

**AGREEMENT**  
**BY AND BETWEEN**  
**THE ORANGE COUNTY FLOOD CONTROL DISTRICT**  
**AND BUCHALTER, A PROFESSIONAL CORPORATION**  
**FOR PROFESSIONAL LEGAL SERVICES**

**MARCH 12, 2019**

**AGREEMENT WITH BUCHALTER, A PROFESSIONAL CORPORATION  
FOR PROFESSIONAL LEGAL SERVICES**

This Agreement for Professional Legal Services (this “Agreement”) is effective March 12, 2019, by and between the Orange County Flood Control District (District), on the one hand, and Buchalter, A Professional Corporation (“Attorneys”), on the other hand. District and Attorneys are sometimes individually referred to as “Party,” or collectively referred to as “Parties.”

**RECITALS**

WHEREAS, the District desires to contract for professional legal services;

WHEREAS, Attorneys provide professional legal services, and are particularly qualified to perform required services due to their legal competence and expertise; and

WHEREAS, District desires to retain Attorneys’ services in connection with the Scope of Services provided herein.

NOW, THEREFORE, the Parties mutually agree as follows:

**ARTICLES**

1. **Scope of Work:** The Scope of Work for this Agreement is attached hereto and incorporated herein by this references as Attachment A.

2. **Compensation:** The compensation to be paid to Attorneys for performing services in accordance with this Agreement is specified in Attachment B, which is attached hereto and incorporated herein by this reference, and includes full compensation for providing all services performed under this Agreement. The approved personnel whose services will be provided by Attorneys under this Agreement and their respective hourly rates are set forth on Attachment B, which list of personnel may be amended from time to time as necessary by the Attorneys and the Office of the Orange County Counsel (“County Counsel”) through letter agreements. The approved hourly rates set forth in this Agreement, however, may not be amended or increased without approval of District’s governing body, the Orange County Board of Supervisors (“Board of Supervisors”).

3. **Invoicing/Payment:** All invoicing and payment for services performed under this Agreement shall be as specified in Attachment B hereto.

4. **Agreement Term:** The Term of this Agreement shall commence on the date of execution by the County Counsel and shall continue until completion of the matters for which Attorneys have been retained, unless sooner terminated as provided herein.

5. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to District under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the Board of Supervisors on September 24, 1985 (reference to "County" shall also include District):

"It is the policy of the Orange County Board of Supervisors, on behalf of County and all other government entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and given specific consent to, such adverse employment.

Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."

If the Board of Supervisors declines to consent to the employment, the Attorneys shall decline any such employment. The Board's authority to give the District's consent is not delegated to any officer or employee of the County or District.

The District recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, Attorneys shall comply with such rules in securing necessary consent from their other clients.

In accordance with County's aforesaid Conflict of Interest Policy, the District acknowledges that Attorneys have represented and are continuing to represent Toll Brothers, in an unrelated matter where the District may be potentially adverse. District hereby provides written consent to Attorneys' representation of the foregoing entity, except where such representation is in a litigation matter in which District is a party or participant and the interests of Attorneys' clients in that litigation are adverse to those of the District. In the event of such a matter, Attorneys shall notify the District as soon as practicable by transmitting a statement containing the information as described above in the Conflicts of Interest Policy, and either withdraw from its representation of the District in this matter, or the District may allow the continuation of the concurrent representation of the District and the other client on the unrelated matters pursuant to a subsequent, written waiver, or the Parties may agree to other mutually acceptable solutions, based on discussions with County Counsel at that time. Attorneys warrant that at all times Attorneys are representing the foregoing entities and the District, Attorneys will implement appropriate ethical safeguards sufficient to protect the District from any conflicts of interest which may arise from the representation.

6. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests

of the District. This obligation shall apply to the Attorneys; the Attorneys' employees, agents, and relatives; sub-tier attorneys and third parties associated with accomplishing services hereunder. The Attorneys' efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the District. The Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employee or offer employment to any District employee for any purpose.

