attorney shall provide Verification of Insurance as required by this Agreement by providing the completed Verification of Insurance as requested below signing and submitting this Exhibit C to the EBMUD. The Exhibit C may be signed by an officer of the Attorney (Agent) or by the Insurance Broker for the Attorney. Attorney shall update Exhibit C throughout the specified term of the insurance required by this Agreement by resubmitting the completed Exhibit C prior to the expiration date of any of the required insurance. The updated Exhibit C shall become a part of the Agreement but shall not require a change order to the Agreement. The Notice to Proceed shall not be issued, and Attorney shall not commence Services until such insurance has been accepted by the EBMUD.

C. Attorney shall carry and maintain the minimum insurance requirements as defined in this Agreement. Attorney shall require any subcontractor to carry and maintain the minimum insurance required in this Agreement to the extent they apply to the scope of the services to be performed by subcontractor.

D. Acceptance of verification of Insurance by the EBMUD shall not relieve Attorney of any of the insurance requirements, nor decrease liability of Attorney.

E. The insurance required hereunder may be obtained by a combination of primary, excess and/or umbrella insurance, and all coverage shall be at least as broad as the requirements listed in this Agreement.

F. Any deductibles, self-insurance, or self-insured retentions (SIRs) applicable to the required insurance coverage must be declared to and accepted by the EBMUD.

G. At the option and request of the EBMUD, Attorney shall provide documentation of its financial ability to pay the deductible, self-insurance, or SIR.

H. Any policies with a SIR shall provide that any SIR may be satisfied, in whole or in part, by the EBMUD or the additional insured at its sole and absolute discretion.

I. Unless otherwise accepted by the EBMUD, all required insurance must be placed with insurers with a current A.M. Best's rating of no less than A- V.

J. Attorney shall defend the EBMUD and pay any damages as a result of failure to

provide the waiver of subrogation from the insurance carrier.

K. For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified) the retroactive date must be shown and must be before the date of this Agreement, and before the beginning of any Services related to this Agreement.

L. Insurance must be maintained and updated Verification of Insurance be provided to the EBMUD before the expiration of insurance by having Attorney's insurance broker or agent update, sign and return Exhibit C to the EBMUD's contract manager. For all claims-made policies the updated Verification of Insurance must be provided to the EBMUD for at least three (3) years after expiration of this Agreement.

M. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement or the start of any Services related to this Agreement, Attorney must purchase an extended reporting period for a minimum of three (3) years after expiration of the Agreement.

N. If requested by the EBMUD, a copy of the policies' claims reporting requirement must be submitted to the EBMUD for review.

O. Where additional insured coverage is required, the additional insured coverage shall be "primary and non-contributory," and will not seek contribution from the EBMUD's insurance or self-insurance.

P. Attorney agrees to provide immediate Notice to the EBMUD of any loss or claim against Attorney arising out of, pertaining to, or in any way relating to this Agreement, or Services performed under this Agreement. The EBMUD assumes no obligation or liability by such Notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the EBMUD.

Q. Attorney agrees, upon request by the EBMUD, to provide complete, certified copies of any policies and endorsements within 10 days of such request (copies of policies may be redacted to eliminate premium details.)

R. It is Attorney's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of the EBMUD to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the EBMUD, in this or any regard.

S. Notice of Cancellation/Non-Renewal/Material Reduction. The insurance requirements hereunder are mandatory and the EBMUD may, at its sole and absolute discretion, terminate the services provided by Attorney, should Attorney breach its obligations to maintain the required coverage and limits set forth in this Agreement. No coverage required hereunder shall be cancelled, non-renewed or materially reduced in coverage or limits without the EBMUD being provided at least thirty (30) days prior written notice,

other than cancellation for the non-payment of premiums, in which event the EBMUD shall be provided ten (10) days prior written notice. Replacement of coverage with another policy or insurer, without any lapse in coverage or any reduction of the stated requirements does not require notice beyond submission to the EBMUD of an updated Verification of Insurance which shall be met by having the Attorney's insurance broker or agent update, sign and return this Exhibit C.

## **II. Workers' Compensation and Employer's Liability Insurance Coverage**

A. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:

Coverage A. Statutory Benefits Limits

Coverage B. Employer's Liability of not less than:

Bodily Injury by accident: \$1,000,000 each accident

Bodily Injury by disease: \$1,000,000 each employee

Bodily Injury by disease: \$1,000,000 policy limit

B. Attorney's insurance shall be primary and any insurance or self-insurance procured or maintained by the EBMUD shall not be required to contribute to it.

