

**NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AGREEMENT NO.**

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of this _____ day of May, 2022, by and between NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a special district of the State of California, hereinafter referred to as "DISTRICT," and ASSOCIATED RIGHT OF WAY SERVICES, INC., a California corporation, whose mailing address is 2300 Contra Costa Blvd., Suite #525 Pleasant Hill, California 94523, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, DISTRICT wishes to obtain specialized services, as authorized by Government Code section 31000, in order to acquire various interests in real property adjacent to the Napa River in order to implement a Flood Protection Project; and

WHEREAS, on February 2, 1999, DISTRICT entered into Napa County Flood Control and Water Conservation District Agreement 37(FC) with CONTRACTOR under which CONTRACTOR agreed to provide DISTRICT with services related to acquisition of interests in real property required for the implementation of the Napa River/Napa Creek Flood Protection Project; and

WHEREAS, it is the intent of the parties that this Agreement replace and supersede any other agreement or agreements, oral or written, that the DISTRICT may have with the CONTRACTOR with respect to the subject matter covered by this Agreement, including but not limited to Napa County Flood Control and Water Conservation District Agreement 37(FC); and

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

TERMS

NOW, THEREFORE, DISTRICT hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve DISTRICT in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first written above and shall expire on the 30th day of June, 2023, 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 two (2) 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. **Scope of Services.** CONTRACTOR shall provide DISTRICT those services set forth in Exhibit "A," attached hereto.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, DISTRICT shall pay CONTRACTOR at the rates set forth in Exhibit "B," attached hereto and incorporated by reference herein. CONTRACTOR will be allowed to submit an annual rate schedule adjustment each fiscal year based on the current Bay Area Construction Cost Index or another Index at the request of CONTRACTOR and approved by the DISTRICT ENGINEER in writing.

(b) Expenses. Travel and other expenses will be reimbursed by DISTRICT upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the provisions set forth in Exhibit "B."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of five hundred and eleven thousand dollars (\$511,000) for professional services and expenses, provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to DISTRICT of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) [RESERVED]

(d) CONTRACTOR shall submit invoices not more often than monthly to the District Engineer who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C."

(e) Legal Status. So that DISTRICT may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes

a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the District Engineer upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents, and employees of CONTRACTOR are not, and shall not be deemed, DISTRICT employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that DISTRICT may monitor the work performed by CONTRACTOR. DISTRICT shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, DISTRICT, in addition to any other rights or remedies which DISTRICT may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide DISTRICT with certification of all such coverages upon request by DISTRICT's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:**

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury,

including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased, and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of DISTRICT's Risk Manager, demonstrated by other evidence of coverage acceptable to DISTRICT's Risk Manager, which shall be filed by CONTRACTOR with DISTRICT prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its DISTRICT number or title and department; shall be kept current during the term of this Agreement; shall provide that DISTRICT shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming DISTRICT, its officers, employees, agents, and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of DISTRICT shall pertain

only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to DISTRICT with respect to any insurance or self-insurance programs maintained by DISTRICT. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by DISTRICT's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, DISTRICT's Risk Manager, which approval shall not be denied unless the DISTRICT's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by DISTRICT's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects DISTRICT, its officers, employees, agents, and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless DISTRICT and its officers, agents, employees, , or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages, or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, contractors, and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages, or expenses arising from the sole negligence or willful acts of DISTRICT or its officers, agents, employees, representatives, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records, or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents, or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period

rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold DISTRICT and its officers, agents, and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The DISTRICT Manager or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of DISTRICT for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by DISTRICT unless an opportunity for consultation is provided prior to the effective date of the termination. DISTRICT hereby authorizes the DISTRICT Manager to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of DISTRICT for the convenience of DISTRICT.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to DISTRICT, DISTRICT shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains DISTRICT data on those portions of digital software hosted by CONTRACTOR and not controlled by DISTRICT ("DISTRICT data"), CONTRACTOR shall promptly return DISTRICT data to DISTRICT Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge DISTRICT data from CONTRACTOR's systems upon confirmation from DISTRICT that the copy of the data provided to DISTRICT is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of DISTRICT, the property of and shall be promptly returned to DISTRICT, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only DISTRICT shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions

or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that DISTRICT shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which DISTRICT is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to DISTRICT or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by DISTRICT for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to DISTRICT.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to DISTRICT for damages sustained by DISTRICT by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and DISTRICT may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to DISTRICT from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval, or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

DISTRICT

Napa County Flood Control &
Water Conservation District
804 First Street
Napa, CA 94559-2623

CONTRACTOR

Associated Right of Way Services, Inc.
2300 Contra Costa Blvd., Suite #525
Pleasant Hill, California 94523

