

**NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AMENDMENT NO. 2 TO AGREEMENT NO. 220322B (FC)**

THIS AMENDMENT NO. 2 (“Amendment No. 2”) **TO NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 220322B (FC)** (“Agreement”) is made and entered into effect as of this _____ day of _____, 2024, by and between the Napa County Flood Control and Water Conservation District, a special district of the State of California (“DISTRICT”), and ASSOCIATED RIGHT OF WAY SERVICES, INC., whose mailing address is 1255 Treat Blvd., Suite 815, Walnut Creek, California 94597 (“CONTRACTOR”).

RECITALS

WHEREAS, on May 3, 2022, DISTRICT and CONTRACTOR entered into the Agreement 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 (Project); and

WHEREAS, DISTRICT and CONTRACTOR amended this agreement on August 22, 2023, to increase the maximum compensation and add additional parcels to the scope for acquisition; and

WHEREAS, DISTRICT anticipates a continued need for specialized right-of-way acquisition services to continue to its efforts in obtaining the required lands and easements for the remaining increments of the Project; and

WHEREAS, CONTRACTOR is willing to continue to provide such specialized services to complete the Project, as directed by DISTRICT; and

WHEREAS, DISTRICT and CONTRACTOR now desire to modify the provisions of the Agreement to update the Scope of Work and to increase the maximum compensation by SEVEN HUNDRED THOUSAND DOLLARS (\$700,000) to a new total of ONE MILLION NINE HUNDRED AND THIRTEEN THOUSAND DOLLARS (\$1,913,000).

TERMS

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

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

Scope of Services. CONTRACTOR shall provide DISTRICT those services set forth in Exhibits “A-2,” attached to this Amendment No. 2 and hereby incorporated by reference.

2. Paragraph 3(c) of the Agreement is hereby amended to read as follows:

Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall not exceed a total of ONE MILLION NINE HUNDRED AND THIRTEEN THOUSAND DOLLARS (\$1,913,000) 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 expenses actually incurred.

3. This Amendment No. 2 shall be effective as of the Effective Date first set forth above.

4. Except as provided in paragraphs (1) through (3), above, the terms and provisions of the Agreement shall remain in full force and effect as last approved.


5. This Amendment No. 2 may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, this Amendment No. 2 of Agreement 220322B (FC) is executed by DISTRICT and by CONTRACTOR through its duly authorized officers.

ASSOCIATED RIGHT OF WAY SERVICES, INC.

By 
BILL TANNENBAUM, President

for By 
MATTHEW SHOCK, 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"

<p>APPROVED AS TO FORM Office of District Counsel</p> <p>By: <u>Shana A. Bagley</u> District Counsel</p> <p>Date: <u>May 31, 2024</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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EXHIBIT “A-2”

SCOPE OF WORK (AMENDED)

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 (District or Client) for the Napa River Napa Creek Flood Protection Project.

The list below identifies where right of way services are anticipated for the period of July 1, 2024, through September 30, 2025. District-initiated revisions will add to scope.

No.	Assessor Parcel No.	Owner
Acquisition Files		
1	044-204-003	California Vacation Holdings Group, LLC
2*	044-220-004	Suzanne M. Murray
3*	044-220-008	Assaad N. Barazi
4	044-220-017	Enzo Orciuoli
5*	044-220-024	Nick T. Paris
6	044-230-001	Judith R. Molloy and Alanna Eve Baldochhi
7	044-230-002	Jose Cruz Calderon and Maximino Ballines
8	044-230-003	Jose Cruz Calderon and Maximino Ballines
9	044-230-004	Larry Ellis Inc.
10	044-230-005	David W. Bess and Ray E. Bertolucci
11	044-230-006	Mark Anthony Grassi and Jami Lee Grassi
12*	044-242-003	MKD Soscol Partners LP
13*	044-242-004	MKD Soscol Partners LP
14*	044-242-006 , -007	MKD Soscol Partners LP
15	044-320-059	River Glen Homeowners Association
16*	044-330-082	Elks Grove Homeowners Association, Inc.
17	044-314-005	William H. and Cathi E. Bickford, Trustees
18	044-301-021	Jose and Laura M. Ceja
19	044-301-032	John and Lydia P. Damian
20	044-314-003	Christopher Joseph and Lindsay Giorgi Emig, Trustees
21	044-314-006	Donald A. and Shelley L. Gomez, Trustees

