



4030 MARTIN LUTHER KING JR. WAY
OAKLAND, CA 94609

MATTHEW C. MACLEAR
PARTNER

T: 415-568-5200
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AGREEMENT FOR SERVICES

THIS AGREEMENT entered into this 20th day of September, 2024, by and between the Lake County Air Quality Management District (hereinafter referred to as "AIR DISTRICT") and the AQUA TERRA AERIS (ATA) LAW GROUP (hereinafter referred to as "FIRM") for the purposes of representing the AIR DISTRICT in enforcement matters and providing the following legal services:

- Case development and investigation
- Drafting regulatory enforcement correspondence
- Evidentiary evaluations of cases and legal matters
- Settlement enforcement, or Judgment recovery, on a case-by-case basis
- Specialized trainings provided to District staff
- Legal, policy and regulatory updates

The Parties do hereby agree as follows:

1. SERVICES. AIR DISTRICT does hereby retain FIRM and FIRM does hereby accept representation of AIR DISTRICT as a client for the purpose of representing AIR DISTRICT in enforcement-related matters and the above-referenced services.

2. TERM. This retainer shall be effective on the date this Agreement is approved and shall continue unless amended or terminated by AIR DISTRICT or FIRM as provided herein.

3. FEES. In consideration for the services rendered pursuant to this agreement, AIR DISTRICT agrees to pay FIRM fees at the hourly rates, described below, for all legal services described herein. FIRM attorneys include partners (Matthew C. Maclear, Jason R. Flanders, Anthony M. Barnes, and Erica A. Maharg), associates and paralegals. Matthew C. Maclear will be the primary contact and responsible attorney for the purpose of providing the services described herein. The services provided shall include pre-litigation and enforcement counsel on the matters described in Paragraph 1 and the opening description of legal services.

The contracted hourly rates and fees will be as follows:

- \$275/hour for partners
- \$175/hour for associates
- \$120/hour for paralegals

Notwithstanding the above rates, total compensation payable to the FIRM hereunder shall not exceed Fifty-Thousand dollars (\$50,000) for the term of this Agreement.

In addition, AIR DISTRICT would agree to disburse 20% of the penalties paid to, and collected by, the treasurer of the AIR DISTRICT pursuant to judgments and/or settlements arising from enforcement cases pursued by FIRM. The FIRM may pursue collections of any court judgment or settlement without further Board approval. IN THE EVENT OF NO MONETARY RECOVERY, FIRM SHALL RECEIVE NO CONTINGENCY FEE FOR SERVICES. The contingency portion of the agreement is not set by law and is negotiable between the parties hereto.

By signing this Agreement, AIR DISTRICT acknowledges, agrees and understands that the above contingency fee is reasonable considering the time and labor required, the novelty, the complexity and difficulty of the legal and factual questions involved, and the requisite skill necessary to perform these legal services properly. AIR DISTRICT further acknowledges, agrees, and understands that the above contingency fee is reasonable considering the significance of this representation, the amount of money involved, the subject matter of enforcement, and the responsibility involved in the representation to obtain the desired results. AIR DISTRICT further acknowledges, agrees, and understands that the above contingency fee contract is reasonable considering the expertise, reputation, diligence, inherent risks of litigation, and ability of the FIRM performing these legal services at public entity rates compared to FIRM's market rates.

FIRM shall prepare an itemized monthly billing on or about the tenth day of each month. AIR DISTRICT shall review FIRM's itemized monthly billing and approve payment of authorized charges to FIRM within its regular payment schedule, but not later than thirty (30) days after receipt of the billing.

The AIR DISTRICT will retain the right to handle any individual case through Administrative, Civil or Criminal channels, as it sees fit. Unless specifically requested and approved by the AIR DISTRICT, the FIRM will not represent or serve as a liaison for the AIR DISTRICT in Administrative or Criminal matters, respectively.