7. **Confidentiality and Communication with District:** Attorneys shall maintain the confidentiality of all information which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State, County and District laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees, and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with District and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through District is confidential and privileged. Attorneys warrant that they shall not disclose or use any manner whatsoever any of the information from District's officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that the County Counsel is the legally empowered legal representative of District and its officers and employees and Attorneys shall not without specific direction from the County Counsel communicate with, advise, or represent District officers or employees. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement's termination or expiration.

8. **Independent Contractors:** Attorneys shall be considered as independent contractors and neither Attorneys, its employees nor anyone working under Attorneys shall be considered an agent or employee of District. Neither Attorneys, their employees nor anyone working under Attorneys shall qualify for workers' compensation or other fringe benefits of any kind through District.

9. **Assignment of Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by Attorneys without the express written consent of District. Any attempt by Attorneys to assign or sub-contract the performance or any portion thereof of this Agreement without the express written consent of District shall be invalid and shall constitute a material breach of this Agreement. Attorneys may retain consultants or experts as provided in Attachment B.

10. **Performance:** Attorneys shall perform all work under this Agreement, taking necessary steps and precautions to perform the work to District's satisfaction. Attorneys shall be responsible for the professional quality, technical assurance, timely completion and coordination

of all documents and other services performed by the Attorneys under this Agreement. Attorneys shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all labor, supervision, materials, and supplies necessary therefore; shall at their sole expense obtain and maintain all permits and licenses required by public authorities, including those of District required in its governmental capacity, in connection with performance of the services; and, if permitted to subcontractors, shall be fully responsible for all work performed by subcontractors.

11. **Compliance with Laws:** Attorneys represent and warrant that services to be provided under this Agreement shall fully comply, at Attorneys' expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by District in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by District. Attorneys acknowledge that District is relying on Attorneys to ensure such compliance, and pursuant to the requirements of section 15 below, Attorneys agree that they shall defend, indemnify and hold District and District Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

12. **Attorneys Personnel:** Attorneys warrant that all Attorneys' personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the District. District expressly retains the right to have any of the Attorneys' personnel removed from performing services under this Agreement to the District. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the District under this Agreement within one business day of notification by County Counsel. County Counsel's Supervising Attorney shall submit the request in writing to the Attorneys. The District is not required to provide any reason, rationale or additional factual information if it elects to request any specific Attorneys personnel be removed from performing services under this Agreement.

Attorneys' Supervising Attorney for this Agreement shall be Brian Fish. Attorneys' Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel ("Lead Counsel") for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to County Counsel's written approval. Any change in Attorneys' Supervising Attorney shall be first authorized in writing by County Counsel's Supervising Attorney.

County Counsel's designated Supervising Attorney under this Agreement shall be Nicole N. Walsh, Senior Assistant County Counsel. County Counsel's Supervising Attorney shall have authority to act for District, within the scope of his or her authority, on all daily operational matters under this Agreement and shall review and approve all Attorneys' reports, whether written or verbal, and any change in Attorneys' Supervising Attorney or Lead Counsel. Whenever County Counsel designates a Supervising Attorney or change in Supervising Attorney, he, she or his or her designee shall notify Attorneys in writing.

13. **Reports/Meetings:** The Attorneys shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Agreement. The District and the Attorneys will meet on reasonable notice, to discuss the Attorneys' performance and progress under this Agreement. If requested, the Attorneys' personnel shall attend all meetings. The Attorneys shall provide such information that is requested by the District for the purpose of monitoring progress under this Agreement.

