

**NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AMENDMENT NO. 2 TO AGREEMENT NO. F-103 (FC)**

PROFESSIONAL SERVICES AGREEMENT

THIS AMENDMENT NO. 2 TO NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. F-103 (FC) (the "Agreement") is made and entered into effective as of July 1, 2022, by and between the Napa County Flood Control and Water Conservation District, a special district of the State of California ("DISTRICT"), and Somach Simmons & Dunn, a Professional Corporation, whose business address is 500 Capitol Mall, Suite 1000, Sacramento, California 95814 ("CONTRACTOR"). DISTRICT and CONTRACTOR may be referred to below individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, CONTRACTOR previously represented DISTRICT and other public agencies in litigation against the California Department of Water Resources (DWR) involving disputes over rights to water from the State Water Project, on record in Sacramento Superior Court as Case No. 34-2008-00016338-CU BC GDS; and

WHEREAS, the litigation was resolved through various settlement agreements among the parties, collectively filed with the Sacramento Superior Court on January 30, 2014; and

WHEREAS, a dispute arose between DISTRICT and DWR over the interpretation of their settlement agreement; and

WHEREAS, on November 16, 2020, the Parties entered into Agreement F-103 (FC), as authorized by Government Code section 31000, in order to advise, assist, and represent the DISTRICT in its dispute over the proper interpretation of the settlement agreement with DWR; and

WHEREAS, on June 15, 2021, the Parties entered into Amendment No. 1 of Agreement F-103 (FC) continuing the services of CONTRACTOR regarding ongoing discussions of the proper interpretation of the settlement agreement; and

WHEREAS, on December 7, 2021, DISTRICT Board of Directors authorized the DISTRICT to proceed with litigation to enforce the DISTRICT's settlement agreement and execute a Memorandum of Understanding (MOU) to allocate costs to DISTRICT and other parties; and

WHEREAS, DISTRICT wishes to continue receiving specialized services from CONTRACTOR, as authorized by Government Code section 31000, necessary to advise, assist, and represent the DISTRICT in its dispute over the proper interpretation of the settlement agreement with DWR; and

WHEREAS, CONTRACTOR is willing to continue providing such specialized services to DISTRICT under the terms and conditions set forth herein.

WHEREAS, DISTRICT and **CONTRACTOR** desire to extend the term of the Agreement, increase the funds available for expenditure, and memorialize the previously authorized litigation.

NOW, THEREFORE, for and in consideration of the recitals stated above and incorporated herein by this reference and the mutual obligations of the parties expressed herein, DISTRICT hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve DISTRICT in accordance with the terms and conditions set forth below.

TERMS

1. Paragraph 1 of the Agreement is hereby amended in full to read as follows:

1. **Term of the Agreement.** The term of this Agreement shall commence on November 16, 2020, and is subject to automatic renewal as set forth below, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination), or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the Parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to DISTRICT shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed four (4) additional years, unless either Party gives the other Party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

2. Paragraph 2 of the Agreement is hereby amended in full to read as follows:

2. **Scope of Services.** CONTRACTOR shall provide DISTRICT with legal services as more particularly set forth in Exhibit "A-2," attached hereto and hereby incorporated by reference, in addition to the legal services previously provided under prior versions of Exhibit A. Legal services shall primarily be provided by Andrew M. Hitchings, Esq. and Aaron F. Ferguson, Esq.

3. Paragraph 3 of the Agreement is hereby amended in full to read as follows:

3. **Compensation.**
(a) **Rates.** In consideration of CONTRACTOR's fulfillment of the promised work, DISTRICT shall pay CONTRACTOR on an hourly basis for the services of CONTRACTOR's

personnel at the rates set forth in Exhibit "B-2," which is attached hereto and incorporated herein by this reference. CONTRACTOR shall perform only those services requested by the DISTRICT or by DISTRICT counsel in the Office of the Napa County Counsel.

(b) Expenses. Expenses and costs for which CONTRACTOR intends to seek reimbursement shall be subject to approval in advance by DISTRICT or District Counsel before such costs or expenses are incurred.

(c) Maximum Amount. Notwithstanding subparagraphs (a) or (b), the maximum payments under this Agreement shall not exceed Thirty Thousand Dollars (\$30,000) per fiscal year; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.

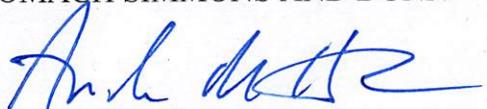
4. Paragraph 13 of the Agreement is hereby amended to replace the reference to "Phillip Miller, District Engineer" with "Richard Thomasser, District Manager."

5. This Amendment represents all the changes to the Agreement agreed to by DISTRICT and CONTRACTOR. No enforceable oral representations or other agreements have been made by the Parties except as specifically stated herein. All other provisions of the Agreement not addressed in this Amendment shall remain in full force and effect.

6. This Amendment may be executed in counterparts, which when taken together, shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Amendment No. 2 is executed by DISTRICT and by CONTRACTOR through its duly authorized officer.

SOMACH SIMMONS AND DUNN

By 
ANDREW HITCHINGS, Shareholder

"CONTRACTOR"

NAPA COUNTY FLOOD CONTROL AND
 WATER CONSERVATION DISTRICT, a
 special district of the State of California

By: _____
 SCOTT SEDGLEY
 Chairperson of the Board of Directors

“DISTRICT”

<p>APPROVED AS TO FORM Office of District Counsel</p> <p>By: <u>Shana A. Bagley</u> District Counsel</p> <p>Date: <u>September 27, 2022</u></p>	<p>APPROVED BY THE BOARD OF DIRECTORS OF THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT</p> <p>Date: _____ Processed By: _____ _____ Deputy Secretary of the District Board</p>	<p>ATTEST: Secretary of the District Board</p> <p>By: _____</p>
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EXHIBIT "A-2"

(Scope of Services)

If and as specifically requested by DISTRICT staff or by District Counsel (Napa County Counsel and deputies), CONTRACTOR shall provide legal advice, analysis, legal opinions, representation before regulatory bodies with jurisdiction over the matters, and issues described below:

1. Legal action required to draft and negotiate any additional settlement agreements and/or releases and to enforce said agreements and releases; and
2. Participation in and prosecution of the previously authorized pending litigation related to this dispute as filed by the DISTRICT, Solano County Water Agency and the City of Yuba City filed on July 14, 2022 (Sacramento Superior Court Case No. 34-2022-00323389).

EXHIBIT "B-2"

(Schedule of Hourly Billing Rates)

Key Personnel:

Andrew Hitchings	\$430.00
Aaron Ferguson	\$360.00

Others:

Shareholders	\$340.00 to \$540.00
Associates	\$240.00 to \$300.00
Of Counsels	\$410.00 to \$460.00
Paralegals and Law Clerks	\$150.00 to \$230.00

CONTRACTOR shall seek written permission of DISTRICT (from its District Engineer or District Counsel) as to the proposed rendition of services by anyone other than the key personnel identified above. At the time of seeking such permission, CONTRACTOR shall inform the DISTRICT of the hourly rate to be billed by such additional attorneys, paralegals, and law clerks before they begin work under this Agreement.

All out-of-pocket costs and expenses will be billed to DISTRICT at CONTRACTOR's cost.