C. If there is an onsite exposure of injury to Attorney, subcontractor, and/or subcontractor's employees under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage is required for such injuries or claims.

D. If Attorney is self-employed, a sole proprietorship or a partnership, with no employees, and is exempt from carrying Workers' Compensation Insurance, Attorney must return the completed Verification of Insurance confirming that Attorney has no employees and is exempt from the State of California Workers' Compensation requirements.

E. If Attorney is self-insured with respect to Workers' Compensation coverage, Attorney shall provide to the EBMUD a Certificate of Consent to Self-Insure from the California Department of Industrial Relations. Such self-insurance shall meet the minimum limit requirements and shall waive subrogation rights in favor of the EBMUD as stated below in section "F."

F. Waiver of Subrogation. Workers' Compensation policies, including any applicable excess and umbrella insurance, must contain a waiver of subrogation endorsement providing that Attorney and each insurer waive any and all rights of recovery by subrogation, or otherwise, against the EBMUD, its directors, board, and committee members, officers, officials, employees, agents, and volunteers. Attorney shall defend and pay any and all damages, fees, and costs, of any kind arising out of, pertaining to, or in

any way relating to Attorney's failure to provide waiver of subrogation from the insurance carrier.

**Verification of Workers' Compensation and Employer's Liability Insurance Coverage**

By checking the box and signing below, I hereby verify that the Attorney is exempt from the State of California's requirement to carry workers' compensation insurance.

As the Attorney's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the Attorney carries workers' compensation insurance as required by this Agreement, including the relevant provisions applicable to all required insurance.

Self-Insured Retention: Amount: \$ \_\_\_\_\_

Policy Limit: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Period: from: \_\_\_\_\_ to: \_\_\_\_\_

Insurance Carrier  
Name: \_\_\_\_\_

Insurance Broker or Agent: Print  
Name: \_\_\_\_\_

Insurance Broker or Agent's Signature:  
\_\_\_\_\_

**III. Commercial General Liability Insurance ("CGL") Coverage**

- A. Attorney's insurance shall be primary and any insurance or self-insurance procured or maintained by the EBMUD shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Attorney.

C. Minimum Requirements. CGL insurance with minimum per occurrence and aggregate limits as follows:

Bodily Injury and Property Damage	\$2,000,000 per occurrence & aggregate
Personal Injury/Advertising Injury	\$2,000,000 per occurrence & aggregate
Products/Completed Operations	\$2,000,000 per occurrence & aggregate

D. Coverage must be on an occurrence basis.

E. Coverage for Products, and Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any “prior work” coverage limitation or exclusion applicable to any Services performed by Attorney and/or subcontractor under this Agreement.

F. Insurance policies and Additional Insured Endorsement(s) Coverage shall be included for all premises and operations in any way related to this Agreement.

G. There will be no exclusion for explosions, collapse, or underground liability (XCU).

H. Insurance policies and Additional Insured Endorsement(s) shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by Subcontractor on Attorney’s behalf.

I. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by Attorney under this Agreement as an “insured contract.”

J. Waiver of Subrogation. The policy shall be endorsed to include a Waiver of Subrogation ensuring that the Attorney and its insurer(s) waive any rights of recovery by subrogation, or otherwise, against the EBMUD, its directors, board, and committee members, officers, officials, agents, volunteers, and employees. Attorney shall defend and pay any and all damages, fees, and costs, of any kind, arising out of, pertaining to, or in any way resulting from Attorney’s failure to provide the waiver of subrogation from its insurance carrier(s).

K. “Independent Attorney’s Liability” shall not limit coverage for liability and/or damages arising out of, pertaining to, or in any way resulting from Services provided under this Agreement.

To the fullest extent permitted by law, the EBMUD, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying, excess and umbrella policies that shall be evidenced in each case by an endorsement. The Additional

Insureds must be covered for liability arising in whole, or in part, from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of Attorney, in any way related to Services performed under this Agreement.

L. A severability of interest provision must apply for all the Additional Insureds, ensuring that Attorney's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies' limit(s).