14. **Patent/Copyright Materials/Proprietary Infringement:** Attorneys shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Agreement. Attorneys warrant that any materials and software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Attorneys agree that, in accordance with the more specific requirement contained in the Indemnification section below, they shall indemnify, defend and hold District and District Indemnitees (as defined below) harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

15. **Indemnification:** Attorneys agree to indemnify, defend with counsel approved in writing by District, and hold harmless District, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("District Indemnitees") from any and all claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the performance of services pursuant to this Agreement. If judgment is entered against Attorneys and District (or any District Indemnitee), by a court of competent jurisdiction because of the concurrent active negligence of Attorneys and District or District Indemnitees, Attorneys and District agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding the foregoing, County agrees that it will first look to Attorneys' professional liability insurance, in lieu of the indemnity provisions herein, but only up to and to the extent of any insurance coverage provided under said insurance, in the event of any loss arising from or related to the performance of services pursuant to this Agreement. Should County's loss exceed coverage provided under Attorneys' professional liability insurance, or should Attorney's insurer deny coverage of all or a portion of County's loss, County shall be entitled to look to the contractual indemnity provisions provided for under this Agreement for any uncovered loss. Nothing contained in this Section 15, or in Sections 11, 14, and 16 of this Agreement, shall be deemed to extend the statute of limitations established by law for professional negligence or willful misconduct.

16. **Insurance Provisions:** Prior to the provision of services under this Agreement, Attorneys agree to purchase all required insurance at Attorneys' expense and to deposit with the County Counsel, Certificates of Insurance, including all endorsements required herein, necessary to satisfy County Counsel's Supervising Attorney that the insurance provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates therefore on deposit with County Counsel during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of Attorneys pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Attorney.

Attorneys shall ensure that all subcontractors performing work on behalf of Attorneys pursuant to this Agreement shall be covered under Attorneys' insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Attorneys. Attorneys shall not allow subcontractors to work if subcontractors have less than the level of coverage required by the District from Attorneys under this Agreement. It is the obligation of Attorneys to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Attorneys throughout the term of this Agreement for inspection by District representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Attorneys, in addition to, and without limitation of, any other indemnity provision(s) in this Agreement, agrees to all of the following:

- a) In addition to the duty to indemnify and hold the District harmless against any and all liability, claim, demand or suit resulting from Attorneys', its agents, employee's or subcontractor's performance of this Agreement, Attorneys shall defend the District at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- b) Attorneys' duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- c) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Attorneys' SIR provision shall be interpreted as though the Agreement was an insurer and the District was the insured.

If the Attorneys' fail to maintain insurance acceptable to the District for the full term of this Agreement, the District may terminate this Agreement.

### **Qualified Insurer**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Attorneys shall provide the minimum limits and coverage as set forth below:

<b><u>Coverage</u></b>	<b><u>Minimum Limits</u></b>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claims-made \$1,000,000 aggregate

### **Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

### **Required Endorsements**

All insurance policies required by this Agreement shall waive all rights of subrogation against the District, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify District in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to the District. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the District may suspend or terminate this Agreement.

If Attorneys' Professional Liability is a "Claims-Made" policy, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed in the Agreement.

If the Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.



The District expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement if this Agreement is amended. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect the District.

The District shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with the County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and the District shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys' liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

17. **Ownership of Documents:** The District has permanent ownership of all directly connected and derivative materials produced under this Agreement by the Attorneys. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the District and may be used by the District as it may require without additional cost to the District. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Attorneys without the express written consent of the District.

18. **Title to Data:** All materials, documents, data or information obtained from the District data files or any District medium furnished to the Attorneys in the performance of this Agreement will at all times remain the property of the District. Such data or information may not be used or copied for direct or indirect use by the Attorneys after completion or termination of this Agreement without the express written consent of the District. All materials, documents, data or information, including copies, must be returned to the District at the end of this Agreement.

19. **Records:** The Attorneys shall keep an accurate record of time expended by Attorneys and the subcontractors working for Attorneys in the performance of this Agreement. Such record shall be available for periodic inspection by the District at reasonable times.

