

RETAINER AGREEMENT FOR SPECIALIZED LEGAL CONSULTING
SERVICES FOR THE DISTRICT'S IMPLEMENTATION OF THE SUSTAINABLE
GROUNDWATER MANAGEMENT ACT AND RELATED ISSUES

THIS AGREEMENT is made this 2nd day of March, 2021, by and between the THE SISKIYOU COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (hereinafter referred to as "District"), and the firm of SOMACH SIMMONS & DUNN, a firm engaged in the practice of law in the State of California, at 500 Capitol Mall, Suite 1000, Sacramento, CA 95814, (hereinafter referred to as "Attorney").

WHEREAS, the District requires specialized legal consulting services and advising on implementation of the Sustainable Groundwater Management Act and related issues; and,

WHEREAS, it has been determined that Attorney has the expertise to render the necessary assistance and advice to the District; and,

WHEREAS, Attorney is qualified by education, training and experience and is competent to perform such services.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Services. Pursuant to this Agreement, Attorney, upon request, shall provide to District specialized legal consulting services based solely upon the District's determination and need for such services. District makes no guarantee or warranty of any nature that any minimum level or amount of services or work will be requested of Attorney by District under this agreement. District by this Agreement incurs no obligation or requirement to request from Attorney the performance of any services or work at all, even if District should have some need for such services or work during the term of this Agreement.

Services and work provided by Attorney at District's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and District laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

2. Term. The term of this Agreement shall commence upon the date of execution of this Agreement by both parties, and shall terminate on January 31, 2022, unless canceled earlier pursuant to Paragraph 13.

3. Legal Fees. Attorney shall be compensated for such services in a sum not to exceed Twenty-Five Thousand Dollars (\$25,000.00) with the District Counsel to review and audit the billings. Attorney services shall not exceed \$25,000.00 without prior approval of the Board of Supervisors. See Exhibit "A" attached hereto for hourly rate(s). Attorney shall submit detailed, monthly invoices for all services rendered. Attorney shall be paid within 30 days of County Auditor's receipt of said invoice and claim form completed by the District.

When it appears that the maximum amount payable under this contract may be exceeded, Attorney shall give District Counsel thirty (30) days notice of such, together with reasons supporting the need for additional funds. The purpose of this notice is intended to

avoid the interruption of necessary services while allowing the Board of Supervisors to exercise its discretion in advance of the expenditure of such funds.

4. Costs and Expenses. Except as expressly provided in this Agreement, Attorney shall not be entitled to, nor receive, from District any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Attorney shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leave of absence of any type or kind whatsoever.

5. Required Licenses, Certificates and Permits. Any licenses, certificates, or permits required by the federal, state, District, or municipal governments for Attorney to provide the services must be procured by Attorney and be valid at the time Attorney enters into this Agreement. Further, during the term of this Agreement, Attorney must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Attorney at no expense to District.

5. Office Space, Supplies, Equipment, Etc. Attorney shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Attorney to provide the services under this Agreement. District is not obligated to reimburse or pay Attorney, for any expense or cost incurred by Attorney in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Attorney in providing and maintaining such items is the sole responsibility and obligation of Attorney.

6. District Property.

(A) Personal Property of District. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc., provided to Attorney by District pursuant to this Agreement are, and at the termination of this Agreement, remain the sole and exclusive property of District. Attorney will use reasonable care to protect, safeguard and maintain such items while they are in Attorney's possession. Attorney will be financially responsible for any loss or damage to such items, partial or total, which is the result of Attorney's negligence.

(B) Products of Attorney's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Attorney's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of District. At the termination of the Agreement, Attorney will convey possession and title to all such properties to District.

7. Workers' Compensation. Attorney shall provide workers' compensation insurance coverage, in the legally required amount, for all Attorney's employees utilized in providing work and services pursuant to this Agreement. By executing a copy of this Agreement, Attorney acknowledges its obligations and responsibilities to its employees under the California Labor Code, and warrants that Attorney has complied and will comply during the term of this Agreement with all provisions of the California Labor Code with regard to its employees. Attorney, at the time of execution of this Agreement, will provide District with evidence of the required workers' compensation insurance coverage.

8. Insurance.

(A) General Liability. Attorney shall procure and maintain during the entire term of this Agreement, a policy of general liability insurance which covers all the work and services to be performed by Attorney under this Agreement. Such insurance policy will have a per occurrence combined single limit coverage of not less than \$100,000.00. Such policy will not exclude or except from coverage any of the services and work required to be performed by Attorney under this Agreement. The required policy of insurance will be issued by an insurer authorized to sell such insurance by the State of California, and have at least a "Best's" policyholder's rating of "A" or "A+". District will be named as "an additional named insureds" on this policy. Attorney will provide District a copy of the policy and a certificate of insurance showing District as "additional named insured" and indicating that the policy will not be terminated, canceled, or modified without thirty (30) days written notice to District.

