

**AGREEMENT FOR SPECIALIZED ADVISORY,  
TRANSACTIONAL AND PRE-LITIGATION ATTORNEY  
SERVICES**

This agreement for specialized attorney services ("Agreement") is made and entered into by and between the Monterey County Water Resources Agency ("MCWRA") and Downey Brand, LLP ("ATTORNEY").

**RECITALS**

This Agreement is made with respect to the following facts:

- (a) MCWRA may contract for legal services when it is necessary and appropriate that special legal services be performed for MCWA, and its officers and employees.
- (b) MCWRA desires to retain ATTORNEY on a non-exclusive basis to provide certain legal services to MCWRA with respect to transactional, advisory, and pre-litigation matters as assigned from time-to-time.
- (c) Kevin M. O'Brien and Meredith E. Nikkel, partners of ATTORNEY are specially trained, experienced, expert, and competent to perform the legal services required. MCWRA specifically seeks the expertise of Kevin O'Brien and Meredith Nikkel and enters into this Agreement with the understanding that they will be the primary attorneys providing services under this Agreement, although other attorneys in the firm may be utilized on an as-needed basis.

NOW, THEREFORE, the parties agree as follows:

**1. EFFECTIVE DATE AND TERM**

1.01 This Agreement shall be effective as of January 1, 2021 and shall continue until completion of all work as further described herein or terminated by mutual agreement of the parties. This Agreement may be amended from time-to-time upon the mutual agreement of the parties.

**2. SERVICES TO BE PERFORMED**

2.01. Services to be Performed by ATTORNEY. MCWRA hereby hires ATTORNEY to render legal services to MCWRA, subject to the terms of this Agreement. The primary attorneys providing services hereunder shall be Kevin O'Brien and Meredith Nikkel, although other attorneys in the firm may be utilized on an as-needed basis. ATTORNEY shall perform said services faithfully and well, when needed by and as requested by MCWRA. The services to be performed under this Agreement shall consist of research, analysis the giving of legal advice, representation of MCRWA in administrative proceedings in advisory, transactional and pre-litigation assignments and matters as may be agreed upon to from time-to-time.

A specific scope of work is enclosed as Exhibit A and incorporated herein by reference.

ATTORNEY shall perform only such services as are within the expertise of the individual attorneys on ATTORNEY'S staff, and ATTORNEY will notify MCWRA promptly if any work requested is beyond such expertise. ATTORNEY shall diligently provide such legal services as are necessary and approved by MCWRA in a professional, timely manner. ATTORNEY shall perform all of its services with due regard to ethical guidelines and the client's interests.

(a) This Agreement supersedes and replaces the “Master Agreement for Specialized Advisory, Transaction and Pre-Litigation Attorney Services” dated June 8, 2015 and any amendments to that master agreement.

(b) Upon approval of the parties, MCWRA may assign new non-litigation assignments to ATTORNEY by amendment to Exhibit A.

2.02. No Conflicts of Interest. ATTORNEY does not have an actual or potential interest adverse to MCWRA, nor does ATTORNEY presently represent a person or firm with an interest adverse to MCWRA with respect to the matter accepted.

2.03. Direction from and Consultation with County Counsel. ATTORNEY shall coordinate and consult with, and receive direction from, the County Counsel or County Counsel's designee.

2.04. Reporting Requirements. ATTORNEY shall provide MCWRA with such reports as may be requested by MCWRA in connection with the performance of services hereunder. MCWRA will request such reports as necessary.

2.05. Closing Report. If this Agreement is terminated as set forth herein, or if for any reason, ATTORNEY is no longer retained by MCWRA with respect to this matter, ATTORNEY shall submit a Closing Report describing the status of the matter, setting forth any information needed by another attorney to handle the matter. The Closing Report will be expeditiously submitted, together with necessary executed Substitutions of Attorneys, to the County Counsel.

2.06. Oral Reports. ATTORNEY shall immediately report orally to County Counsel, in person or by telephone, any event or discovery which is of an urgent nature or requires the immediate attention of MCWRA. ATTORNEY shall promptly follow up such oral report with a Status Report or Status Update reiterating such event or discovery. ATTORNEY shall immediately advise County Counsel in writing if an actual or potential conflict of interest arises or is discovered.