20. **Audits/Inspections:** Attorneys agree to permit the District's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the District) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Attorneys for the purpose of auditing or inspecting any aspect of performance under this Agreement. The inspection and/or audit will be confined to those matters connected with the performance of the Agreement including, but not limited to, the costs of administering the Agreement. Attorneys will be provided reasonable notice of such an audit or inspection.

The District reserves the right to audit and verify the Attorneys' records before final payment is made.

Attorneys agree to maintain such records for possible audit for a minimum of five (5) years after final payment, unless a longer period of records retention is stipulated under this Agreement or by law. Attorneys agree to allow interviews of any employees or others who might reasonably have information related to such records. Further, Attorneys agree to include a similar right to the District to Audit records and interview staff of any subcontractors related to performance of this Agreement.

Should the Attorneys cease to exist as a legal entity, the Attorneys' records pertaining to this Agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County Counsel's Supervising Attorney.

**21. Termination for District's Convenience:** Services performed under this Agreement may be terminated in whole or in part at any time District deems termination of this Agreement to be in its best interests. County Counsel's Supervising Attorney shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by County Counsel's Supervising Attorney, Attorneys shall:

- a) Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.
- b) Complete services not terminated by the Termination notice.
- c) Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with the Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys' engagement.
- d) Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, District may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After District makes a determination, it shall pay Attorneys that amount. District's determination shall be final.
- e) Provide County Counsel's Supervising Attorney with copies (electronic and hard copies) of all files and attorneys work product for any matters in which Attorneys were retained by District. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by County Counsel's Supervising Attorney, Attorneys shall file with the court the appropriate substitution of counsel.

**22. Breach of Agreement:** The failure of the Attorneys to comply with any of the terms, provisions, covenants or conditions of this Agreement shall constitute a material breach of

this Agreement. In such event, the District may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:

- a) Afford the Attorneys written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Agreement within which to cure the breach; and/or
- b) Discontinue payment to the Attorneys for and during the period in which the Attorneys are in breach; and offset against any monies billed by the Attorneys but yet unpaid by the District those monies disallowed pursuant to the above; and/or
- c) Terminate the Agreement immediately, without penalty to the District.

23. **Consent to Breach Not Waiver:** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse of any other different or subsequent breach.

24. **Remedies Not Exclusive:** The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either Party to any other remedies provided by law.

25. **Notices:** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly give upon actual in-person delivery, if delivery is by direct hand or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

For Attorneys:	Name:	Buchalter
	Address:	655 West Broadway Suite 1625 San Diego, CA 92101
	Attn:	Brian Fish
	Phone:	(619) 219-5427
	Email:	<a href="mailto:bfish@buchalter.com">bfish@buchalter.com</a>

With a copy to: Buchalter General Counsel

generalcounsel@Buchalter.com

For District	Name:	Office of the Orange County Counsel
	Address:	P. O. Box 1379 Santa Ana, CA 92702-1379
	Attn:	Nicole M. Walsh
	Title:	Senior Assistant County Counsel
	Phone:	(714) 834-6257
	Fax:	(714) 834-2359
	Email:	<a href="mailto:nicole.walsh@coco.ocgov.com">nicole.walsh@coco.ocgov.com</a>

26. **District Child Support Enforcement:** In order to comply with child support enforcement requirements of District, within 30 days of the effective date of this Agreement, Attorneys agree to furnish to the County Counsel's Supervising Attorney a full completed and executed certification in the form of Attachment D. It is expressly understood that this data will be transmitted to government agencies charged with the establishment and enforcement of child support orders, and for no other purposes.

Failure of the Attorneys to timely submit the data and/or certification required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earning Assignment Orders and Notices of Assignment shall constitute a material breach of the Agreement. Failure to cure such breach within 60 calendar days of notice from the District shall constitute grounds for termination of this Agreement.