14. **Compliance with DISTRICT Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers,

agents, and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by DISTRICT employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the DISTRICT computer network shall sign and have on file with DISTRICT's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995, and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR that relates to DISTRICT's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of DISTRICT, expressed through its District Engineer. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to DISTRICT all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by DISTRICT.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state, and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state, and local laws, rules, and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of DISTRICT Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use, or disclose DISTRICT Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with DISTRICT. Any other access, use, or disclosure of DISTRICT Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to, the following: the removal of confidential files, documents, or devices containing DISTRICT Protected Information from a DISTRICT facility; the unauthorized transmission of DISTRICT

Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or DISTRICT employees) who do not have a DISTRICT approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms of this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological, and administrative safeguards are in place to protect the confidentiality of DISTRICT's Protected Information. Upon request, CONTRACTOR shall make available to DISTRICT its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify DISTRICT immediately of any unauthorized access to or disclosure of Protected Information of which it becomes aware. This includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of DISTRICT's Protected Information, or its unauthorized access to or disclosure of DISTRICT's Protected Information, including, but not limited to, mitigation of the breach, cost to the DISTRICT of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules, or regulations applicable at the time of the breach.

16. No Assignments or Subcontracts.

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of DISTRICT, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for DISTRICT to withhold its consent to assignment. For purposes of this subparagraph, the consent of DISTRICT may be given by the District Engineer.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. Amendment/Modification. Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. Interpretation; Venue.

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation, or similar legal proceedings under this Agreement shall be Napa, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. Compliance with Laws. CONTRACTOR shall observe and comply with all applicable Federal, State, and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV, and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV, and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5), and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of DISTRICT by the State of California pursuant to agreement between DISTRICT and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal

right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to DISTRICT for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold DISTRICT harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that DISTRICT is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish DISTRICT with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** DISTRICT, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after DISTRICT makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and DISTRICT each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to DISTRICT and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as DISTRICT may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of DISTRICT relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, DISTRICT may terminate this Agreement immediately upon giving written notice without further obligation by DISTRICT to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that DISTRICT has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder “assuming office,” “annual,” and “leaving office” Statements of Economic Interest as a “consultant,” as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a “designated” position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character either to enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

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

ASSOCIATED RIGHT OF WAY SERVICES, INC.

By  _____

BILL TANNENBAUM, President

By  _____

MATTHEW SCHOCK, Vice-President

"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"

| | | |
|--|---|--|
| APPROVED AS TO FORM Office of District Counsel By: <u>Shana A. Bagley</u> District Counsel Date: <u>April 21, 2022</u> | APPROVED BY THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT Date: _____ Processed By: _____ _____ Deputy Secretary of the Board | ATTEST: NEHA HOSKINS Secretary of the District Board By: _____ |
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EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide DISTRICT with the following services:

I. DESCRIPTION OF SERVICES

SCOPE OF WORK

Associated Right of Way Services, Inc. (AR/WS) will provide right of way services to Napa County Flood Control and Water Conservation District (Client) for the Napa River Napa Creek Flood Protection Project.

The subject properties are identified as:

NO. APN OWNER ADDRESS

| | | | |
|-----|-------------|----------------------------------|-------------------|
| 1. | 044-170-008 | NAPA ELKS HALL ASSOCIATION | 2840 SOSCOL AVE |
| 2. | 044-204-003 | CALIFORNIA VACATION HOLDINGS GR | 500 LINCOLN AVE |
| 3. | 044-220-004 | MURRAY, SUZANNE M | 501 LINCOLN AVE |
| 4. | 044-220-008 | BARAZI, ASSAAD N | 505 LINCOLN AVE |
| 5. | 044-220-016 | BERT WILLIAMS & SONS REAL ESTATE | 525 NORTHBAY DR |
| 6. | 044-220-017 | ORCIUOLI, ENZO | 713 SILVERADO TRL |
| 7. | 044-220-024 | PARIS, NICK T | 567 LINCOLN AVE |
| 8. | 044-230-001 | MOLLOY, JUDITH R | 1132 JORDAN LN |
| 9. | 044-230-002 | CALDERON, JOSE CRUZ | 1114 JORDAN LN |
| 10. | 044-230-003 | CALDERON, JOSE CRUZ | NO SITUS |
| 11. | 044-230-004 | LARRY ELLIS INC | 1106 JORDAN LN |
| 12. | 044-230-005 | BESS, DAVID W | 1104 JORDAN LN |
| 13. | 044-230-006 | GRASSI, MARK ANTHONY | 1098 JORDAN LN |
| 14. | 044-242-003 | MKD SOSCOL PARTNERS LP | 1710 SOSCOL AVE |
| 15. | 044-242-004 | MKD SOSCOL PARTNERS LP | NO SITUS |
| 16. | 044-242-007 | MKD SOSCOL PARTNERS LP | 625 IMPERIAL WAY |
| 17. | 044-301-018 | MICHAUD, GARY L | 2454 SHORELINE |
| 18. | 044-320-059 | RIVER GLEN HOMEOWNERS ASSOCIATI | NO SITUS |
| 19. | 044-330-082 | ELKSGROVE HOMEOWNERS ASSOC | NO SITUS |