### **3. COMPENSATION**

3.01. Compensation to ATTORNEY. As consideration for ATTORNEY's performance of services under this Agreement, MCWRA shall pay to ATTORNEY the fees and necessary expenses calculated in accordance with the hourly rate and expense method of billing. Fees and expenses are to be charged in accordance with the terms of this Agreement and in accordance with the hourly rates for partners, associates, paralegals, and planners, if any, of ATTORNEY and any other terms governing fees set forth in Exhibit B, attached hereto and incorporated

herein by reference.

3.02. Budget. ATTORNEY and MCWRA agree that the initial budget for services pursuant to this Agreement shall not exceed the sum of one hundred thousand dollars (\$100,000). ATTORNEY and MCWRA shall revise the budget as necessary to reflect additional fees and expenses required for services, and this Agreement shall be amended accordingly to provide for such budget increases. Proposed budget increases must be approved by MCWRA before increased charges or expenditures are accrued. ATTORNEY shall notify County Counsel in writing when fifty percent (50%) and seventy-five percent (75%) of the Budget has been spent. If MCWRA does not approve additional fees and expenses required by the project beyond the initial and revised budget, MCWRA hereby consents to ATTORNEY' s withdrawal as counsel in the matter.

3.03. Maximum Liability. The maximum amount of MCWRA's liability over the full term of this Agreement (including all items paid under paragraph 3.04) shall include the initial budget amount and any revised budget amount as provided in paragraph 3.02.

3.04. Reimbursement for Expenses.

(a) MCWRA shall reimburse ATTORNEY for all actual and necessary expenses for the following items:

- (1) Transcript fees;
- (2) Filing fees;
- (3) Postage;
- (4) Consultant and expert witness fees;
- (5) Photocopying;
- (6) Computerized legal research; and
- (7) Other expenses when approved in advance.

(b) MCWRA will not reimburse ATTORNEY for any non-attorney staff time or overtime for secretarial, clerical, or word processing costs connected with preparing required status reports, time spent to provide information for a fee audit, or for work not authorized by County Counsel. MCWRA shall not pay for any travel expenses without the prior express written authorization from County Counsel.

3.05. Monthly Claims by ATTORNEY. Not later than ten (10) days after the last day of each month, ATTORNEY shall submit to County Counsel a claim, on a form or in a format approved by County Counsel, setting forth in detail the time and expense items incurred by ATTORNEY during the previous month, for which payment is sought, and setting forth such other information pertinent to the claim as MCWRA may require. The fees charges shall be calculated correctly, contain no charges previously billed, and be consistent with the approved hourly fee schedule and budget maximum set forth in Exhibit B. The following information shall be set forth accurately in or attached to the billing invoice:

(a) Identification of subject matter for which ATTORNEY rendered services;

(b) Staffing level, hourly rate, and detailed time and activity descriptions for each attorney, paralegal, and/or planner, including but not limited to time spent with respect to conferences, correspondence, telephone calls, hearings, meetings, research, project review, depositions, document filing, and trials; and

(c) Invoices supporting all outside costs.

3.06. Payment of Monthly Claims by MCWRA. MCWRA, through County Counsel, shall certify ATTORNEY's claim, either in the requested amount or in such other amount as County Counsel approves in conformity with this Agreement. County Counsel shall promptly submit such certified claim for payment.

3.07. Disputed Payment Amount. If for any claim MCWRA certifies a lesser amount than the amount requested, and if ATTORNEY desires to dispute the amount so certified, ATTORNEY must submit a written notice of protest to County Counsel within twenty (20) days after ATTORNEY's receipt of the certification. The parties shall then promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the parties have met and attempted to resolve the dispute in person.

3.08. Conflicting Payment Provisions. The provisions regarding payment set forth in this portion of the Agreement prevail over any conflicting provisions that may be found in any of the exhibits to this Agreement.

#### **4. INDEMNIFICATION AND INSURANCE**

4.01. Indemnification. ATTORNEY shall indemnify, defend, and hold harmless MCWRA and its officers, agents, and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, ATTORNEY'S and/or its agents', employees' or subcontractors' negligent acts or omissions in the performance of this Agreement that are determined in a final, binding judgment against ATTORNEYS by a court of competent jurisdiction to have proximately resulted from professional negligence of ATTORNEYS in connection with its performance of legal services under this Agreement, excepting only loss, injury or damage caused by the gross negligence or willful misconduct of MCWRA or its officers or employees. It is the intent of the parties to this Agreement to provide the broadest possible coverage for MCWRA.