27. **Employee Eligibility Verification:** The Attorneys warrant that they fully comply with all Federal and State Statutes and regulations regarding the employment of aliens and others and that all Attorneys' employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Attorneys shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but no limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324 et seq., as they currently exist and as they may be hereafter amended. The Attorneys shall retain all such documentation for all covered employees for the period prescribed by law. The Attorneys shall indemnify, defend with counsel approved in writing by District, and hold harmless, the District and District Indemnitees from employer sanctions and any other liability which may be assessed against the Attorneys or the District/County Indemnitees or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

28. **Entire Agreement:** This Agreement including Attachments A, B, C and D, which are attached hereto and incorporated herein by this reference, contains the entire Agreement between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.

29. **Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

30. **Governing Law and Venue:** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

31. **Appropriation/Contingency of Funds:** This Agreement is subject to and contingent upon applicable budgetary appropriations being approved by the Board of Supervisors for each fiscal year during the Term of this Agreement. If such appropriations are not approved, the Agreement will be immediately terminated without penalty to the District.

32. **Taxes:** Unless otherwise provided herein or by law, the compensation provided for herein includes California state sales or use tax applicable law now or in the future.

33. **Change of Ownership:** Attorneys agree that if there is a change or transfer in ownership of Attorneys' business prior to completion of this Agreement, the new owner(s) or successor(s) to Attorneys shall be required to provide documentation satisfactory to the District that the new owner(s) or successor(s) have assumed and will assume Attorneys' duties and obligations contained in this Agreement and that this Agreement constitutes a valid and fully binding agreement of such new owner(s) or successor(s).

34. **Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Agreement, are to be released by Attorneys and/or anyone acting under the supervision of Attorneys to any person, partnership, company, corporation, or agency, without prior written approval by the District, except as necessary for the performance of the services of this Agreement. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the District unless otherwise agreed to by both Parties.

35. **Headings:** The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

36. **Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

37. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

38. **Attorney's Fees:** In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

39. **Interpretation:** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

40. **Authority:** The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

41. **Counterparts and .pdf/Facsimile Signature:** This Agreement may be signed in counterparts, which together shall constitute one original, and such counterpart signature pages may be exchanged and compiled using facsimile and/or .pdf file versions, which shall be deemed to be original signatures.

***SIGNATURES ON FOLLOWING PAGE***

The parties hereto have executed this Agreement on the dates shown opposite their respective signatures below.

Dated: March 12, 2019

District:

Nicole M. Walsh  
Supervising Deputy County Counsel

By: \_\_\_\_\_  
Nicole M. Walsh  
Supervising Deputy County Counsel

Dated: March 12, 2019

Attorneys:

Buchalter, A Professional Corporation

By: \_\_\_\_\_

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

APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By

Deputy

Date

5/7/19

## ATTACHMENT A

### SCOPE OF SERVICES

Attorneys will be required to provide the personnel and all necessary support, including computer hardware and software that is sufficient and adequate to perform the services. Attorneys will need to prepare interim and final reports, updates, and summaries for each phase of work if requested by County Counsel.

The required services include, but are not limited to, the following services as directed by the County Counsel's office:

1. Attorneys shall represent the Orange County Flood Control District and provide advisory, strategy, pre-litigation, litigation, and all necessary related legal services concerning *Sierra Club, et al. v. City of Highland* (San Bernardino Superior Court CIVDS 1615347); *Greenspot Residents Association, et al. v. City of Highland* (San Bernardino Superior Court CIVDS 1615280) and the property at issue in those matters ("District Property"). Services may also include, but not be limited to, review of environmental documentation, review of entitlement and planning documentation, and other land use, planning and environmental legal services related to the potential development, leasing, sale or other disposition of portions of the District Property.
2. Attorneys shall, if and when requested by County Counsel:
  - a) Consult with and advise County Counsel, the County Board of Supervisors and designated District staff on negotiation, pre-litigation and litigation strategy;
  - b) Hire litigation consultants and/or expert witnesses, subject to approval by County Counsel and/or the Board of Supervisors; and
  - c) Negotiate and/or engage in informal dispute resolution and/or mediation in an effort to achieve authorized settlements (note that as a general matter, all settlements must be approved by the County Board of Supervisors).
3. Attorneys shall, if and when requested by County Counsel, attend meetings of the Board of Supervisors and meet with District Representatives as requested by County Counsel.
4. Attorneys shall obtain the approval of County Counsel prior to undertaking legal research of more than twelve (12) hours on any particular issue.
5. Attorneys shall obtain County Counsel's prior approval for travel outside the Counties of: Orange, Los Angeles, Riverside, Imperial, Kern, San Bernardino, Ventura, Santa Barbara or San Diego.



