



ITEM NO. 13

FINANCIAL MANAGEMENT COMMITTEE AGENDA

Wednesday, March 20, 2024

8:00 AM

East Bay Dischargers Authority, 2651 Grant Avenue, San Lorenzo, CA

Committee Members: Simon (Chair); Andrews

FM1. Call to Order

FM2. Roll Call

FM3. Public Forum

FM4. Disbursements for February 2024
(The Committee will review the Lists of Disbursements.)

FM5. Treasurer's Report for February 2024
(The Committee will review the Treasurer's Report.)

FM6. Second Quarter Expense Summary, Fiscal Year 2023/2024
(The Committee will review the FY 2023/2024 second quarter expenses.)

FM7. Preliminary Budget Considerations
(The Committee will provide feedback to staff on considerations for the FY 2024/2025 Budget.)

FM8. Motion Authorizing the General Manager to Execute an Agreement with Redwood Public Law LLP for General Counsel Services
(The Committee will consider the motion.)

FM9. Motion Authorizing the General Manager to Approve an Engagement of Legal Services with Meyers Nave for Specialized Legal Services
(The Committee will consider the motion.)

FM10. Adjournment

Any member of the public may address the Committee at the commencement of the meeting on any matter within the jurisdiction of the Committee. This should not relate to any item on the agenda. Each person addressing the Committee should limit their presentation to three minutes. Non-English speakers using a translator will have a time limit of six minutes. Any member of the public desiring to provide comments to the Committee on any agenda item should do so at the time the item is considered. Oral comments should be limited to three minutes per individual or ten minutes for an organization. Speaker's cards will be available and are to be completed prior to speaking.

Agenda Explanation
East Bay Dischargers Authority
Financial Management Committee
March 20, 2024

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in an Authority meeting, or you need a copy of the agenda, or the agenda packet, in an appropriate alternative format, please contact the Juanita Villasenor at juanita@ebda.org or (510) 278-5910. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the Authority staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

In compliance with SB 343, related writings of open session items are available for public inspection at East Bay Dischargers Authority, 2651 Grant Avenue, San Lorenzo, CA 94580. For your convenience, agenda items are also posted on the East Bay Dischargers Authority website located at <http://www.ebda.org>.

<p>Next Scheduled Financial Management Committee is Wednesday, April 17, 2024 at 8:00 am</p>

EAST BAY DISCHARGERS AUTHORITY
List of Disbursements
February 2024

Check #	Payment Date	Invoice #	Vendor Name	Description	Invoice Amount	Disbursement Amount
26375	02/15/2024	352002	CITY OF HAYWARD	HEPS O&M OCT-DEC	50,847.60	50,847.60
26387	02/15/2024	003058	UNION SANITARY DISTRICT	UEPS O&M - NOV	32,996.05	32,996.05
26383	02/15/2024	6899	ORO LOMA SANITARY DISTRICT	OLEPS O&M - DEC	24,227.50	24,227.50
26378	02/15/2024	395152	CITY OF SAN LEANDRO	MDF O&M - DEC	22,493.45	22,493.45
26394	02/29/2024	193173	ENVIRONMENTAL SCIENCE ASSOCIATES	FIRST MILE PROJECT WORK ORDER NO. 3	16,689.25	16,689.25
26389	02/29/2024	INV-0000350697	BLACKBAUD	FE NXT ACCTG SOFTWARE SUBSCRIPTION 3/05/24-3/04/25	13,876.93	12,629.18
26389	02/29/2024	CRM-0000007020	BLACKBAUD	FE ACCTG SOFTWARE SUBSCRIPTION CR	(296.22)	
26389	02/29/2024	CRM-0000007019	BLACKBAUD	FE ACCTG SOFTWARE SUBSCRIPTION CR	(951.53)	
26398	02/29/2024	16280	REGIONAL GOVERNMENT SERVICES	MANAGEMENT AND ADMINISTRATIVE SERVICES	7,146.70	7,146.70
26381	02/15/2024	EA06-1223	EOA, INC	TOTAL RESIDUAL CHLORINE (TRC) EFFLUENT LIMIT IMPLEMENTATION	6,387.00	6,387.00
26391	02/29/2024	55816	CALCON	MDF AUTOMATION UPGRADE PLC & SCADA PROGRAMMING	3,880.80	5,161.00
26391	02/29/2024	55817	CALCON	MDF AUTOMATION UPGRADE NEW REPORTS	1,280.20	
26390	02/29/2024	11509510	BROWN & CALDWELL	ENGINEERING SERVICES - BRINE ASSESSMENT PP39	3,161.29	3,161.29
26380	02/15/2024	39867	CRANE TECH INC	OLEPS ANNUAL INSPECTION & CERTIFICATION OF 15-TON BRIDGE CRANE	1,408.44	1,408.44
26376	02/15/2024	52205708	CITY OF HAYWARD	EMPLOYEE BENEFIT PROGRAMS - FEB	1,370.66	1,370.66
26382	02/15/2024	213346	MEYERS NAVE	LEGAL SERVICES - DEC	1,324.36	1,324.36
26382	02/15/2024	213347	MEYERS NAVE	LEGAL SERVICES - BRINE PROJECT	1,120.60	1,120.60
26374	02/15/2024	88423	CAYUGA INFORMATION SYSTEMS	IT SERVICES	945.00	945.00
26386	02/15/2024	4246-0445-5568-7627	U.S. BANK	PURCHASING CARD EXPENSES	921.97	921.97
26392	02/29/2024	716721	CALTEST	LAB TESTING SERVICES - JAN	900.16	900.16
26385	02/15/2024	1001649290	STATE COMPENSATION INSURANCE FUND	WORKERS COMPENSATION - FEB	878.00	878.00
26377	02/15/2024	394597	CITY OF SAN LEANDRO	MDF CUPA ANNUAL HAZARDOUS MATERIALS & WASTE FEE	804.00	804.00
26388	02/29/2024	42600	BA MORRISON	HEPS HVAC SERVICE	405.00	690.00
26388	02/29/2024	42601	BA MORRISON	ADMIN HVAC SERVICE	285.00	
26396	02/29/2024	259675962	ORKIN	MDF PEST CONTROL SERVICE	232.99	232.99
26384	02/15/2024	CD_000745871	RINGCENTRAL INC	DIGITAL PHONE SERVICE	212.58	212.58
26393	02/29/2024	4004554	CALTRONICS	COPIER USAGE AND MAINTENANCE 1/18/24-2/17/24	194.35	194.35
26397	02/29/2024	150.55	PITNEY BOWES INC	DIGITAL MAILING SYSTEM QUARTERLY LEASE CHARGE	150.55	150.55
26379	02/15/2024	55358	COMPUTER COURAGE	WEBSITE HOSTING	150.00	150.00
26395	02/29/2024	Jan-24	JACQUELINE ZIPKIN	REIMBURSABLE EXPENSES	28.60	28.60
					193,071.28	193,071.28
				ELECTRONIC PAYMENTS		
	02/02/2024	5105948980-0	PG&E	GAS & ELECTRIC SERVICE	47,345.81	47,345.81
	02/02/2024	100000017421027	CALPERS	HEALTH PREMIUMS - FEB	8,249.51	8,249.51

