

**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 11.2
(ID # 12518)

MEETING DATE:

Tuesday, August 04, 2020

FROM: FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Agreement for Professional Services Between the Riverside County Flood Control and Water Conservation District and Burhenn & Gest LLP for Advisory Services in the Areas of Water and Environmental Law, Fiscal Years 2020/2021-2024/2025, All Districts. [Total Cost \$1,000,000 - District Funds 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Agreement for Professional Services ("Agreement") between the Riverside County Flood Control and Water Conservation District ("District") and Burhenn & Gest LLP ("Attorney") for Advisory Services in the Areas of Water and Environmental Law for Fiscal Years 2020/2021-2024/2025;
2. Authorize the Chairwoman of the Board to execute the same on behalf of the District;
3. Authorize the District's General Manager-Chief Engineer to terminate the Agreement in accordance with the terms and conditions in the Agreement; and
4. Direct the Clerk of the Board to return two (2) executed Agreements to the District.

ACTION: Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG

7/23/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: August 4, 2020
xc: Flood

Kecia R. Harper
Clerk of the Board

By:
Deputy

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 200,000	\$ 200,000	\$ 1,000,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: See Additional Fiscal Information			Budget Adjustment: No	
			For Fiscal Year: 20/21 – 24/25	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Agreement sets the terms and conditions by which the Attorney will provide professional legal services to the District. As the regional flood management authority for the western part of Riverside County and the Principal Permittee for the Santa Ana, Santa Margarita and Whitewater Regions National Pollution Discharge Elimination System ("NPDES") Municipal Separate Storm Sewer System ("MS4") permits (individually "Permit" and collectively "Permits"), the District requires specialized legal counsel to provide advisory services in the areas of law, policy, regulation and permitting pertaining to protection and management of the water environment. The regulatory and permitting framework for the maintenance, repair and construction of flood control infrastructure and for the management of NPDES stormwater programs in California is comprised of many overlapping sets of permits, standards and regulations at local, state and federal levels. This framework is continually being revised, refined and interpreted by the applicable regulatory agencies. Regulatory actions can carry significant legal and fiscal liabilities for not only the District, but also the other agencies that the District represents as Principal Permittee. Due to the nature of the legal issues, the potential significance of the liabilities and the need to move quickly to engage legal support, County Counsel supports the solicitation of outside legal services.

Burhenn & Gest LLP is a well-respected environmental law firm that specializes in water quality, air quality and contaminated property litigation, transactional and regulatory issues, as well as general federal and state litigation. The firm has extensive expertise in providing legal representation during MS4 Permit negotiations and administrative civil liability issues; legal review in preparation for Regional Water Quality Control Boards ("Regional Boards") workshops, hearings and other meetings related to the MS4 Permits; and critical input on the issues of unfunded mandates. Additionally, Burhenn & Gest LLP has represented the District during previous Permit renewal processes with the Santa Ana, Santa Margarita and Colorado River Regional Boards. As the District enters into negotiations with the Regional Boards on the MS4 Permits, it is essential to have legal representation that is familiar with the stormwater pollution prevention program in Riverside County.

County Counsel has approved the Agreement as to legal form. The Attorney has executed the Agreement.

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Impact on Residents and Businesses

Costs incurred under these Agreements will be funded by current NPDES Benefit Assessment revenue and entail no new fees, taxes or bonded indebtedness.

Additional Fiscal Information

Sufficient funding is available in the District's budget for Fiscal Year 2020-2021 and will be included in the District's recommended budget(s) for future fiscal years as appropriate and necessary.

<u>Contract Term</u>	<u>Annual Budget (not to exceed)</u>
FY 20/21	\$200,000
FY 21/22	\$200,000
FY 22/23	\$200,000
FY 23/24	\$200,000
FY 24/25	\$200,000
TOTAL	\$1,000,000

SOURCE OF FUNDS: (Continued)

1. 25180 947540 525440 NPDES Whitewater Professional Services
2. 25190 947560 525440 NPDES Santa Ana Professional Services
3. 25200 947580 525440 NPDES Santa Margarita Professional Services


Contract History and Price Reasonableness

In accordance with the purchasing guidelines, on April 9, 2020, the District released Request for Qualifications #FCARC-00162 for Special Counsel for Advisory Services in the Area of Water and Environmental Law on the District's website from April 9, 2020 to April 30, 2020. Five (5) firms responded, and a selection committee comprised of County Counsel and District employees evaluated the proposals based on the criteria set forth in the Request for Proposal. Burhenn & Gest LLP was selected as the most qualified firm. The firm's prices are competitive.