ASSUMPTIONS:

- Assumes pre-acquisition discussions with up to 6 property owners.
- Assumes negotiations for up to 19 properties with 16 owners.
- Assumes relocation services for personal property-only moved on up to 4 properties.
- Assumes full acquisitions or analysis to estimate potential damages may be needed for parcels No. 4, 6, 12, 13, and 16. For all other parcels, assumes acquisitions will not include buildings or other significant improvements or result in damages to remainder parcels, and that improvements to be acquired will be limited primarily to non-complex items such as landscaping, paving and fencing.

PROJECT MANAGEMENT – GENERAL CONSULTATION

- Establish work process with Client and schedule, manage and coordinate all real estate and relocation assistance functions.
- On-going consultation, meetings, and recurring project management duties.
- Coordinate with Client, subcontractors (independent review appraiser), appraiser, property acquisition agent, relocation advisor and others, such as legal counsel and engineering design team.
- Assistance with analyzing various courses of action. Work with Client to resolve problems and recommend solutions.
- Contract management, budget monitoring and control, and project reporting.
- Implementation and compliance with applicable state and federal laws and regulations.
- Maintaining accurate records. Monitor work plan and workflow.

DELIVERABLES

- Project status report spreadsheets.

PRE-ACQUISITION DISCUSSIONS

- Perform pre-acquisition discussions with up to 6 property owners.
- Along with District team members, engage with property owners to discuss the project in general and acquisition process. These meetings should also include someone from engineering design team to respond to questions about project design.
- Gather information on concerns of the property owners and examine issues without discussing compensation or negotiating with the owners.
- Have discussions with Client and engineering design team regarding the feasibility of potential modifications to the project design and/or requests from the property owners.

APPRAISAL

- Appraisals to be provided to Client staff as directed.
- Appraisals to be prepared in accordance with California Eminent Domain Law; California Government Code section 7260 et seq.; Uniform Standards of Professional Appraisal Practice (USPAP) requirements, except as jurisdictionally exempt; and 49 CFR Part 24.
- The owner or a designated representative will be invited by the appraiser to accompany them during the inspection of the property.
- Appraisals to be prepared in an Appraisal Report format in accordance with USPAP, Standard Rule 2-2.
- Appraisals are for the “Fair Market Value” of the properties as per California Code of Civil Procedure, Section 1263.320.
- In accordance with the California Code of Civil Procedure Section 1263.330, the market value of the property acquired will not include consideration of any increase or decrease in the value of the property that is attributable to any of the following:

- The project for which the property is taken;
- The eminent domain proceeding in which the property is taken;
- Any preliminary actions of the acquiring authority relating to the taking of the property.
- Appraiser will not consider, nor include in their appraisal, any allowance for relocation benefits of personal property.
- The appraisal of real estate does not include business or goodwill analyses or conclusions. Any loss of goodwill valuations should be performed by others.
- The appraiser will work directly with the Review Appraiser.
- If revisions are made to the property or assignment requirements during the appraisal process or upon completion of the report, appraisal time to address these revisions will be billed on an hourly basis in accordance with the AR/WS Fee Schedule, upon Client approval. (Optional Service)

DELIVERABLES

- Draft Notice of Decision to Appraise for approval.
- Appraisal Report.

CLIENT OBLIGATIONS

- Adequate appraisal maps or legal descriptions and plat maps.
- Design information and construction plans.
- Environmental site assessments, if applicable.

APPRAISAL REVIEW

Appraisal review may be required and AR/WS proposes to subcontract with a qualified independent review appraiser for these services.

- Upon receiving appraisal reports, an office review of the reports using the various standards prescribed by the Federal and State Uniform Acts, 49 CFR Part 24, USPAP, and the California Eminent Domain codes will be completed.
- Review appraiser will provide comments to the appraiser for discussion and will communicate with the appraiser to clarify potential issues and resolve problems.
- Upon satisfactory completion of the appraisal reports, a review certificate report will be prepared.

DELIVERABLES

- Appraisal Review Report.

NEGOTIATIONS / ACQUISITIONS

- AR/WS to prepare acquisition documents. Said documents include, but are not limited to, the following: offer letter, appraisal summary statement and summary of the basis for just compensation, summary statement pertaining to the acquisition of real property or an interest therein, purchase agreement, deed, and public acquisition Client's written approval as to form prior to use in the field.
- AR/WS will negotiate to acquire a fee acquisition, flood protection levee easements and temporary construction easements from up to 20 parcels, as previously identified by the Client and included in the list at the beginning of

this proposal. We are assuming there will be negotiations with up to 17 property owners.