4.02. Evidence of Coverage. Prior to commencement of this Agreement, ATTORNEY shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, ATTORNEY upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to MCWRA, unless otherwise directed. This approval of insurance shall neither relieve nor decrease the liability of ATTORNEY.

4.03. Qualifying Insurers. All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than

A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved MCWRA.

4.04. Insurance Coverage Requirements. Without limiting ATTORNEY's duty to indemnify, ATTORNEY shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

(a) Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached as Exhibit C; subject to approval).

(b) Business automobile liability insurance, covering all motor vehicles, including leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached as Exhibit C; subject to approval).

(c) Workers' Compensation Insurance, if ATTORNEY employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Modification (Justification attached as Exhibit C; subject to approval).

(d) Professional liability insurance, in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the ATTORNEY shall, upon the expiration or earlier termination of the Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Modification (Justification attached; subject to approval).

(e) Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to MCWRA and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date ATTORNEY completes its performance of services under this Agreement.

Each liability policy shall provide that MCWRA shall be given notice in writing at least Thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for ATTORNEY and

additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

*Commercial general liability and automobile liability policies shall provide an endorsement naming the Monterey County Water Resources Agency and their officers, agents, and employees as Additional Insureds with respect to liability arising out of the ATTORNEY's work including ongoing and completed operations and shall further provide that such insurance is primary insurance to any insurance held by the Monterey County Water Resources Agency and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the ATTORNEY's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 201011-85 or CG 201010 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.*

Prior to the execution of this Agreement by MCWRA, ATTORNEY shall file certificates of insurance with MCWRA showing that ATTORNEY has in effect the insurance required by this Agreement. ATTORNEY shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

ATTORNEY shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by MCWRA, annual certificates to MCWRA. If the certificate is not received by the expiration date, MCWRA shall notify ATTORNEY and ATTORNEY shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by ATTORNEY maintain such insurance is a default of this Agreement which entitles MCWRA, at its sole discretion, to terminate this Agreement immediately.

## **5. TERMINATION**

5.01. Termination by MCWRA. MCWRA may terminate this Agreement at any time for its convenience and without cause. Upon such termination, ATTORNEY shall promptly comply with the provisions of paragraph 2.05. MCWRA shall pay to ATTORNEY all sums then due and owing for services performed through the effective date of the termination, subject to all other provisions of this Agreement.

5.02. Termination by ATTORNEY. ATTORNEY may terminate this agreement at any time upon giving thirty (30) days written notice to MCWRA. Upon such termination, and unless MCWRA notifies ATTORNEY in writing that it will not need a substitute co-counsel, ATTORNEY shall continue to provide such services as MCWRA may require until such time as MCWRA is able to identify a substitute co-counsel to render necessary services. MCWRA shall not unreasonably delay in identifying such substitute co-counsel or in providing written notice

that it will not require a substitute co-counsel. ATTORNEY shall also immediately comply with the provisions of paragraph 2.05. MCWRA shall pay to ATTORNEY all sums due and owing for services performed through the effective date of the termination, subject to all other provisions of this Agreement.

**6. GENERAL PROVISIONS**

6.01. Nonassignment. ATTORNEY shall not assign or transfer this Agreement, or any part thereof, without the written consent of MCWRA, nor shall ATTORNEY assign any monies due or to become due to ATTORNEY hereunder without the previous written consent of MCWRA.

6.02. Independent Contractor. Nothing in this Agreement shall be construed or interpreted to make ATTORNEY anything but an independent contractor and in all ATTORNEY's activities and operations pursuant to this Agreement, ATTORNEY shall for no purposes be considered an employee or agent of MCWRA.

6.03. Authority to Bind MCWRA. It is understood that ATTORNEY, in the performance of any and all duties under this Agreement, has no authority to bind MCWRA to any agreements or undertakings with respect to any and all persons or entities with whom ATTORNEY deals in the course of business.

6.04. Nondisclosure of Information. ATTORNEY shall not disclose, without express written consent of MCWRA, any information relating to MCWRA business which has been submitted by MCWRA to ATTORNEYS pursuant to the services to be rendered pursuant to this Agreement. In the event that this Agreement is terminated, ATTORNEY shall immediately return to MCWRA all papers, documents and the like belonging to MCWRA.