EAST BAY DISCHARGERS AUTHORITY
List of Disbursements
February 2024

Check #	Payment Date	Invoice #	Vendor Name	Description	Invoice Amount	Disbursement Amount
	02/02/2024	100000017386073	CALPERS	PENSION CONTRIBUTION, CLASSIC 1/16 - 31/2024	5,710.87	5,710.87
	02/20/2024	100000017417137	CALPERS	PENSION CONTRIBUTION, CLASSIC 2/01 - 15/2024	5,710.87	5,710.87
	02/05/2024	6569864	MISSION SQUARE	DEFERRED COMPENSATION 1/31/2024	2,106.70	2,106.70
	02/20/2024	6593080	MISSION SQUARE	DEFERRED COMPENSATION 2/15/2024	2,106.70	2,106.70
	02/13/2024	51048304397166	AT&T	MDF TELEPHONE SERVICE	277.95	277.95
	02/05/2024	2402036472	INTERMEDIA.NET INC	EMAIL EXCHANGE HOSTING	121.87	121.87
	02/20/2024	9955571083	VERIZON WIRELESS	WIRELESS PHONE SERVICES	63.04	63.04
				TOTAL ELECTRONIC PAYMENTS	71,693.32	71,693.32
				PAYROLL		
	02/28/2024		ADP, LLC	PAYROLL PERIOD: 02/16-29/2024	27,452.24	27,452.24
	02/14/2024		ADP, LLC	PAYROLL PERIOD: 02/01-15/2024	23,914.22	23,914.22
	02/09/2024	653555467	ADP, LLC	PAYROLL FEES, 1/16-31/2024	102.06	102.06
	02/23/2024	654737243	ADP, LLC	PAYROLL FEES, 2/01-15/2024	87.86	87.86
	02/21/2024	654138423	ADP, LLC	PAYROLL FEES, TAX REPORTING	34.75	34.75
				TOTAL PAYROLL	51,591.13	51,591.13
				TOTAL DISBURSEMENTS	316,355.73	316,355.73

ITEM NO. FM5 TREASURER'S REPORT FOR FEBRUARY 2024

The cash balance as of February 29, 2024 is \$4,715,420.78. EBDA's LAIF balance is \$1,285,144.77, and the average monthly effective yield for February is 4.122%. EBDA's CAMP balance is \$1,540,574.99, and CAMP's 7-day yield is 5.47%.

Approval is recommended.

**EAST BAY DISCHARGERS AUTHORITY
TREASURER'S REPORT
February 2024**

FUND	FUND DESCRIPTION	BEGINNING CASH BALANCE	DEBITS (INCREASE)	CREDITS (DECREASE)	ENDING CASH BALANCE
12	OPERATIONS & MAINTENANCE	\$ 796,053.41	\$ 1,295,714.26	\$ 287,070.17	\$ 1,804,697.50
13	PLANNING & SPECIAL STUDIES	78,861.96	380,207.57	16,689.25	442,380.28
14	RECLAMATION O & M (SKYWEST)	77,256.99	0.00	2,013.82	75,243.17
15	BRINE ACCEPTANCE	151,223.03	3,560.04	4,281.89	150,501.18
31	RENEWAL & REPLACEMENT	2,241,710.60	7,188.65	6,300.60	2,242,598.65
TOTALS		\$ 3,345,105.99	\$ 1,686,670.52	\$ 316,355.73	\$ 4,715,420.78

Feb-24

3/12/2024

SUPPLEMENTAL TREASURER'S REPORT

DATE	TRANSACTION	RECEIPT	DISBURSEMENT CHECKING	DISBURSEMENT PAYROLL	PAYROLL TRANSFER	LAIF	CAMP	WELLS FARGO CHECKING BALANCE	WELLS FARGO PAYROLL BALANCE	LAIF BALANCE	CAMP BALANCE	TOTAL CASH
01/31/24	BALANCE							502,144.38	24,430.50	1,285,144.77	1,533,386.34	3,345,105.99
02/01/24	DIVIDENDS	7,188.65					7,188.65	502,144.38	24,430.50	1,285,144.77	1,540,574.99	3,352,294.64
02/01/24	DEPOSIT - CARGILL	28,925.82						531,070.20	24,430.50	1,285,144.77	1,540,574.99	3,381,220.46
02/01/24	DEPOSIT - ORO LOMA	335,446.27						866,516.47	24,430.50	1,285,144.77	1,540,574.99	3,716,666.73
02/02/24	ELECTRONIC BILL PAY		5,710.87					860,805.60	24,430.50	1,285,144.77	1,540,574.99	3,710,955.86
02/02/24	ELECTRONIC BILL PAY		8,249.51					852,556.09	24,430.50	1,285,144.77	1,540,574.99	3,702,706.35
02/02/24	ELECTRONIC BILL PAY		47,345.81					805,210.28	24,430.50	1,285,144.77	1,540,574.99	3,655,360.54
02/05/24	ELECTRONIC BILL PAY		121.87					805,088.41	24,430.50	1,285,144.77	1,540,574.99	3,655,238.67
02/05/24	ELECTRONIC BILL PAY		2,106.70					802,981.71	24,430.50	1,285,144.77	1,540,574.99	3,653,131.97
02/05/24	DEPOSIT - CVSAN	179,487.35						982,469.06	24,430.50	1,285,144.77	1,540,574.99	3,832,619.32
02/08/24	DEPOSIT - LAVWMA	500,110.09						1,482,579.15	24,430.50	1,285,144.77	1,540,574.99	4,332,729.41
02/09/24	PAYROLL FEES			102.06				1,482,579.15	24,328.44	1,285,144.77	1,540,574.99	4,332,627.35
02/12/24	DEPOSIT	500.00						1,483,079.15	24,328.44	1,285,144.77	1,540,574.99	4,333,127.35
02/12/24	PAYROLL TRANSFER				75,000.00			1,408,079.15	99,328.44	1,285,144.77	1,540,574.99	4,333,127.35
02/13/24	DEPOSIT - USD	579,376.69						1,987,455.84	99,328.44	1,285,144.77	1,540,574.99	4,912,504.04
02/13/24	ELECTRONIC BILL PAY		277.95					1,987,177.89	99,328.44	1,285,144.77	1,540,574.99	4,912,226.09
02/14/24	PAYROLL			23,914.22				1,987,177.89	75,414.22	1,285,144.77	1,540,574.99	4,888,311.87
02/15/24	DISBURSEMENT		146,087.21					1,841,090.68	75,414.22	1,285,144.77	1,540,574.99	4,742,224.66
02/20/24	DEPOSIT - ABAG	55,635.65						1,896,726.33	75,414.22	1,285,144.77	1,540,574.99	4,797,860.31
02/20/24	ELECTRONIC BILL PAY		63.04					1,896,663.29	75,414.22	1,285,144.77	1,540,574.99	4,797,797.27
02/20/24	ELECTRONIC BILL PAY		5,710.87					1,890,952.42	75,414.22	1,285,144.77	1,540,574.99	4,792,086.40
02/20/24	ELECTRONIC BILL PAY		2,106.70					1,888,845.72	75,414.22	1,285,144.77	1,540,574.99	4,789,979.70
02/21/24	PAYROLL FEES			34.75				1,888,845.72	75,379.47	1,285,144.77	1,540,574.99	4,789,944.95
02/23/24	PAYROLL FEES			87.86				1,888,845.72	75,291.61	1,285,144.77	1,540,574.99	4,789,857.09
02/28/24	PAYROLL			27,452.24				1,888,845.72	47,839.37	1,285,144.77	1,540,574.99	4,762,404.85
02/29/24	DISBURSEMENT		46,984.07					1,841,861.65	47,839.37	1,285,144.77	1,540,574.99	4,715,420.78
	TOTAL	1,686,670.52	264,764.60	51,591.13	75,000.00	-	7,188.65	1,841,861.65	47,839.37	1,285,144.77	1,540,574.99	4,715,420.78
	CURRENT BALANCE							①	②	③	④	