ATTACHMENTS:

1. Agreement for Professional Services

RKM:blm
P8/232315



Jason Farin, Principal Management Analyst 7/28/2020



Gregory L. Priamos, Director County Counsel 7/24/2020

AGREEMENT FOR PROFESSIONAL SERVICES
Advisory Services in the Areas of Water and Environmental Law

This Agreement for Professional Services ("Agreement"), dated as of AUG 04 2020, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), and Burhenn & Gest LLP, a California limited liability partnership ("ATTORNEY"). Sometimes hereinafter, DISTRICT and ATTORNEY may be referred to collectively as the "Parties." The Parties hereby agree as follows:

1. SCOPE OF SERVICE. ATTORNEY shall provide professional legal counsel and services in the areas of law, policy, regulation and permitting pertaining to protection and management of the water environment to DISTRICT as further described in Attachment "A", attached hereto and made a part hereof. The legal services are necessary due to complex and unique legal issues which require a heightened level of expertise.

2. TERM. The term of this Agreement shall commence on the date it is executed by DISTRICT's Board of Supervisors and shall terminate at 11:59 pm Pacific Time on June 30, 2025. ATTORNEY shall not commence performance of any work or services, for any reason whatsoever, until DISTRICT has provided ATTORNEY with a written Notice to Proceed authorizing ATTORNEY to initiate work pursuant to this Agreement. No payment will be made for any work or services performed prior to the issuance of said Notice to Proceed.

3. TERMINATION. Services performed under this Agreement may be terminated in whole or in part at any time DISTRICT deems to be in its best interest, as determined by DISTRICT. DISTRICT shall terminate services by delivering to ATTORNEY a written Termination Notice executed by DISTRICT and specifying the extent to which services are terminated and the effective termination date.

4. EFFECT OF TERMINATION. After receiving a Termination Notice and unless otherwise directed by DISTRICT, ATTORNEY shall: (1) take all steps necessary to stop services

on the date and to the extent specified in the Termination Notice; (2) complete services not terminated by the Termination Notice; (3) submit final billing for terminated services within thirty (30) days from the effective termination date; and (4) promptly submit a brief closing report advising DISTRICT of the status of the matters being handled.

5. CLOSING REPORT UPON TERMINATION. ATTORNEY shall deliver a Closing Report to DISTRICT immediately after termination of services under Section 3 or Section 6 which shall include, but not be limited to:

- (a) A brief description of the status of all matters or projects that had been assigned to ATTORNEY.
- (b) A discussion of DISTRICT's exposure and applicable law.

ATTORNEY shall give DISTRICT copies or originals, as appropriate, of all files and attorney work product for all matters on which it has been working. This includes any computerized index, computer programs and document retrieval system created or used for these matters.

6. PROFESSIONAL CONFLICT OF INTEREST. ATTORNEY represents and warrants that no DISTRICT employee whose position in DISTRICT enables him/her to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such employee is or shall be employed in any capacity by ATTORNEY, or shall have any direct or indirect financial interest in this Agreement.

Anyone who is a former employee of DISTRICT at the time of execution of this Agreement or who subsequently becomes affiliated with ATTORNEY in any capacity (employee, associate or partner) shall not (i) participate in the services provided by ATTORNEY to DISTRICT; or (ii) become a partner, shareholder or otherwise share in the profits of ATTORNEY for a period of one year from the date the former DISTRICT employee left DISTRICT employment.

It is possible that some of ATTORNEY's present or future clients will have disputes with DISTRICT during the time that ATTORNEY is representing DISTRICT. DISTRICT and ATTORNEY agrees that should the situation arise where a new or existing client engages ATTORNEY in any matter in a position adverse to DISTRICT or in which DISTRICT's interest may be adversely affected, that ATTORNEY will so advise DISTRICT and upon receipt of such notice DISTRICT may determine that the conflict may be waived or may determine that it is in the DISTRICT's best interest to terminate the services of ATTORNEY. Should DISTRICT determine that it is best to terminate the services of ATTORNEY; DISTRICT will notify ATTORNEY of such decision. ATTORNEY may then submit any outstanding invoices for payment up to the date of termination as determined by the notice from DISTRICT.