(B) Business Auto. If Attorney utilizes a motor vehicle in performing any of the work or services hereunder, Attorney shall procure and maintain in force throughout the duration of this Agreement, a business auto liability insurance policy with minimum coverage levels of \$300,000.00 per occurrence, combined single limit for bodily injury liability and property damage liability. The coverage shall include all Attorney owned vehicles and all hired and non-owned vehicles used in performing under this Agreement.

A certificate of insurance shall be provided to District at least ten (10) days prior to the start of services to be performed by Attorney. The policy shall contain a provision prohibiting the cancellation or modification of said policy except upon thirty (30) days prior written notice to District.

(C) Professional Liability. If Attorney is required to be professionally licensed or certified by any agency of the State of California in order to perform any of the work or services hereunder, Attorney shall procure and maintain in force throughout the duration of this Agreement a professional liability insurance policy with a minimum coverage level of \$1,000,000.00. Proof of such insurance shall be provided to District at least ten (10) days prior to the start of any work by Attorney.

9. Status of Attorney. All acts of Attorney, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of District. Attorney, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of District. Attorney has no authority or responsibility to

exercise any rights or power vested in the District. No agent, officer, or employee of the District is to be considered an employee of Attorney. It is understood by both Attorney and District that this Agreement shall not under any circumstances be construed or considered to create an employer--employee relationship or a joint venture. As an independent contractor:

(A) Attorney shall determine the method, details, and means of performing the work and services to be provided by Attorney under this Agreement.

(B) Attorney shall be responsible to District only for the requirements and results specified in this Agreement and except as expressly provided in this Agreement, shall not be subjected to District's control with respect to the physical action or activities of Attorney in fulfillment of this Agreement.

(C) Attorney, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of District.

10. Defense and Indemnification. Attorney shall defend, indemnify, and hold harmless District, their agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by Attorney, or Attorney's agents, officers, or employees. Attorney's obligation to defend, indemnify, and hold District, their agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Attorney's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any act or omission of the Attorney, its agents, employees, supplier, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Attorney's obligation to defend, indemnify, and hold District, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Attorney to procure and maintain a policy of insurance.

To the extent permitted by law, District shall defend, indemnify, and hold harmless Attorney, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorneys' fees, arising out of, or resulting from, the active negligence, or wrongful acts of District, its officers, or employees.

11. Records and Audits.

(A) Records. Attorney shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, and municipal law, ordinances, regulations, and directions. Attorney shall maintain these records for a minimum of five (5) years from the termination or completion of this Agreement. Attorney may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, microphotographs, or other authentic reproduction of such records.

(B) Inspections and Audits. Any authorized representative of District shall

have access to any books, documents, papers, records, including, but not limited to, financial records of Attorney, which District determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Attorney. Further, District has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

12. Nondiscrimination. During the performance of this Agreement, Attorney, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Attorney and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Attorney shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act.

13. Cancellation. This Agreement may be canceled by District without cause, and at will, for any reason by giving to Attorney thirty (30) days written notice of such intent to cancel. Attorney may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to cancel to District.

14. Assignment. This is an agreement for services of Attorney. District has relied upon the skills, knowledge, experience, and training of Attorney as an inducement to enter into this Agreement. Attorney shall not assign or subcontract this Agreement, or any part of it, without the express written consent of District. Further, Attorney shall not assign any monies due or to become due under this Agreement without the prior written consent of District.

15. Default. If the Attorney abandons the work, or fails to proceed with the work and services requested by District in a timely manner, or fails in any way as required to conduct the work and services as required by District, District may declare the Attorney in default and terminate this Agreement upon five (5) days written notice to Attorney. Upon such termination by default, District will pay to Attorney all amounts owing to Attorney for services and work satisfactorily performed to the date of termination.

16. Waiver of Default. Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph 27 below.

17. Confidentiality. Attorney agrees to comply with the various provisions of the federal, state, and District laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Attorney in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Attorney agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Attorney only with the express written consent of District.