Reconciliation - 02/29/2024

① Bank Statement Balance	\$ 1,947,580.98
Less: Outstanding Checks	105,719.33
	\$ 1,841,861.65
② Payroll Bank Statement	\$ 47,839.37
③ LAIF Statement	\$ 1,285,144.77
④ CAMP Statement	\$ 1,547,292.16
Less: Accrual Income Dividend	6,717.17
	\$ 1,540,574.99

The Supplemental Treasurer's Report is prepared monthly by the General Manager. It also serves as EBDA's cash and investments reconciliation.

ITEM NO. FM6 SECOND QUARTER EXPENSE SUMMARY, FISCAL YEAR 2023/2024

Recommendation

Approve the Second Quarter Expense Summary for Fiscal Year 2023/2024.

Strategic Plan Linkage

3. **Financial:** Develop financial strategies and practice sound fiscal management to ensure wise use of ratepayers' resources.
 - b. Proactively manage expenditures to stay within adopted budget.

Background

The Second Quarter Expense Summary for FY 2023/2024 is attached for the Committee's review. Expenses are presented by Program and by Account Code. These categories have been grouped to provide an overview of Authority expenses. The tables include discussion of particular items that varied significantly (>10%) from the budget.

Discussion

At the end of the second quarter, 50% through the fiscal year, EBDA's spending is slightly over budget, at 51% spent. Staff notes that the Authority's most significant annual fees including BACWA dues, Nutrient Surcharge, Water Research Foundation, and NPDES permit fee have been paid in the first half of the year, and therefore those line items are expected to revert to budget at year end.

O&M spending is tracking slightly low at 46% through the second quarter. The budget for maintenance and repair of the force main was somewhat conservative this year as we transitioned service from San Leandro to USD. Spending is expected to increase in that category as the year progresses. That said, O&M spending overall is likely to be low thanks to decreased chemical needs for sodium bisulfite resulting from the change in total residual chlorine effluent limit that took effect January 1.

East Bay Dischargers Authority

EXPENSE SUMMARY BY PROGRAM

FY 2023/2024 THROUGH DECEMBER 31, 2023 (50% of YEAR)

	YTD Expenses	Budget	Revenues Cargill, Grant, & Skywest	Variance	% of Budget	Explanations for Variance Over 10%
O&M EFFLUENT DISPOSAL						
General Administration	\$619,887	\$1,487,812		(\$867,925)	42%	
Outfall & Forcemains	\$49,046	\$269,800		(\$220,754)	18%	Budget was conservative as we transitioned service providers.
Marina Dechlor Facility	\$268,632	\$614,100		(\$345,468)	44%	
Oro Loma Pump Station	\$269,963	\$613,000		(\$343,037)	44%	
Hayward Pump Station	\$81,605	\$186,000		(\$104,396)	44%	
Union Pump Station	\$222,031	\$466,000		(\$243,969)	48%	
Bay & Effluent Monitoring	\$512,308	\$729,867		(\$217,559)	70%	BACWA dues paid for FY.
TOTAL O&M EFFLUENT DISPOSAL	\$2,023,472	\$4,366,579	\$0	(\$2,343,107)	46%	
SPECIAL PROJECTS						
NPDES Permit Fees	\$685,195	\$693,023		(\$7,828)	99%	Permit fee paid for FY.
Regional Monitoring Program	\$0	\$293,760		(\$293,760)	0%	Fees will be paid later this year.
Alternative Monitoring and Reporting	\$0	\$32,314		(\$32,314)	0%	Fees will be paid later this year.
Nutrient Surcharge	\$240,143	\$240,143		\$0	100%	Fee paid for FY.
Water Research Foundation	\$27,553	\$27,665		(\$112)	100%	Fee paid for FY.
Strategic Planning	\$363	\$0		\$363	-	
Nature-Based Solutions Study	\$101,619	\$200,000	\$101,619	(\$200,000)	51%	
Solar Feasibility Study	\$2,264	\$5,000		(\$2,736)	45%	
Bruce Wolfe Memorial	\$0	\$1,000		(\$1,000)	0%	Contribution will be made later this year.
TOTAL SPECIAL PROJECTS	\$1,057,136	\$1,492,905	\$101,619	(\$537,387)	64%	
TOTAL AGENCY-FUNDED PROGRAMS	\$3,080,608	\$5,859,484	\$101,619	(\$2,880,494)	51%	
WATER RECYCLING						
Skywest Golf Course	\$19,322	\$36,000	\$18,000		54%	
TOTAL WATER RECYCLING	\$19,322	\$36,000	\$18,000		54%	
BRINE ACCEPTANCE						
Brine Acceptance	\$43,271		\$43,271			All work performed is reimbursed by Cargill.
TOTAL BRINE ACCEPTANCE	\$43,271		\$43,271			
TOTAL ALL PROGRAMS	\$3,143,201	\$5,895,484	\$162,889	(\$2,915,172)	51%	

East Bay Dischargers Authority

PRELIMINARY EXPENSE SUMMARY BY ACCOUNT

FY 2023/2024 THROUGH DECEMBER 31, 2023 (50% OF YEAR)