**Verification of Commercial General Liability (CGL) Insurance Coverage**

**As the Attorney's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the Attorney carries Commercial General Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance:**

**Self-Insured: Amount: \$** \_\_\_\_\_

**Policy Limit: Per Occurrence: \$** \_\_\_\_\_ **Aggregate: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from:** \_\_\_\_\_ **to:** \_\_\_\_\_

**Insurance Carrier**

**Name:** \_\_\_\_\_

**Insurance Broker or Agent: Print**

**Name:** \_\_\_\_\_

**Insurance Broker or Agent's Signature:**

\_\_\_\_\_

**IV. Business Auto Liability Insurance Coverage**

Attorney's insurance shall be primary and any insurance or self-insurance procured or maintained by the EBMUD shall not be required to contribute to it.

A. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Attorney.



B. Minimum Requirements. Auto insurance with minimum coverage and limits as follows:

Each Occurrence Limit (per accident) and in the Aggregate:  
\$2,000,000

Bodily Injury and Property Damage: \$2,000,000

C. Coverage must include either “owned, non-owned, and hired” autos or “any” automobile

This provision ensures the policy covers losses arising out of use of company-owned vehicles (“owned autos”), employee’s personal autos (“non-owned autos” meaning not owned by company/insured) or autos that are rented or leased (“hired autos”).

D. If Attorney is transporting hazardous materials or contaminants, evidence of the Motor Carrier Act Endorsement-hazardous materials clean-up (MCS-90, or its equivalent) must be provided.

E. If Attorney’s Scope of Services under this Agreement exposes a potential pollution liability risk related to transport of potential pollutants, seepage, release, escape or discharge of any nature (threatened or actual) of pollutants into the environment arising out of, pertaining to, or in any way related to Attorney’s and/or Subcontractor’s performance under this Agreement, then Auto Liability Insurance policies must be endorsed to include Transportation Pollution Liability insurance. Alternatively, coverage may be provided under the Attorney’s Pollution Liability Policies if such policy has no exclusions that would restrict coverage under this Agreement. Coverage shall also include leakage of fuel or other “pollutants” needed for the normal functioning of covered autos.

F. To the fullest extent permitted by law, the EBMUD, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying and excess and umbrella policies. The Additional Insureds must be covered for liability arising in whole, or in part, from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of Attorney, in any way related to Services performed under this Agreement.

G. A severability of interest provision must apply for all the Additional Insureds, ensuring that Attorney’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer’s limits of liability.

#### **Verification of Business Auto Liability Insurance Coverage**

**As the Attorney’s insurance broker/agent, I hereby verify that I have reviewed and confirmed that the Attorney carries Business Automobile Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance:**

**Self-Insured: Amount: \$** \_\_\_\_\_

**Policy Limit: Per Accident/Occurrence \$** \_\_\_\_\_ **Aggregate: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from:** \_\_\_\_\_ **to:** \_\_\_\_\_

**Insurance Carrier**

**Name:** \_\_\_\_\_

**Insurance Broker or Agent: Print**

**Name:** \_\_\_\_\_

**Insurance Broker or Agent's Signature:**

\_\_\_\_\_

**V. Professional Liability (also known as Errors and Omissions) Insurance Coverage**

A. Attorney's insurance shall be primary and any insurance or self-insurance procured or maintained by the EBMUD shall not be required to contribute to it.

B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Attorney.

C. Minimum Requirements: Professional Liability Insurance with minimum limits as follows:

Each Claim or Occurrence Limit: \$2,000,000

Aggregate Limit: \$2,000,000

D. If Coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Services.
2. Insurance must be maintained and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date

of the Agreement, Attorney must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services.

E. Insurance shall include prior acts coverage sufficient to cover the services under this Agreement.

F. Coverage shall be included for all premises and operations in any way related to this Agreement.

**Verification of Professional Liability (Errors and Omissions) Insurance Coverage**

**As the Attorney's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the Attorney carries Professional Liability insurance as required by this Agreement, including the relevant provisions applicable to all required insurance.**

**Self-Insured: Amount: \$** \_\_\_\_\_

**Policy Limit: Per Claim \$** \_\_\_\_\_ **Aggregate: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from:** \_\_\_\_\_ **to:** \_\_\_\_\_

**Insurance Carrier  
Name:** \_\_\_\_\_

**Insurance Broker or Agent: Print  
Name:** \_\_\_\_\_

**Insurance Broker or Agent's Signature:**  
\_\_\_\_\_