7. ATTORNEY'S SERVICES AND RESPONSIBILITIES. Upon appointment, ATTORNEY shall provide DISTRICT with the names of other professionals (partners, associates, law clerks, paralegal, etc.) who will assist in the provision of services under this Agreement and the functions to be performed by each professional shall also be provided. ATTORNEY's Supervising Attorney will be fully responsible for the quality of the work product. DISTRICT also requests no more than two (2) attorneys in the firm handle its files. Within a law firm, research and minor work should be performed by the lowest level of personnel (e.g., junior attorneys, paralegal) capable of performing a given task. Responsibility for the quality of work product remains with ATTORNEY's Supervising Attorney. DISTRICT retains the right to approve or disapprove any and all ATTORNEY assignments.

(a) Key Personnel.

- (1) ATTORNEY agrees that David Burhenn will be the Supervising Attorney assigned to perform the work on Attachment "A" and the terms of this Agreement. Any changes or substitution of the

assigned attorney must have the express written approval of the General Manager-Chief Engineer of DISTRICT or his designee.

- (2) Support attorneys and paralegals shall be designated by David Burhenn and shall be comprised of the following individual: Only Howard Gest is expected to assist on this matter at this time; however, other attorneys or support staff may work on this matter as agreed upon on an as-needed basis.

Any change in staffing shall be made only upon telephonic or written notice to, and written consent by DISTRICT, which may be made by facsimile transmission, which consent, shall not be unreasonably withheld.

8. LEGAL REPRESENTATION. ATTORNEY shall provide DISTRICT with the necessary representation by staff qualified to perform the legal tasks at the least costly billing category. ATTORNEY's legal representation shall include, but not be limited to:

- (a) Review of all applicable files and correspondence and claims, if any, and provision of an assessment of potential liability.
- (b) All legal research and review of all documents and other evidentiary materials.
- (c) Secretarial and clerical support services necessary to perform the legal representation in a professional manner.

ATTORNEY shall meet with DISTRICT as DISTRICT requires and provide all information and reports, including an estimate of fees for each aspect of representation as identified in the outlines, deemed necessary by DISTRICT to keep it informed.

9. SETTLEMENT EVALUATION. If applicable, ATTORNEY shall provide DISTRICT with an initial evaluation on settlement potential involving DISTRICT or any subordinate program that will serve as the basis for developing the legal position and strategy of

DISTRICT and for controlling costs. ATTORNEY shall provide status reports upon request of DISTRICT.

10. PRIOR APPROVALS. ATTORNEY shall obtain the prior written approval of DISTRICT before: (i) retaining any consultant; (ii) undertaking research of more than four (4) hours on any particular issue; (iii) commencing travel on behalf of DISTRICT outside the Counties of Los Angeles, Riverside, San Bernardino, or Orange.

In addition, ATTORNEY shall: (i) assist DISTRICT in evaluation and negotiations, and shall obtain authority from DISTRICT before making any settlement proposal on behalf of DISTRICT; (ii) immediately notify DISTRICT verbally and in writing when a proposal of settlement is received; and (iii) keep and preserve all backup documentation to support all entries included in its billings for a period of four (4) years after termination or completion of the matters for which ATTORNEY has been retained.

11. COMPENSATION. The total amount of compensation paid to ATTORNEY under the terms of this Agreement shall not exceed the sum of One Million Dollars (\$1,000,000) over the entire term of this Agreement unless a written Amendment to this Agreement is executed by both parties prior to performance of additional services. Since these services are generally required throughout the term of the contract, DISTRICT and ATTORNEY will monitor work requirements and efforts such that the limits of compensation are not reached before the last month of the term of the Agreement.

12. FEES. DISTRICT shall pay ATTORNEY for services actual satisfactorily performed, products provided and expenses incurred in accordance with the fee rate schedule set forth on Attachment "B" attached hereto and made a part hereof.

13. EXPENSES. DISTRICT shall reimburse ATTORNEY for their actual out-of-pocket expenses but without any additional costs for having advanced the funds or for expenses generally considered as overhead already reflected in ATTORNEY's hourly rate.

Reimbursable ordinary expenses shall include, but not be limited to: (i) Postage; (ii) Messenger service; (iii) Document reproduction by outside vendor; and (iv) In-house document reproduction, provided, however, no single expense shall exceed one thousand five hundred dollars (\$1,500) without the prior consent of the General Manager-Chief Engineer of DISTRICT or his designee.