	YTD Expenses	Budget	Revenues Cargill, Grant, & Skywest	Variance	% of Budget	Explanations for Variance Over 10%
4010 - Salary	\$318,963	\$663,595	\$10,654	(\$355,285)	46%	
4020 - Benefits	\$126,268	\$257,217		(\$130,949)	49%	
4030 - Commissioner Compensation	\$13,920	\$45,000		(\$31,080)	31%	Budget assumes maximum number of meetings.
4070 - Insurance	\$38,365	\$75,900	-	(\$37,535)	51%	
4080 - Memberships & Subscriptions	\$159,948	\$166,472		(\$6,524)	96%	BACWA & WRF dues paid for the FY.
4100 - Supplies, Variable	\$333,583	\$670,000		(\$336,417)	50%	
4100 - Supplies, Fixed	\$6,871	\$23,000		(\$16,129)	30%	Deferred replacement of several computers.
4110 - Contract Services	\$24,669	\$60,841		(\$36,172)	41%	
4120 - Professional Services	\$346,674	\$598,831	\$139,385	(\$391,541)	35%	Revenues from Cargill and grant bring item under budget overall.
4140 - Rents & Fees	\$935,443	\$939,446		(\$4,003)	100%	Fees paid for FY.
4141 - NPDES Fines	\$0	\$9,000		(\$9,000)	0%	Reserve funds in case of enforcement.
4150 - Maintenance & Repair	\$320,272	\$937,100	\$11,281	(\$628,109)	33%	Force Main budget was conservative as we transitioned service providers.
4160 - Monitoring	\$102,736	\$558,282	\$1,570	(\$457,116)	18%	RMP fees not billed yet
4170 - Travel	\$4,585	\$18,000		(\$13,415)	25%	Reduced travel due to many meetings transitioning to video conference.
4191 - Utility, Variable	\$409,747	\$864,800	-	(\$455,053)	47%	
4200 - Acquisitions & Other	\$1,158	\$8,000	-	(\$6,842)	14%	Allowance for Skywest capital projects.
TOTAL ALL ACCOUNTS	\$3,143,201	\$5,895,484	\$162,889	(\$2,915,172)	51%	

ITEM NO. FM7 PRELIMINARY BUDGET CONSIDERATIONS

Recommendation

For the Committee's information only; no action is required.

Strategic Plan Linkage

3. **Financial:** Develop financial strategies and practice sound fiscal management to ensure wise use of ratepayers' resources.
 - b. Proactively manage expenditures to stay within adopted budget.

Background

The Authority's Amended and Restated JPA states the following:

The Commission will adopt an annual or biennial budget for the ensuing Fiscal Year(s) prior to July 1. The budget will include sufficient detail to constitute a fiscal control guideline, specify cash flow requirements from each Agency, grant reimbursements, and cash receipts and expenditures to be made for Operation and Maintenance Costs, Planning and Special Studies Costs, and Capital Costs for the Facilities, and other necessary and appropriate expenditures.

A complete draft budget for FY 2024/2025 will be presented for the Committee's consideration in April 2024, with a goal of Commission adoption in May 2024.

Discussion

Staff expects the FY 2024/2025 to be very similar to the FY 2023/2024 budget total. Staff notes the following considerations:

- Labor and benefits assumptions were reviewed with the Personnel Committee in February 2023. Per that Committee's direction, staff is assuming a 2.6% cost of living adjustment for salaries. Overall, salary and benefits costs are expected to increase by approximately 9%. This is due to the fact that, as discussed with the Personnel Committee, medical benefits are projected to increase by up to 12%. In addition, EBDA was not required to make an unfunded accrued liability contribution to the Authority's pension plan in FY 2023/2024 but will be making a \$21,000 payment next fiscal year.
- The State Water Resources Control Board is currently expecting to increase National Pollutant Discharge Elimination System (NPDES) Permit Fees by 2%. This is significantly less than the 8.8% and 11.8% increases implemented in the past two years. The SWRCB continues refining their fee schedule each year until August, and fee increases could go up or down in that time. Staff is assuming the 2% for now and will keep the Commission apprised of changes.
- While chemicals costs continue to rise on a unit cost basis, staff is proposing a significant decrease in EBDA's chemical budget due to implementation of the new

effluent limit for chlorine residual. As discussed in Item No. OM5, EBDA has gone from spending over \$68,000 on sodium bisulfite deliveries in the second quarter this fiscal year, prior to implementation of the new chlorine limit, to spending zero in quarter three. This decrease in chemical cost in FY2024/2025 will offset the increases to benefits costs noted above, as well as other expected increases.

- As in previous years, PG&E costs are expected to increase.
- At the recommendation of the MAC, staff has added \$100,000 to the NPDES Permit Issues budget to provide flexibility in responding to the Nutrient Watershed Permit. As discussed in Item No. RA9, the Regional Water Board is scheduled to adopt the third Watershed Permit in June 2024. While staff is hopeful that negotiation prior to adoption will result in a workable permit, budgeting funds will provide flexibility for retaining technical and/or legal support in the event that EBDA decides to appeal the permit.
- Staff is not recommending any new Special Studies at this time.
- Staff expects to continue efforts associated with the Cargill project in FY 2024/2025. This project will continue to be shown as part of a separate brine fund that recognizes the revenue associated with Cargill's complete reimbursement of EBDA's expenditures.

ITEM NO. FM8 MOTION AUTHORIZING THE GENERAL MANAGER TO EXECUTE AN AGREEMENT WITH REDWOOD PUBLIC LAW LLP FOR GENERAL COUNSEL SERVICES

Recommendation

Approve the motion authorizing a legal services agreement with Redwood Public Law LLP for Eric S. Casher to continue serving as Authority General Counsel.

Strategic Plan Linkage

4. **Sustained Organization:** Sustain a functional, productive, resilient organization to ensure EBDA can strive to achieve its Mission and Vision.

Background

In 2016, Eric S. Casher began working for the Authority as General Counsel, through a contract with Meyers Nave. Mr. Casher took over this role from Meyers Nave founding partner Steve Meyers. Mr. Casher informed the Authority of his transition from Meyers Nave to Redwood Public Law in early February 2024.

Discussion

The Commission met in closed session on February 15, 2024, to discuss Mr. Casher's transition to Redwood Public Law. At the conclusion of the meeting, the Commission expressed a desire for Mr. Casher to continue serving as General Counsel through an agreement with Redwood Public Law. Redwood Public Law is a newly formed law firm that is focused on public agency representation and will include, in addition to Mr. Casher, a number of other attorneys that serve as City Attorneys for cities throughout the Bay Area and beyond. Alex Mog, Oro Loma Sanitary District's General Counsel, as well as Erica Gonzalez and other attorneys currently providing legal services to the Authority will be joining Redwood Public Law along with Mr. Casher.

Mr. Casher is an experienced attorney who has provided legal services to the Authority for nearly eight years. Over that period of time, Mr. Casher has consistently provided excellent legal services to the Authority, managing the full range of legal issues the Authority faces, and served as a trusted advisor and counsel to the Commission and staff. A new legal services agreement with Redwood Public Law has been prepared and is consistent with the agreement approved by Oro Loma Sanitary District on March 5, 2024. A copy of the legal services agreement for Redwood Public Law is attached. The agreement contains the same rates as those that currently exist with Meyers Nave, and thus there will be no fiscal impact as a result of this agreement. In addition, at the Commission's request, the agreement is being proposed with no explicit termination date, and with an annual process for reviewing General Counsel performance and increasing billing rates by CPI.