## ATTACHMENT B

### COMPENSATION, INVOICING AND PAYMENT

#### A. Hourly Rate Schedule

STAFFING LEVEL	NAME	HOURLY RATE
Supervising Attorney	Brian Fish	\$445.00
Partners, as approved by County Counsel's designated Supervising Attorney		\$445.00
Of Counsel, as approved by County Counsel's designated Supervising Attorney		\$440
Associates, as approved by County Counsel's Supervising Attorney		\$350.00
Paralegals, as approved by County Counsel's Supervising Attorney		\$290.00

The Attorneys shall not be compensated for "travel time." Itemized receipts/backup documentation for reimbursable expenses must be submitted with the invoice.

**NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, UNLESS ATTORNEYS RECEIVE PRIOR WRITTEN APPROVAL OF THE DISTRICT, THE DISTRICT WILL NOT COMPENSATE ATTORNEYS FOR THE ATTENDANCE OR PARTICIPATION OF MORE THAN ONE ATTORNEY (INCLUDING ATTORNEYS STAFF) IN ANY MEETING, CONFERENCE CALL, DEPOSITION, COURT APPEARANCE OR SIMILAR MATTER. IN THE EVENT MORE THAN ONE ATTORNEY ATTENDS ANY MATTER, THE DISTRICT WILL COMPENSATE ATTORNEYS AT THE HOURLY RATE FOR THE MOST SENIOR ATTORNEY PRESENT.**

**THE DISTRICT WILL NOT PAY ANY ATTORNEY HOURLY RATE FOR TIME SPENT TRAVELING, REGARDLESS OF THE FORM OF TRANSPORTATION (AUTOMOBILE, AIR, ETC.). FOR POLICIES RELATED TO TRAVEL EXPENSE REIMBURSEMENT SEE SECTION B.2, BELOW.**

## ATTACHMENT B

### COMPENSATION, INVOICING AND PAYMENT

#### B. Expenses

District shall reimburse Attorneys for their actual out-of-pocket expenses without mark-up, excluding expenses generally considered as overhead already reflected in the Attorneys' hourly rates.

1. Reimbursable ordinary expenses shall include, but not be limited to:
  - a) Transcript fees.
  - b) Postage.
  - c) Messenger service.
  - d) Process service.
  - e) Document reproduction by outside vendor.
  - f) In-house document production. If amount charged in any one month exceeds \$500.00, prior County Counsel approval shall be obtained.
2. Reimbursable extraordinary expenses include charges of which Attorneys have obtained County Counsel' prior approval. Such expenses include, but shall not be limited to:
  - a) Consultants, up to \$150,000 per contract, unless otherwise authorized by the County Board of Supervisors.
  - b) Expert witnesses up to \$150,000 per contract, unless otherwise authorized by the County Board of Supervisors.
  - c) Travel outside the Counties of Orange, Los Angeles, San Bernardino, Riverside, Imperial, Kern, Ventura, Santa Barbara and San Diego. Such extraordinary expenses shall be reimbursed at the IRS prevailing rate for mileage only.
  - d) Investigative services.
  - e) Any expense item exceeding Five Hundred Dollars (\$500.00).
3. Non-Reimbursable expenses include, but shall not be limited to:
  - a) Staff time or overtime for performing secretarial, clerical, or word processing functions.