4. APPROVAL NECESSARY FOR INITIATING AN ACTION AND SETTLEMENT. Attorney will not initiate any action or make any settlement or compromise of any nature of any of AIR DISTRICT'S claims without AIR DISTRICT'S prior approval. The AIR DISTRICT Air Pollution Control Officer shall follow AIR DISTRICT Board of Directors' policy for enforcement actions or may request input from AIR DISTRICT counsel acting through the Office of County Counsel. AIR DISTRICT agrees to consider seriously any settlement offer FIRM recommends before making a decision to accept or reject such offer. AIR DISTRICT agrees not to make any settlement or compromise of any nature of any of AIR DISTRICT'S enforcement-related claims brought through FIRM, without prior notice and opportunity to be heard by FIRM. But, all decisions regarding settlement of the case are reserved exclusively to the discretion of the AIR DISTRICT's Air Pollution Control Officer. Any defendant that is the subject of enforcement of state laws or AIR DISTRICT rules may contact the lead government attorneys, at the Office of Lake County Counsel, directly without having to confer with FIRM Attorney. It is presumed that the person or governmental entity making a decision authorizing initiation of an action or settlement has the legal and contractual authority to do so.

4.1. AIR DISTRICT Retains Decision Making Authority. AIR DISTRICT retains complete control of all decisions in the Action. AIR DISTRICT in no way assigns its

prosecutorial discretion to FIRM and retains all of its inherent powers related to prosecutorial discretion, judgment, control and decision making related to the Action. This authority and controls include, but are not limited to, the following:

- (a) Decisions regarding settlement of the Action are reserved exclusively to the discretion of the AIR DISTRICT's Air Pollution Control Officer pursuant to H&SC 40752.
- (b) Any of the Defendants that are the subject of the Action may contact AIR DISTRICT Counsel directly, without first having to confer with or get permission to do so from FIRM;
- (c) The AIR DISTRICT's Board of Directors, through AIR DISTRICT Counsel, will retain complete control over the course and conduct of the Action pursuant to AIR DISTRICT policies;
- (d) AIR DISTRICT retains veto power over any decisions made or proposed to be made by FIRM;
- (e) AIR DISTRICT Counsel may be personally involved in overseeing the Action and participating in all significant legal decisions; and
- (f) FIRM shall provide all significant written court briefing and other submittals to AIR DISTRICT Counsel for review reasonably in advance of the filing or delivery deadline to allow for meaningful review and editing.

5. EXPENSES. Subject to paragraph 3 above, FIRM shall be reimbursed for all out-of-pocket costs and expenses advanced by FIRM. Costs and expenses shall include, but not be limited to, filing fees, deposition fees, witness fees, fax and file fees, court call fees, costs for investigation, service of process fees and other related court costs, travel fees, parking fees and other related travel costs. Such expenses shall be included within billable hour invoices.

6. EXPERTS. To aid in the preparation or presentation of AIR DISTRICT'S case, it may become necessary to hire expert witnesses, consultants or investigators. FIRM will first seek to find appropriate experts and expertise within AIR DISTRICT, but in consultation with the AIR DISTRICT may select expert witnesses, consultants or investigators to be hired after AIR DISTRICT has been informed of and approved expert's fee schedule. Subject to paragraph 3 above, AIR DISTRICT agrees that, whether or not attorneys' fees or costs are awarded by the court in ANY AIR DISTRICT case, AIR DISTRICT will remain responsible for the payment, in full, of all FIRM'S and expert fees and expenses in accordance with this Agreement.

7. RESPONSIBILITIES. FIRM agrees to provide legal services in a professional manner and in the practice and custom of practitioners in the environmental enforcement bar.

8. TERMINATION. Either party shall have the right to terminate this Agreement upon thirty (30) days written notice.

9. NOTICES. All notices between the parties shall be in writing addressed as follows:

Lake County

Air Quality Management District
2617 S. Main St.
Lakeport, CA 95453
Attn: Douglas Gearhart, APCO

County of Lake
County Counsel's Office
255 N. Forbes St. #320
Lakeport, CA 95453

10. INDEPENDENT CONTRACTOR AND HOLD HARMLESS. It is agreed that FIRM shall serve as an independent contractor and not as employee(s) of LAKE COUNTY or AIR DISTRICT.

FIRM shall indemnify and hold harmless AIR DISTRICT from any and all claims, demands, actions, liability or loss which may arise from or be incurred as a result of the negligent performance of this Agreement by FIRM.