**LEGAL SERVICES AGREEMENT BETWEEN
EAST BAY DISCHARGERS AUTHORITY
AND
REDWOOD PUBLIC LAW**

THIS AGREEMENT for legal services is made by and between the East Bay Dischargers Authority ("EBDA") and Redwood Public Law, a Limited Liability Partnership, with offices located at 66 Franklin Street, Ste. 300, Oakland, CA 94607, ("Attorney") (together sometimes referred to as the "Parties") as of March 15, 2024 (the "Effective Date") in San Lorenzo, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Attorney shall provide to EBDA the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date, shall end on June 30, 2025, and shall automatically renew for additional year each year on July 1, subject to a satisfactory performance review as provided in Section 1.2, or unless the term of the Agreement is otherwise terminated as provided for in Section 8. The time provided to Attorney to complete the services required by this Agreement shall not affect the EBDA's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Attorney shall perform all legal services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Attorney is engaged in the geographical area in which Attorney practices its profession. Attorney shall prepare all work products required by this Agreement in a professional manner and shall conform to the standards of quality normally observed by a person practicing in Attorney's profession. Attorney shall conduct an annual performance evaluation with the EBDA Commission.
- 1.3 Assignment of Personnel.** Attorney shall assign only competent personnel to perform services pursuant to this Agreement. For the purposes of this Agreement, the EBDA Commissioners appoints Eric Casher as EBDA General Counsel. Attorney may discharge and/or change its staff at any time without the consent of EBDA. However, the EBDA Commission shall approve all appointments to the position of EBDA General Counsel.
- 1.4 Time.** Attorney shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Attorney's obligations hereunder.

Section 2. COMPENSATION. EBDA hereby agrees to pay Attorney an hourly fee as set forth in Exhibit A and all reimbursable expenses incurred in performing the work. Attorney shall

submit all invoices to EBDA in the manner specified herein. Except as specifically authorized by EBDA, Attorney shall not bill EBDA for duplicate services performed by more than one person. Attorney and EBDA acknowledge and agree that compensation paid by EBDA to Attorney under this Agreement is based upon Attorney's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Attorney. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Attorney and its employees, agents, and subcontractors may be eligible. EBDA therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Attorney shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- A detailed summary of each task;
- A list of all attorneys working on each file

2.2 Monthly Payment. EBDA shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. EBDA shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Attorney.

2.3 Hourly Fees. Fees for work performed by Attorney on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit A. Fees listed in Exhibit A shall be adjusted at the beginning of each fiscal year, commencing July 1, 2024, pursuant to the Consumer Price Index for All Urban Consumers (CPI-U) for San Francisco-Oakland-Hayward, CA for the period of January 1 through December 30 of the previous year., rounded up to the nearest five dollars (\$5.00) per hour. However, such adjustment shall be no less than 2.0% and no more than 5.0% per year.

2.4 Reimbursable Expenses. In addition to payment of legal fees, EBDA shall reimburse Attorney for all reasonable costs incurred in the course of providing legal services to the EBDA. Such costs include all third-party expenses relating to litigation, duplicating, delivery charges, computerized legal research, filing fees, and consulting expenses. Costs for third-party expenses under \$100.00 will be paid by Attorney and will be reimbursed by EBDA; costs for third-party expenses that exceed \$100.00 shall be approved for payment by the Attorney and sent to the EBDA for direct payment. EBDA shall be billed actual costs, only, without an additional markup. Attorney will not charge for travel time and expenses for attending regularly scheduled meetings of the EBDA Commission, nor for time spent preparing detailed billing statements.

2.5 Payment of Taxes. Attorney is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.6 Payment upon Termination. In the event that the EBDA or Attorney terminates this Agreement pursuant to Section 8, the EBDA shall compensate the Attorney for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Attorney shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

Section 3. FACILITIES AND EQUIPMENT. Attorney shall, at its sole cost and expense, provide all equipment that may be necessary to perform the services required by this Agreement. EBDA shall make all facilities available to Attorney that are necessary to perform services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Attorney, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Attorney and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Attorney shall provide proof satisfactory to EBDA of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the EBDA. Attorney shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Attorney's bid. Attorney shall not allow any subcontractor to commence work on any subcontract until Attorney has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to EBDA. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 Workers' Compensation. Attorney shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Attorney. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Attorney may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code.)

Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the EBDA. The insurer, if insurance is provided, or the Attorney, if a program of self-insurance is provided, shall waive all rights of subrogation against the EBDA and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Attorney, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or GL 0002 (ed.1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1. No endorsement shall be attached limiting the coverage.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Attorney, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that

precedes the date of this Agreement, Attorney must provide extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work. The EBDA shall have the right to exercise, at the Attorney's sole cost and expense, any extended reporting provisions of the policy, if the Attorney cancels or does not renew the coverage.

- d. A copy of the claim reporting requirements must be submitted to the EBDA prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of Coverage. Prior to beginning any work under this Agreement, Attorney shall furnish EBDA with complete copies of all endorsements. Copies of policies are available upon request by the EBDA.

4.4.3 Notice of Reduction in or Cancellation of Coverage. A certified endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the EBDA. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, Attorney shall provide written notice to EBDA at Attorney's earliest possible opportunity and in no case later than ten (10) working days after Attorney is notified of the change in coverage.

4.4.4 Additional Insured; primary insurance. A certified endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) shall be attached to all policies stating that the EBDA and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Attorney, including the insured's general supervision of Attorney; products and completed operations of Attorney, as applicable; premises owned, occupied, or used by Attorney; and automobiles owned, leased, or used by the Attorney in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to EBDA or its officers, employees, agents, or volunteers. A certified endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the EBDA and its officers, officials,

employees and volunteers, and that no insurance or self-insurance maintained by the EBDA shall be called upon to contribute to a loss under the coverage.

4.5 Remedies. In addition to any other remedies EBDA may have if Attorney fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, EBDA may, at its sole option exercise any of the following remedies, which are alternatives to other remedies EBDA may have and are not the exclusive remedy for Attorney's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Attorney to stop work under this Agreement or withhold any payment that becomes due to Attorney hereunder, or both stop work and withhold any payment, until Attorney demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND ATTORNEY'S RESPONSIBILITIES. Attorney shall indemnify, defend with counsel reasonably acceptable to the EBDA, and hold harmless the EBDA and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Attorney or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Attorney shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the EBDA or its officers, employees, agents, or volunteers and (2) the actions of Attorney or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Attorney to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by EBDA of insurance certificates and endorsements required under this Agreement does not relieve Attorney from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Attorney acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Attorney or any employee, agent, or subcontractor of Attorney providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of

EBDA, Attorney shall indemnify, defend, and hold harmless EBDA for the payment of any employee and/or employer contributions for PERS benefits on behalf of Attorney or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of EBDA.

Section 6. STATUS OF ATTORNEY.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Attorney shall be an independent contractor and shall not be an employee of EBDA. EBDA shall have the right to control Attorney only insofar as the results of Attorney's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise EBDA shall not have the right to control the means by which Attorney accomplishes services rendered pursuant to this Agreement. Notwithstanding any other EBDA, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Attorney and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by EBDA, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of EBDA and entitlement to any contribution to be paid by EBDA for employer contributions and/or employee contributions for PERS benefits.
- 6.2 No Guarantee.** Attorney agrees to provide conscientious, competent and diligent services and at all times will seek to achieve solutions that are just and reasonable. However, because of the uncertainty of the legal process, the interpretation and changes in the law and many unknown factors, Attorney cannot and does not warrant, predict or guarantee results or the final outcome of any case, matter, proceeding or project.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Attorney and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Attorney represents and warrants to EBDA that Attorney and its employees, agents, and any subcontractors have all professional licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice law. Attorney

represents and warrants to EBDA that Attorney and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

- 7.4 Nondiscrimination and Equal Opportunity.** Attorney shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Attorney under this Agreement. Attorney shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Attorney thereby.