Reimbursable extraordinary expenses shall include charges of which ATTORNEY has obtained prior approval of DISTRICT. Such expenses shall include, but not be limited to: (i) consultants; (ii) travel outside the Counties of Los Angeles, Riverside, San Bernardino and Orange; (iii) investigative services and (iv) any expense item exceeding five hundred dollars (\$500.00).

Non-reimbursable expenses shall include, but not be limited to: (i) staff time or overtime for performing secretarial, clerical, or word processing functions; (ii) charges for time spent to provide necessary information for DISTRICT audits or billing inquiries; (iii) charges for work performed which had not been authorized by DISTRICT, which work shall be a gratuitous effort by ATTORNEY; and (iv) mileage or travel expenses from the regular office of ATTORNEY to DISTRICT and/or County Counsel offices.

14. BILLINGS AND PAYMENT. ATTORNEY shall submit its billing statement at least quarterly, but no more than monthly, in arrears, following satisfactory performance of services. The original billing statement(s) shall be submitted to:

Riverside County Flood Control and Water Conservation District
1995 Market Street
Riverside, CA 92501
Attention: Business Office-Accounts Payable

Additionally, one (1) copy of the billing statement(s) shall be submitted to:

County of Riverside
Office of County Counsel
Aaron Gettis, Supervising Deputy County Counsel
3960 Orange Street Fifth Floor

Riverside, CA 92501

All billings shall be itemized to include (i) staffing levels, hourly rates and specific activities for each attorney and/or paralegal; (ii) listing of each activity as a line item in a time reporting format acceptable to DISTRICT with a detailed description of specific activities for each attorney and/or paralegal; (iii) total current period fees and total cumulative fees billed for each staffing level; and (iv) current period expenses and total cumulative expenses billed in itemized categories. Payments shall be made on a progressive basis.

It is the expectation of DISTRICT that it will not be billed for ordinary overhead expenses, including (i) ordinary word processing; (ii) time to prepare and review billings; and (iii) local travel.

ATTORNEY shall have and maintain all backup documentation to support all entries included in the monthly billing statement. Such documentation shall be in a form subject to audit and in accordance with generally accepted accounting principles. ATTORNEY shall make such documentation available to auditors upon request and at such reasonable times and locations as may be agreed to between DISTRICT and ATTORNEY.

Payments shall be made by DISTRICT within thirty (30) days after receipt of appropriate billing from ATTORNEY. DISTRICT shall not pay interest on any outstanding balance(s).

15. SUPERVISION OF AGREEMENT. This Agreement shall be supervised on behalf of the County of Riverside Office of County Counsel by Aaron Gettis, Supervising Deputy County Counsel. Once services have begun, Mr. Gettis may designate in writing a DISTRICT management representative who may jointly supervise this Agreement on behalf of DISTRICT. Richard Boon, Chief of Watershed Protection Division, shall be such designee. Approval of proposed settlement recommendations is subject to approval by the Board of Supervisors, as legislative body of DISTRICT.

16. CONFIDENTIALITY. ATTORNEY shall maintain the confidentiality of all information which it may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. ATTORNEY shall inform all of its principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement. These confidentiality obligations shall survive the termination or expiration of this Agreement.

17. COMMUNICATIONS WITH DISTRICT. ATTORNEY recognizes that their relationship with DISTRICT and its agents, 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. ATTORNEY warrants that they shall not disclose or use in any manner whatsoever any of the information from DISTRICT and its officers, employees and agents in connection with said relationships or proceedings. ATTORNEY understands that the County Counsel is the empowered legal representative of County of Riverside and its officers and employees and ATTORNEY shall not without specific direction from the Office of County Counsel communicate with, advise or represent DISTRICT legislative body.

18. INDEMNIFICATION. ATTORNEY shall indemnify and hold harmless DISTRICT and County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any services of ATTORNEY, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of

ATTORNEY, its officers, agents, employees, subcontractors, agents or representatives from this Agreement.

ATTORNEY shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by ATTORNEY, ATTORNEY shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of DISTRICT; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes ATTORNEY's indemnification to DISTRICT as set forth herein.

ATTORNEY's obligation hereunder shall be satisfied when ATTORNEY has provided to DISTRICT the appropriate form of dismissal relieving DISTRICT from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe ATTORNEY's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

This indemnification provision shall survive termination or expiration of this Agreement until such a time as the statute of limitations shall run for any claims that may arise out of this Agreement.