18. Conflicts.

- (A) Attorney agrees that it has disclosed any interest that it reasonably believes would conflict in any manner or degree with the performance of the work and services under this Agreement. Attorney and District agree that it is desirable to address certain issues regarding its representation of current clients (“Existing Clients”) and other future clients as provided in this section. Attorney is not aware of any existing conflict of interest between Existing Clients and the District that prevents Attorney from representing District on the matters for which District is retaining Attorney. Attorney represents certain Existing Clients that have a current and ongoing interest in the District’s activities in the Shasta Valley Basin, Butte Valley Basin, and Tule Lake Subbasin, including the following:
- (i) Attorney represents Tulelake Irrigation District as its General Counsel. Attorney has executed a written disclosure and waiver agreement with Tulelake Irrigation District regarding the following potential conflicts of interest related to: (a) an existing MOU for development of a Groundwater Sustainability Plan in the Tule Lake Subbasin to which both TID and Siskiyou County are parties; and (b) a potential hydrologic connection between the groundwater in the Tule Lake Subbasin and the Butte Valley Basin.
 - (ii) Attorney represents the Hart Ranch in water rights, water management and environmental compliance matters, including activities dependent upon Hart Ranch’s use of groundwater from the Shasta Valley Basin and surface water from the Little Shasta River. Attorney has executed a written disclosure and waiver agreement with Hart Ranch regarding potential conflicts of interest related to the District’s development and implementation of a Groundwater Sustainability Plan for the Shasta Valley Basin.
- (B) District agrees that Attorney’s representation of the District on the matters for which the District is retaining Attorney shall not affect Attorney’s ability to represent Existing Clients. In the event that a future potential conflict arises between Attorney’s representation of Existing Clients and the District, Attorney will inform the District at the earliest time practical of information discovered by Attorney that indicates that a potential future conflict of interest exists between the interests of Existing Clients and the interests of the District that requires: (i) disclosure to both the Existing Clients and the District and (ii) a written agreement between the Attorney and the Existing Clients and the District, respectively, that provides for a waiver of the conflict of interest. Attorney will diligently facilitate good faith discussions with the Existing Clients and the District in an attempt to resolve any potential future conflict of interest related to Attorney’s representation of Existing Clients and the District, including assisting the clients in developing a written disclosure and waiver agreement mutually agreeable to the Existing Clients and the District. District agrees that if resolution is not possible and withdrawal or termination of this agreement becomes

necessary, in the event of any such withdrawal or termination, District waives any conflict regarding Attorney's continued representation of Existing Clients, and District shall not object to Attorney's continued representation of Existing Clients. District agrees that Attorney's representation of District on the matters for which the District retaining Attorney shall not affect Attorney's ability to represent Existing Clients on any unrelated matter.

- (C) Attorney agrees that any legal representation agreement between Attorney and any new client ("Future Clients") will provide that, in the event of a future conflict of interest between Future Clients and the District that is not capable of being resolved by a mutual informed written consent waiver, Attorney will withdraw from its continued representation of Future Clients in favor of continuing its representation of District under this agreement. The foregoing shall apply only to Future Clients whose interests could conceivably conflict with the interests of the District.

19. Post Agreement Covenant. Attorney agrees not to use any confidential, protected, or privileged information which is gained from District in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement.

20. Severability. If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or District statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

21. Funding Limitation. The ability of District to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, District has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Attorney of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph 26 (Amendment).

22. Attorneys' Fees. If either of the parties hereto brings an action or proceeding against the other, including, but not limited to, an action to enforce or declare the cancellation, termination, or revision of the Agreement, the prevailing party in such action or proceeding shall be entitled to receive from the other party all reasonable attorneys' fees and costs incurred in connection therewith.

23. Amendment. This Agreement may be modified, amended, changed, added to, or subtracted from by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

24. Notice. Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Attorney, District shall be required, or may desire, to make, shall be in writing and may be

personally serviced, or sent by prepaid first class mail to, the respective parties as follows:

TO DISTRICT: Siskiyou County Flood Control and Water Conservation
District
Attn: County Counsel
P.O. Box 659
Yreka, CA 96097

TO ATTORNEY: Aaron Ferguson
Somach, Simmons & Dunn
500 Capital Mall
Suite 1000
Sacramento, CA 95814

25. Conditions. This Agreement shall not take effect, and Attorney will have no obligation to provide legal services, and shall not be paid for any legal services, except for services provided from and after the execution of this Agreement.

26. Entire Agreement. This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date first above written.

SISKIYOU COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: Ray A. Haupt
Ray A. Haupt
Chair, Board of Directors

ATTEST:
LAURA BYNUM
Clerk of the Board

By: Wendy Winingham
Deputy

SOMACH, SIMMONS & DUNN

Aaron Ferguson Date: 2/22/2021
Aaron Ferguson

TAXPAYER I.D. _____

ACCOUNTING:

Fund Organization Account Activity Code (if applicable)
2528 205010 723000 Prop 68 Grant
Encumbrance number (if applicable):
If not to exceed, include amount not to exceed:

EXHIBIT "A

Attorney shall submit to District periodically, and not less frequently than monthly, a detailed statement of account which clearly sets forth by date the items of work performed, the amount of time (to the nearest 1/10 (0.10) of an hour) spent on each item by each attorney or paralegal who performed the work, and identification of the attorney or paralegal who performed such work and their hourly billing rate under this contract.

Attorney shall be compensated at the following hourly rates:

Aaron Ferguson	\$320.00/hr
Alexis K. Stevens	\$350.00/hr
Jared S. Mueller	\$330.00/hr
Associates	\$230.00 to \$300.00/hr
Paralegals and Law Clerks	\$130.00 to \$210.00/hr

Actual costs of express package related services and substantial photocopying will be reimbursed with submission of original itemized receipts to the District.

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EXHIBIT "B"

SERVICES TO BE PERFORMED

Upon request of District, as set forth herein, to provide specialized legal consulting services and advising the District in matters regarding implementation of the Sustainable Groundwater Management Act and related issues.