Attorney shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** EBDA may terminate this Agreement at any time and without cause upon ninety (90) days written notification to Attorney. In the event of termination, Attorney shall be entitled to compensation for services performed to the effective date of termination. EBDA, however, may condition payment of such compensation upon Attorney delivering to EBDA any or all documents, electronically stored information, photographs, computer software, video and audio tapes, and other materials provided to Attorney or prepared by or for Attorney or the EBDA in connection with this Agreement. Upon termination, Attorney shall cooperate with EBDA to transfer all necessary files to the EBDA's new attorney(s), except for those matters that are proprietary to Attorney. Attorney may terminate this Agreement without cause upon ninety (90) days written notification to EBDA. Attorney may terminate this Agreement immediately for cause when outstanding invoices for legal services and /or costs are more than ninety (90) days past due. However, Attorney will work with the EBDA General Manager to resolve all disputes pertaining to outstanding legal invoices prior to providing notice of termination.
- 8.2 Extension.** This Agreement shall automatically renew every year, unless ninety (90) days prior to the termination of the initial term, or any other subsequent term, EBDA sends notice of termination to Attorney.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** EBDA and Attorney recognize and agree that this Agreement contemplates personal performance by Attorney and is based upon a determination of Attorney's unique professional competence, experience, and specialized professional knowledge. Moreover, a substantial inducement to EBDA for entering into this Agreement was and is the personal reputation and competence of Attorney. Attorney may not assign this Agreement or any interest therein without the prior written approval of the EBDA. Attorney shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the EBDA.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between EBDA and Attorney shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Attorney.** If Attorney materially breaches any of the terms of this Agreement, EBDA's remedies shall include, but not be limited to, the following:
- 8.6.1 Immediately terminate the Agreement; and
 - 8.6.2 Retain all work products prepared by Attorney pursuant to this Agreement.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Attorney's Work.** All reports or any other documents or materials, in electronic or any other form that Attorney prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder, shall be the property of the EBDA. Attorney hereby agrees to deliver those documents to the EBDA upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the EBDA and are not necessarily suitable for any future or other use.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Attorney shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Attorney may serve other clients, but none whose activities within the corporate limits of EBDA or whose business, regardless of location, would place Attorney in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq.

Attorney shall not employ any EBDA official in the work performed pursuant to this Agreement. No officer or employee of EBDA shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 et seq.

Attorney understands that, if this Agreement is made in violation of Government Code §1090 et. seq., the entire Agreement is void and Attorney will not be entitled to any compensation for services performed

pursuant to this Agreement, including reimbursement of expenses, and Attorney will be required to reimburse the EBDA for any sums paid to the Attorney. Attorney understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 Solicitation. Attorney agrees not to solicit EBDA employees either orally or through any written materials, for employment with Attorney's office and EBDA agrees not to solicit any Attorney's employees for employment with the EBDA for the duration of this Agreement.

10.9 Contract Administration. This Agreement shall be administered by the EBDA General Manager who shall act as the EBDA's representative. All correspondence shall be directed to or through the EBDA General Manager or his or her designee.

10.10 Notices. Any written notice to Attorney shall be sent to:

Redwood Public Law
Attn: Managing Principal
66 Franklin Street, Ste. 300
Oakland, CA 94607

Any written notice to EBDA shall be sent to:

East Bay Dischargers Authority
Attn: General Manager
2651 Grant Avenue
San Lorenzo, CA 94580

10.11 Integration: Incorporation. This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between EBDA and Attorney and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

10.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

EAST BAY DISCHARGERS AUTHORITY

REDWOOD PUBLIC LAW

Jackie Zipkin, General Manager

Eric S. Casher

EXHIBIT A
SCOPE OF SERVICES AND COMPENSATION

Scope of Services

Attorney shall provide all necessary legal services as counsel to EBDA. Attorney shall serve at the pleasure of the EBDA Commission and perform such duties including, but not limited to, preparation and review of agreements, leases, resolutions, and other documents of legal import; attendance at all regular and special meetings of the EBDA Commission; render legal opinions and advise on matters of EBDA business; represent EBDA in all litigation where EBDA is a party; and such other duties or services generally performed by a general counsel and necessary to assist EBDA in achieving its goals in a sound legal manner.

Compensation

Attorney shall be compensated according to the following hourly fee schedule:

Category	Hourly Fees
(a) Administrative	
General Counsel Services, including appearances at meetings, consultations, preparation of agreements or other documents, appearance before administrative bodies and litigation, if any. The hourly rate will not include travel time.	\$343
(b) Litigation	
Litigation services performed by member of Attorney’s law firm.	\$377
(c) Cargill	
Legal services related to EBDA’s project with Cargill, including preparation and review of agreements or other documents.	Of Counsel \$496 Principal \$523 Senior Principal \$575

Specialized legal services matters shall be approved by the EBDA General Manager and memorialized in writing prior to engagement at the specialized legal services rate.

Administrative and Litigation Fees listed shall be adjusted at the beginning of each fiscal year, commencing July 1, 2024, pursuant to the Consumer Price Index for All Urban Consumers (CPI-U) for San Francisco-Oakland-Hayward, CA for the period of January 1 through December 30 of the previous year, rounded up to the nearest five dollars (\$5.00) per hour. However, such adjustment shall be no less than 2.0% and no more than 5.0% per year.

Costs shall be reimbursed pursuant to Section 2.4 of this Agreement.

ITEM NO. FM9 MOTION AUTHORIZING THE GENERAL MANAGER TO APPROVE AN ENGAGEMENT OF LEGAL SERVICES WITH MEYERS NAVE FOR SPECIALIZED LEGAL SERVICES

Recommendation

Approve the motion authorizing an engagement of legal services with Meyers Nave.

Strategic Plan Linkage

1. **Regulatory Compliance:** Proactively meet or exceed regulatory requirements for protection of the environment and public health.
 - a. Represent EBDA and the Member Agencies' interests by preemptively engaging in development of emerging regulations and permits and advocating for reasonable, science-based decisions.
 - b. Maintain consistent compliance with EBDA's National Pollutant Discharge Elimination System (NPDES) Permit.
3. **Financial:** Develop financial strategies and practice sound fiscal management to ensure wise use of ratepayers' resources.
 - b. Identify and manage opportunities for revenue generation.

Background

EBDA first selected Meyers Nave in March 2010 through a competitive bidding process to replace its retiring General Counsel. In addition to General Counsel services, Meyers Nave has assisted EBDA with other legal expertise, including on issues related to NPDES compliance. The compensation rate determined through that 2010 competitive bid has been adjusted historically by the Commission on an annual basis to correspond with inflation.