19. REQUIRED INSURANCE. Without limiting or diminishing ATTORNEY's obligation to indemnify or hold the Indemnitees harmless, ATTORNEY shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement.

As respects to the insurance section only, DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District and the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

A. Workers' Compensation:

If ATTORNEY has employees as defined by the State of California, ATTORNEY shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of the Riverside County Flood Control and Water Conservation District and the County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of ATTORNEY's performance of its obligations hereunder. Policy shall name DISTRICT as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply

separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then ATTORNEY shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name DISTRICT as Additional Insured.

D. Professional Liability:

ATTORNEY shall maintain Professional Liability Insurance providing coverage for ATTORNEY's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If ATTORNEY's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and ATTORNEY shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that ATTORNEY has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) will continue as long as the law allows.

E. General Insurance Provisions – All Lines:

- i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less

than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

- ii. ATTORNEY must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to DISTRICT, and at the election of the County Risk Manager, ATTORNEY's carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- iii. ATTORNEY shall cause their insurance carrier(s) to furnish DISTRICT with
 - 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein; and
 - 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If ATTORNEY insurance carrier(s) policies does not meet the

minimum notice requirement found herein, ATTORNEY shall cause ATTORNEY's insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.

- iv. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of Endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverage's set forth herein and the insurance required herein is in full force and effect. ATTORNEY shall not commence operations until DISTRICT has been furnished with original Certificate(s) of Insurance and certified original copies of Endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.
- v. It is understood and agreed by the Parties hereto that ATTORNEY's insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- vi. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or there is a material change in the equipment to be used in the performance of the scope of work; or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance and the

monetary limits of liability for the insurance coverages required under this Agreement, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by ATTORNEY has become inadequate.

- vii. ATTORNEY shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- viii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- ix. ATTORNEY agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

20. NOTICES. Any and all notices sent, or required to be sent, to the Parties of this agreement will be mailed by first class mail, postage prepaid, to the following addresses:

If to DISTRICT: Riverside County Flood Control and Water Conservation District
1995 Market Street
Riverside, CA 92501
Attn: Watershed Protection Division

With a copy to:

County of Riverside
Office of County Counsel
Aaron Gettis, Supervising Deputy County Counsel
3960 Orange Street Fifth Floor
Riverside, CA 92501

If to ATTORNEY: Burhenn & Gest, LLP
624 South Grand Avenue, Suite 2200
Los Angeles, CA 90017
Attn: David W. Burhenn

21. ASSIGNMENT. No part of this Agreement or any right or obligation arising from it is assignable without the written consent of DISTRICT. Any attempt by ATTORNEY to assign or subcontract services relating to this Agreement without the consent of DISTRICT shall

constitute a material breach of this Agreement. However, ATTORNEY may retain consultants and experts as ATTORNEY deem appropriate after receiving the written approval of DISTRICT.

22. INDEPENDENT CONTRACTOR. ATTORNEY and the agents and employees of ATTORNEY shall act at all times in an independent capacity during the term of this Agreement and in the performance of the services to be rendered hereunder and shall not act as or shall not be and shall not in any manner be considered employees or agents of DISTRICT.

23. JURISDICTION/LAW/SEVERABILITY. This Agreement is to be construed in accordance with the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be declared severable and shall be given full force and effect to the extent possible.

Any legal action, in law or equity, related to the performance or interpretation of this Agreement shall be filed only in the Superior Court for the State of California located in County of Riverside, California, and the Parties waive any provision of law providing for a change of venue to another location. Prior to the filing of any legal action, the Parties shall be obligated to attend a mediation session with a neutral mediator to try to resolve the dispute.

24. WAIVER. Any waiver by DISTRICT of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other term thereof. Failure on the part of DISTRICT to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof or estopping DISTRICT from enforcement hereof.

25. NON-DISCRIMINATION. ATTORNEY represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, disability, physical condition, marital status or age, and to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (California

Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), the American with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Civil Rights Restoration Act of 1987, Executive Orders 12898 and 13166, and all other applicable related laws, regulations and Executive Orders. Such nondiscrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

26. NON-APPROPRIATION OF FUNDS. It is mutually agreed and understood that the obligations of DISTRICT are limited by and contingent upon the availability of DISTRICT funds for the reimbursement of ATTORNEY's fees. In the event that such funds are not forthcoming for any reason, DISTRICT shall immediately notify ATTORNEY in writing. This Agreement shall be deemed terminated and have no further force and effect immediately on receipt of DISTRICT's notification by ATTORNEY. In the event of such termination, ATTORNEY shall be entitled to payment for work already performed in accordance with this Agreement.