11. INSURANCE. FIRM shall procure and maintain Professional Liability Insurance, Commercial General Liability, Automobile Liability Insurance for the protection against claims arising out of the performance of services under this Agreement caused by errors, omissions or other acts for which FIRM is liable. Said insurance shall be written with limits of not less than one million dollars (\$1,000,000).

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude County from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of County to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

12. GOVERNING LAW and MODIFICATION. The laws of the State of California shall govern the validity, construction, and enforcement and interpretation of this Agreement. This Agreement contains the entire agreement between AIR DISTRICT and FIRM regarding the matters described herein, and the fees, charges and expenses to be paid relative thereto, and supersedes all prior oral or written agreements. This Agreement may only be modified in writing by AIR DISTRICT and FIRM, and their respective legal representatives, successors, and assigns. However, matters concerning scope of services, or which affect compensation, may only be modified by approval of AIR DISTRICT'S Board of Directors.

13. COUNTERPART SIGNATURES. This Agreement may be executed in multiple original counterparts, each of which shall be deemed an original, and which together shall constitute the same agreement.

14. ASSOCIATION WITH OTHER COUNSEL. AIR DISTRICT agrees that FIRM shall have standing authorization to cooperate and co-counsel on enforcement-related matters with counsel from the United States Environmental Protection Agency, California Air Resources Board, and other California air districts and prosecutors, provided the necessary approval to initiate an action has been so authorized.

15. ARBITRATION

A. ARBITRATION OF ALL DISPUTES INCLUDING CLAIMS OF MALPRACTICE

Any controversy between the parties regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The parties shall appoint one retired judge/justice from JAMS to hear and determine the dispute and agree that the arbitration shall be conducted pursuant to the JAMS arbitration rules. If the parties cannot agree upon selection of an arbitrator, then the Superior Court of Lake County shall choose an impartial arbitrator whose decision shall be final and conclusive on all parties. FIRM and AIR DISTRICT shall each have the right of discovery in connection with any arbitration proceeding in accordance with Code of Civil Procedure Section 1283.05. The cost of the arbitration, excluding legal fees and costs, shall be borne by the losing party or in such proportion as the arbitrator shall decide. The parties shall bear their own legal fees and costs for all claims. The sole and exclusive venue for the arbitration shall be Lake County, California.

B. STATE BAR FEE ARBITRATION

Notwithstanding subparagraph A above, in any dispute subject to the jurisdiction of the State of California over attorney's fees, charges, costs or expenses, AIR DISTRICT has the right to elect arbitration pursuant to the fee arbitration procedures of the State Bar of California, as set forth in California Business and Professions Code Section 6200, *et seq.* Those procedures permit a trial after arbitration, unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award. If, after receiving a notice of client's right to arbitrate, AIR DISTRICT does not elect to proceed under the State Bar fee arbitration procedures, and file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as provided in the previous subparagraph A.

Because each party is giving up a right, Client is encouraged to have an independent lawyer of Client's choice review these arbitration provisions before agreeing to them. By initialing below, AIR DISTRICT and FIRM confirm that they have read and understand subparagraphs A and B above, and voluntarily agree to binding arbitration. In doing so, Client and Attorney voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. AIR DISTRICT is advised that it has the right to have an independent lawyer of Client's choice review these arbitration provisions, and this entire agreement, prior to initialing this provision or signing this Agreement.

_____ (AIR DISTRICT Initial Here)

MCM (FIRM Initial Here)

IN WITNESS WHEREOF, this Agreement is signed and entered into by the Parties hereto.

IT IS HEREBY AGREED.

Lake County Air Quality Management District

By: _____

Date: _____

Douglas Gearhart, APCO
Lake County Air Quality Management District

AQUA TERRA AERIS LAW GROUP

By: 

Date: 12/16/2024

Matthew C. Maclear, Principal
Aqua Terra Aeris Law Group

Approve as to Form:

Lloyd Guintivano
County of Lake County Counsel

By: 

Date: 12/3/24

Nicole Johnson
Senior Deputy County Counsel
Attorney for Lake County Air Quality Management District