Discussion

As discussed in Item No. FM8, the Authority's General Counsel, Eric Casher, is departing Meyers Nave in March 2024. The Commission met in closed session on February 15, 2024 to discuss Mr. Casher's transition to Redwood Public Law. The Commission expressed a desire for Mr. Casher to continue serving as General Counsel through his new firm. The Commission also supported continuing to contract with Meyers Nave for specialized legal services related to NPDES permitting.

Meyers Nave's regulatory team, led by Greg Newmark, has been providing significant support on the Cargill project over the past several years. In addition, Mr. Newmark and his team are currently advising EBDA on reissuance of the Nutrients Watershed Permit (see Item No. RA9). The same Meyers Nave team is also supporting BACWA in the Nutrients Watershed Permit negotiation, providing synergy and the ability to spread costs over multiple agencies.

Staff is recommending that the Commission approve the attached Letter of Engagement with Meyers Nave for continued support on these two matters and other NPDES-related

issues as may arise. This engagement would supersede the 2010 contract. Meyers Nave has proposed billing rates consistent with their specialized legal services for other municipal clients. The rates would escalate annually based on CPI. Staff notes that all work on the Cargill project is fully reimbursable.

March 13, 2024

VIA E-MAIL

PERSONAL & CONFIDENTIAL

Jacqueline Zipkin
General Manager
East Bay Dischargers Authority
2651 Grant Ave.
San Lorenzo, CA 94580
jzipkin@ebda.org

Re: Engagement of Legal Services

Dear Jackie:

Thank you for retaining Meyers Nave (“Meyers Nave”) to perform legal services in connection with East Bay Dischargers Authority (“Client”) of which you are General Manager. We appreciate the opportunity to serve as your lawyers and look forward to working with you.

This letter sets forth our agreement concerning the legal services we will provide and our fee arrangements for those services. Please read this entire agreement before signing and returning it to us.

1. Scope of Engagement. We will provide the legal services reasonably required to represent and advise you in connection with: 1) representing and advising Client regarding Cargill, Incorporated’s Mixed Sea Salts Processing and Brine Discharge Project; 2) represent and advise Client regarding the San Francisco Bay Regional Water Quality Control Board’s Administrative Draft Order R2-2024-00XX, NPDES Permit CA0038873 (the “Draft Nutrient Permit”), and subsequent versions of that permit; and 3) other NPDES Permit-related matters, including but not limited to matters related to the Waste Discharge Requirements issued to EBDA by the San Francisco Bay Regional Water Quality Control Board, Order R2-2022-0023, NPDES Permit CA0037869 (the “EBDA Permit”), and subsequent versions of that permit. Our work is limited to such services. We will also provide legal services for additional matters that you request of us, provided we agree to perform that additional work. A letter confirming such additional work shall bring such work within the scope of this agreement.

2. Fees and Personnel. As compensation for our services, our fees will be based on our current standard billing rate for the personnel performing services under this agreement at the time such services are rendered. Our standard billing rates for attorneys and paralegals are attached as Attachment 1.

I will be the principal in charge of representing your interests. If other attorneys and/or paralegals are assigned to work on your matter, the then current hourly rates of those individuals will be utilized. This agreement retains the legal services of our law firm and not of a particular attorney. Hourly rates are subject to reasonable change, usually at the beginning of each year.

3. Retainer. As discussed, the Firm will not require a retainer to commence services related to this matter. However, the Firm reserves the right to require a retainer in the future if it determines that circumstances warrant.

4. Disbursements and Expenses. In addition to hourly fees, we may incur out-of-pocket expenses related to your representation. Our Statement of Fee and Billing Information, which sets forth the details of our disbursement and expense policy, is attached as Attachment 2.

5. Billing and Payment Responsibilities. We will send monthly statements which are due within 30 days of receipt. If you have any questions about an invoice, please promptly telephone or write me so that we may discuss these matters. Our Statement of Fee and Billing Information sets forth the details of our fee and billing policy.

6. Termination of Services. You may terminate our services at any time by written notice. After receiving such notice, we will cease providing services. We will cooperate with you in the orderly transfer of all related files and records to your new counsel.

We may terminate our services at any time with your consent or for good cause. Good cause exists if (a) any statement is not paid within 60 days of its date; (b) you fail to meet any other obligation under this agreement and continue in that failure for 15 days after we send written notice to you; (c) you have misrepresented or failed to disclose material facts to us, refused to cooperate with us, refused to follow our advice on a material matter, or otherwise made our representation unreasonably difficult; or (d) any other circumstance exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If we terminate our services, you agree to execute a substitution of attorneys promptly and otherwise cooperate in effecting that termination.

Termination of our services, whether by you or by us, will not relieve the obligation to pay for services rendered and costs incurred before our services formally ceased.

7. Insurance. During the term of this engagement, this law firm shall take out and maintain general liability and property damage insurance in amounts not less than \$1,000,000; professional errors and omissions insurance, in amounts not less than \$2,000,000

per occurrence; and \$4,000,000 aggregate, which insurance may not be canceled or reduced in required limits of liability unless at least ten days advance written notice be given to you.

8. No Guarantee of Outcome. Any comments made by us about the potential outcome of this matter are expressions of opinion only and are not guarantees or promises about any outcome or results.

9. Dispute Resolution. In the event you become dissatisfied with any aspect of our relationship, we encourage you to bring such concerns to our attention immediately. If we are unable to resolve any dispute, either arising out of or in connection with this Agreement or relating to the services performed by our firm or any of its attorneys, to our mutual satisfaction, our firm will first comply with any mandatory dispute resolution procedures that may apply to any such dispute.

If we are unable to resolve any dispute, and after mandatory dispute resolution procedures have been waived or exhausted, the parties shall submit such dispute to final and binding arbitration in Alameda County, California before the American Arbitration Association, pursuant to its then prevailing rules, unless the parties agree in writing to a different arbitration method or forum.

By signing this agreement, you acknowledge and agree that you have read and understand this arbitration provision. You understand that by agreeing to arbitration we each give up the right to present our claims or defenses for trial by a judge or jury, and we also give up the right to an appeal. The initial resort to the courts by either party shall not be considered a waiver of that party's right to compel binding arbitration under this provision. This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

10. Document Retention. In the course of the Firm's representation of East Bay Dischargers Authority, you may provide us with and we may obtain documents that are relevant to the representation. Some of those documents may be important to you and so that there is no confusion we find that it is useful at the inception of the representation for us to communicate our Document Retention Policy. Meyers Nave is committed to using less paper and eliminating unnecessary copies of documents. Documents of Record can be either hard copies or digital, regardless of the form they took originally when created or received by the Firm. Whenever it is proper and practicable, the Firm prefers Documents of Record (official version) to be in a digital format. Further, if record is stored electronically, then paper copies may be deemed duplicative and may be purged. This helps us manage information, helps the environment and helps us control costs. The materials pertaining to this matter belong to you and you may access them or have duplicates provided to you at any time during your representation with the exception of certain Meyers Nave Firm and accounting information. At the conclusion of this matter, no further representation will be provided and we recommend that you make arrangements to retrieve all original documents.

