

CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (Agreement) is entered into this 18th day of November, 2008 by and between the NAPA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT (District), the COUNTY OF NAPA; the Cities of AMERICAN CANYON, YOUNTVILLE, ST. HELENA, CALISTOGA AND NAPA (collectively referred to herein as Agencies); and SOMACH SIMMONS & DUNN (Counsel).

1. **Background.** Napa County Flood Control & Water Conservation District holds a water service contract with the Department of Water Resources (DWR) for a water supply from the State Water Project. The District's contract with DWR benefits Napa County, the Cities of American Canyon, Yountville, St. Helena, Calistoga and Napa. Through Counsel, the District is pursuing claims against DWR for breach of its contract jointly with other similarly situated agencies and their respective counsels: Solano County Water Agency, Butte County, and City of Yuba City (collectively referred to herein as Co-Litigants). The Co-Litigants desire to insure that confidential legal opinions, attorney work-product and other information regarding their claims remain confidential even though disclosed to the Agencies, other parties and their respective counsel during the administrative claims process and subsequent litigation. To that end, the Co-Litigants executed a Confidentiality Agreement on March 19, 2008. This Agreement is to insure among and between the District and the Agencies that information which is the subject of the March 19, 2008 Confidentiality Agreement remains confidential and that the Agencies adhere to the requirements of the March 19, 2008 Confidentiality Agreement as specifically set forth herein.

2. **Definition.** For purposes of this Agreement, the term "Disclosure" shall mean any and all documents, electronic mail, or orally conveyed information conveyed from Counsel to District and/or Agencies, between the Parties, between the Parties and/or their respective counsel and consultants and designated in writing as "Confidential."

3. **Attorney-Client Privilege.** Any and all Disclosures from any of the counsel representing the Co-Litigants or from Counsel to the District and/or any of the Agencies shall not waive attorney-client privilege pursuant to California Evidence Code sections 952 and 954 as any and all Disclosures shall solely consist of confidential communications between Counsel and the District and/or Agencies in the course of their relationship, by a means which, so far as the District and Agencies are aware, discloses the information only to other counsel and Co-Litigants, to whom disclosure is reasonably necessary for the accomplishment of the purpose for which the counsel are consulted and includes legal opinions formed and the advice given by counsel in the course of their individual and collective relationship with Co-Litigants. (See Cal. Evid. Code, § 952; see also *STI Outdoor v. Superior Court* (2001) 91 Cal.App.4th 334, 341.)

4. Miscellaneous

a. Any and all Disclosures shall be maintained in strict confidence and shall not be disclosed in whole or in any part to any other party, agency, tribunal, court, person, company, or anyone at all, for any purpose, and shall be inadmissible for any purpose in any proceeding.

b. This Agreement may be executed in counterparts, each of which shall be deemed an original and will become effective and binding upon the District and Agencies as of the Effective Date.

c. Any and all Disclosures and/or copies of the Disclosures in any form (including data on computer hard drives, floppy disks, CD-ROMs, tapes, or other media) shall be and remain the exclusive property of the disclosing party and shall, upon written request of that party, be promptly returned to it or, at its sole option, destroyed upon the termination of this Agreement. Upon return or destruction, the party destroying or returning such copies shall certify in writing that all such Disclosures and/or copies thereof have been returned or destroyed.

d. Each party acknowledges and agrees that monetary damage would be inadequate remedy for a breach of this Agreement and that each party shall be entitled to specific performance or injunctive relief, or both, to prevent the breach or continued breach of this Agreement. The Parties agree that the prevailing party shall be entitled to recover any and all expenses, including, without limitation, reasonable attorneys' fees and court costs, which will be paid by the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf.

NAPA COUNTY FLOOD CONTROL
& WATER CONSERVATION DISTRICT

CITY OF AMERICAN CANYON

BY: *Brad Wagenknecht*
BRAD WAGENKNECHT, Chairperson

BY: _____

ATTEST: *Gladys I. Coil*
GLADYS I. COIL, Secretary of the District Board

ITS: _____

APPROVED AS TO FORM
Office of District Counsel
By: *Kurtan Green*
Date: November 18, 2008

APPROVED BY THE NAPA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
Date: 11-18-08
Processed by: *Sherry Vathores*
Deputy Secretary of the District Board

CITY OF YOUNTVILLE

CITY OF ST. HELENA

BY: _____

BY: _____

ITS: _____

ITS: _____

4. Miscellaneous

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NAPA COUNTY FLOOD CONTROL
& WATER CONSERVATION DISTRICT

CITY OF AMERICAN CANYON

BY: _____

BY: [Signature]

ITS: _____

ITS: City Manager

CITY OF YOUNTVILLE

CITY OF ST. HELENA

BY: _____

BY: _____

ITS: _____

ITS: _____

4. Miscellaneous

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NAPA COUNTY FLOOD CONTROL
& WATER CONSERVATION DISTRICT

CITY OF AMERICAN CANYON

BY: _____

BY: _____

ITS: _____

ITS: _____

TOWN OF YOUNTVILLE

CITY OF ST. HELENA

BY: SKR [Signature]

BY: _____

ITS: Town Manager

ITS: _____

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NAPA COUNTY FLOOD CONTROL
& WATER CONSERVATION DISTRICT

CITY OF AMERICAN CANYON

BY: _____
ITS: _____

BY: _____
ITS: _____

CITY OF YOUNTVILLE

CITY OF ST. HELENA

BY: _____
ITS: _____

BY: Bert Johnson 9/23/08
ITS: Bert Johnson, CITY MANAGER

CITY OF CALISTOGA

CITY OF NAPA

BY: _____
ITS: _____

BY: _____
ITS: _____

SOMACH SIMMONS & DUNN

BY: _____

CITY OF CALISTOGA

CITY OF NAPA

BY: James C. McLean
ITS: City Manager

BY: _____
ITS: _____

SOMACH SIMMONS & DUNN

BY: _____

CITY OF CALISTOGA

CITY OF NAPA

BY: _____

BY: _____

ITS: _____

ITS: _____

SOMACH SIMMONS & DUNN

[Handwritten Signature]
Public Works Director
Approved As To Form
[Handwritten Signature]
City Attorney

BY: _____

CITY OF CALISTOGA

CITY OF NAPA

BY: _____

BY: _____

ITS: _____

ITS: _____

SOMACH SIMMONS & DUNN

BY: 