

**AMENDMENT NO. 1 OF
AGREEMENT TO FUND THE REMOVAL OF
THE ZERBA BRIDGE-SALVADOR CREEK
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AGREEMENT NO. 210249B (FC)**

THIS AMENDMENT NO. 1 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 210249B (FC) (“Agreement”) is made and entered by and between BURBANK HOUSING DEVELOPMENT CORPORATION (“BURBANK”), the GASSER FOUNDATION (“GASSER”) and NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a special district of the State of California (the “DISTRICT”) as of _____, ____, 2021, (the “Effective Date”). The DISTRICT, GASSER, and BURBANK are sometimes referred to as “Parties” and may be individually referred to as “Party.”

RECITALS

WHEREAS, the Parties entered into the Agreement on January 5, 2021; and

WHEREAS, the Agreement provides for removal of the Zerba Bridge over Salvador Creek as more specifically described in Exhibit “A” to the Agreement (“Bridge Removal”); and

WHEREAS, the Agreement required DISTRICT to complete the Bridge Removal no later than October 30, 2021; and

WHEREAS, the Agreement required BURBANK to grant to DISTRICT an amount equal to the total actual construction cost plus a flat \$5,000 towards post-construction maintenance (“Construction Grant”) of the Bridge Removal which was estimated at \$70,000; and

WHEREAS, due to circumstances outside of their control, BURBANK and GASSER have requested that DISTRICT delay start of the Bridge Removal, causing DISTRICT to be unable to complete the Bridge Removal before the deadline of October 30, 2021; and

WHEREAS, due to recently received bids and the general state of construction costs in the area, the Parties believe that it is necessary to increase the estimated amount of the Construction Grant for the construction and post-project maintenance of the Bridge Removal; and

WHEREAS, the Parties wish to amend the Agreement in order to change the completion date for the Bridge Removal and increase the estimated amount of the Construction Grant.

TERMS

NOW, THEREFORE GASSER, BURBANK, and DISTRICT hereby agree to amend the Agreement as follows:

1. **Paragraph 1, Funding** is hereby amended to read in its entirety as follows:

1. Funding.

The Bridge Removal, as generally described in Exhibit “A” attached hereto and incorporated herein by this reference, is comprised of two components: the design of the project and the construction of the project. BURBANK shall grant to the DISTRICT an amount equal to the total actual cost (“Total Grant Amount”) of the Bridge Removal. The Total Grant Amount will be divided into the Design Grant and the Construction Grant. The Design Grant will be paid directly to a consultant retained by BURBANK to develop the design of the Bridge Removal in an amount estimated to be TWENTY-FIVE THOUSAND DOLLARS (\$25,000). The Construction Grant will be paid directly to the DISTRICT for construction of the Bridge Removal in an amount determined through DISTRICT’s competitive bidding process. DISTRICT shall obtain competitive bids for the Bridge Removal and award the work to the lowest responsive bidder, having shared the total amount of the base bid of the selected contractor (“Base Bid Amount”) with BURBANK prior to award. The total amount of the Construction Grant shall be the final cost of DISTRICT’s competitively bid construction project, including the cost of any change orders that, after consultation with BURBANK, DISTRICT finds reasonable and executes while carrying out the Bridge Removal, plus \$5,000 as a contribution towards vegetation establishment and post-project maintenance. The estimated amount of the Construction Grant is ONE HUNDRED, TWENTY-FIVE THOUSAND DOLLARS (\$125,000), which includes the post-project maintenance contribution.

2. **Paragraph 2, Payment Date** is hereby amended to read in its entirety:

2. Payment Date

A. Except as otherwise provided in sub-paragraph B, BURBANK shall transfer the Construction Grant to DISTRICT in three payments. The first payment, in the amount of \$25,000 was received by DISTRICT on 04/15/2021. The second payment, in an amount equal to the Base Bid Amount less \$25,000, shall be made within ten (10) days of the date DISTRICT awards the contract for Bridge Removal. The third payment, in the amount of the total cost of any and all change orders that, after consultation with BURBANK, DISTRICT found reasonable and executed while carrying out Bridge Removal, shall be made within ten (10) days of receiving the Notice of Completion for DISTRICT’s construction project.

B. Until the date of award for DISTRICT’s construction contract for Bridge Removal, BURBANK may terminate this Agreement and have no further responsibility for transferring any remaining amount of the Construction Grant if (i) the amount determined through DISTRICT’s competitive bidding process exceeds the estimated amount of the Construction Grant; or (ii) BURBANK notifies DISTRICT that sufficient funding to construct the Valle Verde project proposed for Property has not been secured.

3. **Paragraph 3, Permitting and Environmental Review** is hereby amended to read in its entirety:

3. Permitting and Environmental Review. BURBANK is not responsible for any permitting or environmental review associated with Bridge Removal, except approval of Bridge Removal from the California Department of Fish and Wildlife (CDFW) for the year 2022 work season. BURBANK provided the final design submittal for Bridge Removal to DISTRICT on 08/18/2021. DISTRICT will submit the design in its 2022 Stream Maintenance Program notification and obtain all resource agency approvals and applicable permitting for construction except those from CDFW.

4. **Paragraph 4, Performance and Maintenance of the Work** is hereby amended to read in its entirety:

4. Performance and Maintenance of the Work.

A. DISTRICT shall perform the Bridge Removal in accordance with all local, state, and federal laws. DISTRICT shall complete the work no later than August 15, 2022, assuming the design provided by BURBANK is approved by agencies having jurisdiction for the Bridge Removal through the DISTRICT's Stream Maintenance Program notification and the California Department of Fish and Wildlife approval provided through BURBANK's coordination. BURBANK will provide access for the bridge removal project and facilitate the DISTRICT in obtaining access to the private property where the eastern bridge abutment is located for the purpose of removing the bridge.

B. Upon completion, DISTRICT shall maintain the creek area where the bridge was removed. BURBANK shall grant DISTRICT an easement to allow District to maintain the Bridge Removal over that portion of the Property generally depicted on Exhibit A.

5. Exhibit A attached to the Agreement as originally approved, is hereby replaced in its entirety by Exhibit A-1, attached to this Amendment No. 1 and incorporated into the Agreement by reference.

6. Except as specifically provided in (1), (2), (3), (4), and (5) of this Amendment to the Agreement, all terms and provisions of the Agreement shall remain in full force and effect as originally adopted.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

BURBANK HOUSING DEVELOPMENT CORP.

By: 
Lawrance Florin, Chief Executive Officer

“BURBANK”

PETER A. and VERNICE H. GASSER FOUNDATION, a
California non-profit corporation

By: 
Nancy Watt, Chief Executive Officer

“GASSER”

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

By: _____
Brad Wagenknecht
Chairperson of the Board of Directors

“DISTRICT”

<p>APPROVED AS TO FORM Office of District Counsel</p> <p>By: <u>Shana A. Bagley (e-sign)</u> Deputy District Counsel</p> <p>Date: <u>October 21, 2021</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: NEHA HOSKINS Secretary of the District Board</p> <p>By: _____</p>
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