It is the Firm's general policy that we maintain records for a period of seven (7) years after conclusion of the matter, although due to certain practical considerations that is not always possible. Additionally, while we take steps to ensure that all records are held in strict confidence and maintained in a secure location, we cannot guarantee that something beyond our control will not occur resulting in damage to client records.

Thus, if in the course of our representation you provide us with original documents that you consider important or desire to keep, we recommend that, first, you inform us in writing that the documents are important. And second, we ask that you take immediate possession of such documents upon the conclusion of our representation. If we do not hear from you, we will generally retain only the documents and materials pertaining to this matter which we designate as vital for a period of seven (7) years. After which such documents will be destroyed unless, before that time, you notify us in writing that you wish to take possession of them.

11. Entire Agreement; Full Understanding; Modifications in Writing. This letter contains our entire agreement about our representation. Any modifications or additions to this letter agreement must be made in writing.

12. Joint Representation. Our firm maintains of counsel agreements with certain legal specialists. Because these individuals are deemed independent contractors under the applicable provisions of the tax laws and not employees of our firm, it is necessary that you consent to dual representation by our firm and the specialist in the event the matter which you have engaged us to handle requires the use of that specialist. This arrangement has no effect whatsoever on the cost of your legal services, rather it is an ethical requirement that we disclose this fact and that you consent. You are consenting by signing this letter.

13. Conflicts. Meyers Nave has recently been retained represent the Bay Area Clean Water Agencies (BACWA) regarding the Draft Nutrient Permit. We have evaluated potential conflict of interest issues regarding this matter, and understand that there is no present adversity between BACWA and Client. Nevertheless, because Meyers Nave currently represents Client, we intend to treat the proposed engagement by BACWA and the current representation of Client as a "joint representation." This does not mean that our clients would have to file joint pleadings in the event of a lawsuit or would necessarily be precluded from presenting separate arguments.

The representation of multiple clients in the same matter generally creates the potential for a future conflict of interest. This could happen, for example, in the following hypothetical situations: (1) a lawyer may receive conflicting instructions from the clients so that the lawyer cannot follow one client's instruction without violating another client's instruction; (2) the clients may have conflicting objectives so that the lawyer cannot effectively advance one client's objective without detrimentally affecting another client's objective; or (3) the lawyer's duty to maintain the confidentiality of one client's information conflicts with the lawyer's duty to make full disclosure to the other client regarding the subject of the joint representation.

We make this disclosure to you in an abundance of caution. We believe we can competently represent BACWA and Client while fulfilling all of the duties we have to each client because of their common interests in this matter. We do not foresee any conflicts at this time and the joint representation may result in economic or tactical advantages. Although we do not expect any actual conflict to arise, it is possible that issues might arise as to which our representation of Client might be materially limited by our joint representation.

Under California Evidence Code section 962 and California case law, there is no attorney/client privilege between the joint clients so that any information we receive from one client in connection with the Draft Nutrient Permit matter cannot be withheld from another client in the same matter during or after the joint representation. Such information could be used by another client if a conflict of interest ever arises.

By accepting the terms of the representation, Client agrees that it will not seek to disqualify Meyers Nave or any expert witness from representing BACWA regarding the Draft Nutrient Permit matter because of this firm's representation of Client. If the lawyer-client relationship between Client and Meyers Nave with respect to the Draft Nutrient Permit terminates for any reason, Client agrees the firm may continue to represent BACWA in that matter.

We ask that you consider this consent request carefully. You may wish to confer with independent legal counsel regarding this consent, and should feel free to do so. If, after review and consideration of the foregoing BACWA and Client consent to the representations as described herein, please sign a copy of this letter and return it to me as soon as possible. Again, we thank you for allowing us the opportunity to serve as your lawyers.

Sincerely,



Gregory J. Newmark

These terms are accepted and agreed to as of the date of this letter.

East Bay Dischargers Authority

By: _____
Jacqueline T. Zipkin
General Manager

5600987.3

ATTACHMENT 1

**MEYERS NAVE
RATE SHEET**

Sr. Principal	\$610
Principal	\$590
Of Counsel	\$550
Sr. Associate	\$480
Associate	\$430
Paralegal	\$305

Our rates adjust every July 1 (appropriate date) by the greater of 3% or the relevant local CPI increase over the prior 12 month period, rounded to the nearest \$5.

ATTACHMENT 2

MEYERS NAVE STATEMENT OF FEE AND BILLING INFORMATION

The following is a general description of our fee and billing policies. These general policies may be modified by the specific engagement letter or agreement to which this summary is attached.

Professional Fees. Our fees for professional services are based on the fair value of the services rendered. To help us determine the value of our services, our attorneys and paralegals maintain time records for each client and matter. Our attorneys and paralegals are assigned hourly rates which are based on years of experience, specialization, training and level of professional attainment. We adjust our rates periodically (usually at the beginning of each year) to take into account inflation and the increased experience of our professional personnel. To keep professional fees at a minimum, legal work that does not require more experienced attorneys will be performed, where feasible, by attorneys with lower billing rates. Of course, the quality of the work is paramount, and we do not sacrifice quality to economy.

Before undertaking a particular assignment, we will, if requested, provide you with a fee estimate to the extent possible. Estimates are not possible for some matters, however, and cannot be relied on in many others because the scope of our work will not be clear at the outset. When a fee estimate is given, it is only an estimate; it is not a maximum or minimum fee quotation. The actual fee may be more or less than the quoted estimate.

Retainer. Our normal practice is to require a retainer to cover a portion of the anticipated attorneys' fees and costs. Any retainer will be placed in the firm's trust account. At the conclusion of our services, we will return to our client any unapplied retainer, after deducting payment for charges billed or to-be-billed for services and any remaining out-of-pocket expenses.

Billing And Payment Procedures. Unless other arrangements are made at the time of the engagement, invoices will be sent monthly. Invoices for outside services exceeding \$100 may be billed separately. Occasionally, however, we may defer billing for a given month or months if the accrued fees and costs do not warrant current billing or if other circumstances would make it appropriate to defer billing.

Our invoices contain a brief narrative description of the work performed; if requested, the initials of the attorney who performed the work will appear on the statement. The invoice will include a line item reflecting in-house administrative costs. The firm's in-house administrative costs include duplicating, facsimile charges, telephone charges, E-mail, postage, mileage and other administrative expenses.

The firm will be reimbursed for all outside services incurred in the course of providing legal services to our client(s). Outside services will include, but are not limited to, all third-party

expenses, delivery charges, travel expenses, outside research services, filing fees, expert witness and expert consultant fees.

If you have any questions regarding an invoice, the Finance Director or Executive Director is available to answer your questions. For any unresolved matters, the Bar Association has an arbitration mechanism that can be used to resolve such matters.

Late Payments. Statements for services are payable upon presentation and, in all events, within thirty (30) days after receipt. Occasionally a client has difficulty in making timely payments. To avoid burdening those clients who pay their statements promptly with the added costs we incur as a result of late payments, a late charge will be assessed on statements not paid within thirty (30) days. The maximum monthly late payment charge will be 1.5% per month. In the unlikely event we are required to institute legal proceedings to collect fees and costs, the prevailing party will be entitled to reasonable attorneys' fees and other costs of collection.