- b) Charges for time spent to provide necessary information for District audits or billing inquiries.
- c) Charges for work performed which had not been authorized by County Counsel. Such work shall be gratuitous effort by Attorneys.
- d) Mileage, travel expenses or telephone expenses within the counties of Orange, Los Angeles, San Bernardino, Riverside, Imperial, Kern, Ventura, Santa Barbara and San Diego.

## **BILINGS AND PAYMENTS**

### **C. Billings**

1. Attorneys shall submit monthly billing statements in arrears, no later than the tenth (10th) of the month following the month service was rendered.
2. The original billing statement(s) and one copy shall be submitted to:
 

Orange County Flood Control District  
Office of the County Counsel  
333 W. Santa Ana Blvd., 4th Floor  
Post Office Box 1379  
Santa Ana, CA 92702-1379  
Attn: Nicole M. Walsh, Senior Assistant County Counsel
3. The original of each billing statement shall include a declaration of Attorneys' Supervising Attorney or Lead Counsel as provided in Attachment C.
4. Each billing statement shall be identified by a unique number and shall be itemized to include:
  - a) Matter or Case names and court number.
  - b) Staffing level(s), hourly rates and specific activities for each attorney and/or paralegal.
    - 1) Each activity shall be billed separately as a line item in a time reporting format acceptable to County Counsel.
    - 2) A detailed description of specific activities for each attorney and/or paralegal.
  - c) Total current cumulative monthly fees billed for each staffing level.
  - d) Total current monthly expenses billed in the following categories:

- 1) Consultant and expert witness expenses;
  - 2) Deposition and transcript expenses; and
  - 3) Other miscellaneous expenses.
- e) The total cumulative expenses to date billed in (d) directly above.

**D. Payments**

District shall make payment(s) for services rendered under this Agreement monthly in arrears based on the monthly itemized billing statement(s) Attorneys submit to District. District shall make its best effort to process payments promptly after receiving Attorneys' monthly billing statement. District shall not pay interest or finance charges on any outstanding balance(s).

**ATTACHMENT C****ATTORNEYS' DECLARATION ON BILLING STATEMENT**

The following declaration shall be made on the original of each billing statement and personally signed and dated by Attorneys' Supervising Attorney or Lead Counsel.

"I have personally examined this billing statement. All entries are in accordance with the Agreement for Professional Legal Services, are correct and reasonable for the services performed and costs incurred, and no item on this statement has been previously billed to District."

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Date

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Signature

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Name

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Title  
(Supervising Attorney or Lead Counsel)

**ATTACHMENT D****COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT  
CERTIFICATION REQUIREMENTS**

This data shall be transmitted to governmental agencies charged with the establishment and enforcement of child support order and for no other purposes and shall be held confidential by those agencies.

- A. In the case of an individual Vendor, his/her name, date of birth, Social Security number, and residence address:

Name: \_\_\_\_\_  
 D.O.B: \_\_\_\_\_  
 Social Security No: \_\_\_\_\_  
 Residence Address: \_\_\_\_\_  
 \_\_\_\_\_

- B. In the case of a Vendor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity:

Name: \_\_\_\_\_  
 D.O.B: \_\_\_\_\_  
 Social Security No: \_\_\_\_\_  
 Residence Address: \_\_\_\_\_  
 \_\_\_\_\_

Name: \_\_\_\_\_  
 D.O.B: \_\_\_\_\_  
 Social Security No: \_\_\_\_\_  
 Residence Address: \_\_\_\_\_  
 \_\_\_\_\_

*(Additional sheets may be used if necessary)*

I certify that \_\_\_\_\_ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Agreement with the Orange County Flood Control District. I understand that failure to comply shall constitute a material breach of the Agreement and failure to cure such breach within sixty (60) calendar days of notice from the District shall constitute grounds for termination of the Agreement.

\_\_\_\_\_  
 Name (Please Print)

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Title