27. COMPLETE AGREEMENT. This Agreement shall constitute the complete and exclusive statement of understanding between DISTRICT and ATTORNEY which supersedes all previous written or oral agreements, and all prior communications between DISTRICT and ATTORNEY relating to the subject matter of this Agreement.

28. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument.

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ATTACHMENTS:

Attachment "A" – Scope of Service

Attachment "B" – Fee Schedule

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on

August 4, 2020
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

By [Signature]
JASON E. UHLEY
General Manager-Chief Engineer

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By [Signature]
KAREN SPIEGEL, Chairwoman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

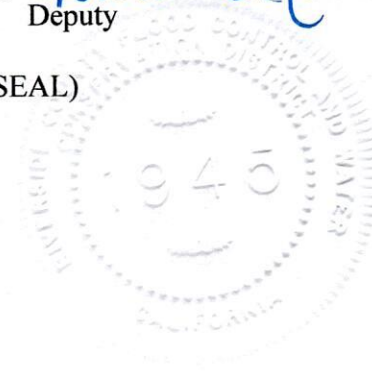
By [Signature]
SYNTHIA M. GUNZEL
Chief Deputy County Counsel

ATTEST:

KECIA HARPER
Clerk of the Board

By [Signature]
Deputy

(SEAL)



Agreement for Professional Services
Advisory Services in the Areas of Water and Environmental Law
06/29/2020
RKM:blm

BURHENN & GEST LLP

By



DAVID W. BURHENN

Partner

Agreement for Professional Services
Advisory Services in the Areas of Water and Environmental Law
06/29/2020
RKM:blm

Attachment A

Scope of Service

SCOPE OF SERVICE / GENERAL

ATTORNEY shall provide "on-call" advisory services in the areas of law, policy, regulation and permitting pertaining to protection and management of the water environment.

PROFESSIONAL SERVICES REQUIRED

ATTORNEY shall provide personnel and all necessary support, including computer hardware and software, sufficient to perform the services, which may include but are not limited to, the following:

1. Advise the District regarding procedures, legality of documents, policy concerns, and legal implications with respect to national and state water and environmental laws and their application to District areas of interest - principally stormwater policy and permitting - and including administrative civil liability issues, unfunded mandates, water conservation, and water rights.
2. Provide legal advice in connection with the development of the regulatory framework for stormwater in the State of California including implementation of Federal Clean Water Act, California Porter-Cologne Water Quality Control Act, California Administrative Procedures Act, Regional Water Quality Control Plans, Total Maximum Daily Load ("TMDL") Guidance and Policy, stormwater permitting (including, municipal, industrial, and construction permits), and the application of numeric effluent limitations to permits. Provide legal advice regarding the legal, regulatory and administrative processes of the State Water Resources Control Board and Regional Water Quality Control Boards.
3. Provide legal advice in connection with the implementation of California Environmental Quality Act ("CEQA"), California Fish and Game Code, Sections 404 and 401 of the Clean Water Act, California Porter-Cologne Water Quality Control Act, Western Riverside Multiple Species Habitat Conservation Plan ("MSHCP") and the Coachella Valley MSHCP, and Tribal laws such as Section 106 of the National Historic Preservation Act and AB 52.
4. Advise the District with regard to proposed federal/state laws and regulations such as but not limited to, proposals from the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, State Water Resources Control Board, Regional Water Quality Control Boards, and the California Department of Fish and Wildlife.
5. The work described above may include: reviewing regulatory agency proposals and proposed rules, drafting formal response letters, developing policy and permitting position statements, attending meetings (including internal negotiations and coordination with regulatory and resource agencies) and public hearings, and providing representation and/or testimony in hearings, arbitrations, mediations, legislative and judicial proceedings, and any litigation concerning environmental issues that arise from or relate to District activities.

AGREEMENT FOR PROFESSIONAL SERVICES

Advisory Services in the Areas of Water and Environmental Law

Attachment B
Fee Schedule

Burhenn & Gest LLP

NAME	TITLE	HOURLY RATE
David W. Burhenn	Partner	\$385
Howard Gest	Partner	\$385
---	Associates	\$285
---	Legal Assistants	\$115