6.05. Notices.

(a) Notices permitted or required to be given to the respective parties under this Agreement shall be deemed given: (1) when personally delivered to MCWRA care of the Deputy County Counsel or to ATTORNEY's principal partner contacts; (2) when personally delivered to the party's principal place of business during normal business hours (i.e., to the office of the County Counsel in Salinas, California, or to ATTORNEY's office), by leaving the notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) twenty-four (24) hours after the notice is transmitted by email to the other party, to the email address indicated below; or (4) three (3) days after the notice is deposited in the U.S. mail (by first class, certified, registered, or express mail), with postage fully prepaid, addressed to the party as indicated below.

(b) Notices mailed to the parties shall be addressed as follows:

To MCWRA:	To ATTORNEY:
Kelly L. Donlon, Deputy County Counsel Monterey County Counsel's Office	Kevin O'Brien Downey Brand, LLP

168 W. Alisal St., 3 <sup>rd</sup> Floor Salinas, CA93901 (831)755-5430 DonlonKL@co.monterey.ca.us	621 Capitol Mall, 18 <sup>th</sup> Floor Sacramento, CA 95814 (916)444-1000 kobrien@downeybrand.com
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(c) The mailing addresses and other information specified in paragraph (b) may be changed by either party, by giving notice to the other in the manner provided herein.

6.06. Subcontracting. ATTORNEY shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without prior written approval of MCWRA. Any and all subcontracts shall be subject to the provisions contained in this Agreement.

6.07. Modifications. This Agreement may be modified or amended only by written agreement of the parties. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.

6.08. Nonwaiver. No covenant or condition of this Agreement can be waived except by the written consent of MCWRA. Forbearance or indulgence by MCWRA in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by ATTORNEY. MCWRA shall be entitled to invoke any remedy available to MCWRA under this Agreement or by law or in equity despite said forbearance or indulgence.

6.09. Sole Agreement. This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

6.10. Venue. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.

6.11. Construed Pursuant to California Law. The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California.

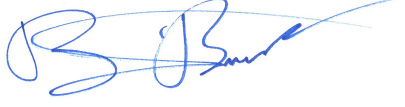
6.12. Exhibits. The following exhibits are attached hereto:

- Exhibit A - Scope of Services
- Exhibit B - Fees and Expenses

**IN WITNESS WHEREOF**, MCWRA and ATTORNEY have caused this Agreement to be executed:

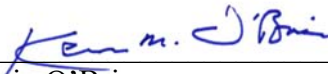
MONTEREY COUNTY WATER RESOURCES  
AGENCY

DATED: April 28, 2021

By   
Brent Buche  
General Manager

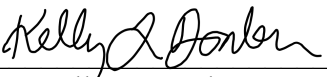
DOWNEY BRAND, LLP

DATED: April 28, 2021

By   
Kevin O'Brien  
Partner

APPROVED AS TO FORM

LESLIE J. GIRARD, County Counsel

By   
Kelly L. Donlon  
Deputy County Counsel

APPROVED AS TO FISCAL PROVISIONS

Auditor Controller

By 

4-30-2021

## **EXHIBIT A**

### **SCOPE OF SERVICES**

MCWRA retains ATTORNEY to provide independent specialized advisory, transactional and pre-litigation attorney services to MCWRA. ATTORNEY shall provide the full range of services necessary to complete assignments. Such services include, without limitation:

1. General Matters
2. Water Rights
3. Environmental
4. Regulatory requirements and/or permitting
5. Interlake Tunnel Project
6. Pre-litigation services (including administrative proceedings)
7. Representation and advocacy as requested

## **EXHIBIT B**

### **FEES AND EXPENSES**

MCWRA shall pay ATTORNEY the fees and necessary expenses for services performed under this Agreement pursuant to the following schedule.

Kevin O'Brien	\$405/hr.
Meredith Nikkel	\$385/hr.
Christopher Rendall-Jackson	\$385/hr.
Sam Bivins	\$350/hr.

Expenses will be billed at actual cost (no mark-up).

ATTORNEY will bill monthly for work performed and costs advanced in accordance with the terms of this Agreement. Invoices shall be submitted to:

Kelly L. Donlon, Deputy County Counsel  
Office of the County Counsel  
168 W. Alisal Street, 3rd Floor  
Salinas CA 93901  
DonlonKL@co.monterey.ca.us

The maximum amount to be paid by MCWRA to ATTORNEY under this Agreement shall not exceed \$100,000.