- All discussions for the acquisition of property or an interest therein will be directed to result in the payment of just compensation.
- If settlement with owners is reached pursuant to the Client approved appraisal or Client approved administrative settlement, AR/WS will prepare a Memorandum of Settlement for transmittal to Client, reviewing the issues. This memorandum will require Client written approval before implementation of any settlement agreement.
- AR/WS will make every reasonable effort to acquire property on behalf of the Client expeditiously through agreement with its owner and to avoid litigation. This may necessitate greater levels of effort in the negotiations phase and, where appropriate, should continue after eminent domain has been initiated. Client will provide ongoing feedback to AR/WS as to authorization for settlements.
- AR/WS will establish a process of coordinating escrow closings and reviewing escrow instructions. Where there are escrow closings, preparation of escrow instructions will be completed by title company. Approval of conditions of title and escrow instructions, including but not limited to, “subject to” title exceptions, will be done by Client.
- If agreement with all owners cannot be reached, AR/WS will advise Client that negotiations have reached an impasse. The Client will consider scheduling of an action in eminent domain including the required public necessity hearing. AR/WS will provide condemnation support as needed and requested, budget allowing.
- ARWS will contract with a title company acceptable to District to secure preliminary title reports for the 19 parcels listed in Exhibit “A”. Estimated cost of the title reports is included in the ARWS budget.

DELIVERABLES

- Draft Acquisition Documents for approval.
- Memorandum of Settlement and Signed Agreement (upon settlement).
- Notice that negotiations have reached an impasse (if needed).

CLIENT OBLIGATIONS

- Written approval of all acquisition documents in a timely manner.
- Direction as to administrative settlements, negotiating authority and condition of title acceptance.
- Providing any formats to be used by AR/WS on Client’s behalf.
- Review and approval of title company prepared escrow instructions.

PERSONAL PROPERTY ONLY RELOCATION ASSISTANCE

Personal property-only relocation assistance will be provided for up to 4 properties.

Personal property only relocation assistance services include:

- Appropriately notice the property occupants.
- Manage the relocation of personal property of owners/tenants.
- Provide research on estimated moving costs, available storage locations and costs, as needed.

- Prepare claim forms and provide claims processing.
- Provide ongoing consultation, coordination and meetings participation.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of DISTRICT pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT “B”

COMPENSATION AND EXPENSE REIMBURSEMENT

All rates are per hour unless otherwise noted.

| | |
|---|------------|
| Principal Consultant | \$250.00 |
| Managing Consultant | \$210.00 |
| Consultant III | \$160.00 |
| Consultant II | \$140.00 |
| Consultant I | \$120.00 |
| Right of Way Technician | \$95.00 |
| Administrative Support | \$75.00 |
| Appraisal Reports | Lump Sum |
| Appraiser III (MAI) (Hourly) | \$225.00 |
| Appraiser II (Hourly) | \$205.00 |
| Appraiser I (Hourly) | \$180.00 |
| Subcontractors | Cost + 10% |
| Preparation for Court Appearances | \$300.00 |
| Depositions, Court Appearances, Arbitrations / Mediations, Hearings, and Testimony | \$400.00 |

EXHIBIT "C"

[Company Name]
[Street Address]
[City, ST ZIP Code]
Phone [phone] Fax [fax]
Taxpayer ID #

**SAMPLE
INVOICE**

INVOICE # _____

DATE: _____

TO:

[Customer Name]
[Street Address]
[City, ST ZIP Code]

FOR:

[Project or service description]
Contract No.

| Date | DESCRIPTION | Employee & Title | HOURS | RATE | AMOUNT |
|--------|--|------------------|-------|----------|--------|
| 1/1/15 | Site visit/investigation 123 Main St, Napa. Conf w/Owner AutoCad, Bldg X, 3 rd Floor | Smith, Engineer | 1.5 | \$165.00 | 247.50 |
| 1/1/15 | | Smith, Engineer | 1 | \$165.00 | 165.00 |
| 1/1/15 | | Smith, Engineer | 4 | \$165.00 | 660.00 |
| | | | | | |
| 1/2/15 | Rev plans, phone conf w/Owner | Jones, PE | 1.75 | \$195.00 | 341.25 |
| 1/2/15 | AutoCad Bldg X, 3 rd Floor Conf w/Owner re 2 nd Floor | Smith, Engineer | 4 | \$165.00 | 660.00 |
| 1/2/15 | | Smith, Engineer | .5 | \$165.00 | 82.50 |
| 1/3/15 | Mtg w/Jones re 2 nd Floor; conf w/Owner Mtg w/Smith; conf w/Owner re 2 nd Floor | Smith, Engineer | 1.5 | \$165.00 | 247.50 |
| 1/3/15 | | Jones, PE | 1.5 | \$195.00 | 292.50 |
| TOTAL | | | | | |