22	044-301-026	David T. and Leslie Ann Gracia
23	044-314-004	Owen and Marianne Gray, Trustees
24	044-301-023	Joshua A. and Melissa E. Green, Trustees
25	044-301-034	Michael and Nancy Montez
26	044-301-031	Lance Hafenstein
27	044-301-020	Ryan G. and Courtney R. Healy
28	044-314-007	Maria G. Kazakova and Gregghk Valdovinos
29	044-314-002	Benjamin and Lisa Manley
30	044-301-025	Louis M. and Jennifer L. Milgrom
31	044-301-022	Elise Genevieve Nerlove
32	044-301-029	Allan and Connie Lee Nicholson
33	044-301-024	Christina Perez, Trustee
34	044-301-027	Chamroeun Pinnkathok
35	044-301-028	Lee D. and Sharon A. Riggs
36	044-301-033	David and Vickie Tompkins Living Trust
37	044-301-030	David and Vickie Tompkins Living Trust
38	044-314-001	Zhao Qi Wang
39	044-301-019	Jonathan and Kristina Harrison
40	044-301-018	Gary and Nancy L. Michaud
41	044-260-004	McKinstry Street Surplus Parcel
42	045-041-010	Richard and Nyrene Clark, TR
43*	045-011-021	ALTAMURA COMPANY LLC
44*	044-250-033	WCH Napa, LLC, dba River Terrace Inn
45*	044-220-018	Irvine and Whitehill
46*	044-220-023	Lowenstein, Janice L. et al Trust
Relocation Files		
47	044-220-024	Nick T. Paris
48	044-220-024	Escalante Towing
49	044-220-024	Wine Barrel Business
50	044-220-017	Enzo Orciuoli
51	044-220-017	Tree Trimming Business
52	044-220-017	Anytime Towing
53	044-230-005	David W. Bess and Ray E. Bertolucci
54	044-230-005	David Bess Pump and Well Business
55	044-204-003	California Vacation Holdings Group, LLC
56	044-220-008	Assaad N. Barazi
57	044-220-008	Ace and Vine

58	044-230-004	Larry Ellis Inc.
59	044-230-002	Jose Cruz Calderon and Maximino Ballines
60	044-220-004	Suzanne M. Murray
61	044-220-004	Napa River Pet Hospital

* Includes Appraisal and Appraisal Review expected to be billed after July 1, 2025.

PROJECT MANAGEMENT – GENERAL CONSULTATION

- Establish work process with District and District’s designated Right of Way Coordinator. Schedule, manage and coordinate all real estate and relocation assistance functions. Provide regular updated property rights schedules along with parcel-by-parcel status and project tracking reports.
- On-going consultation, weekly and bi-weekly meetings with AR/WS team and Right of Way Coordinator; as well as legal counsel., and recurring project management meetings.
- Coordinate with District, subcontractors (independent review appraiser), appraisers of fixtures and equipment, title company, property acquisition agents, relocation advisors and others, including legal counsel and engineering design team.
- Assistance analyzing various courses of action. Work with District to resolve problems and recommend solutions.
- Contract management, budget monitoring and control, project reporting and detailed tracking.
- Implementation and compliance with applicable state and federal laws and regulations.
- Maintaining accurate records. Monitor work plan and workflow.
- Support on review and suggestions for easement deeds and other acquisition documents.
- Value engineering assistance as to right of way issues and providing input related to design components as they impact potential right of way acquisitions.
- Limited liaison with the USACE as requested by District.

APPRAISAL

- Appraisals to be provided to District 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. This item includes responding to reviews and comments by the Review Appraiser and the District. Assumes limited involvement responding to USACE questions.
- 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.

DELIVERABLES

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

- Adequate appraisal maps or legal descriptions and plat maps.
- Deeds cover sheets defining intent and purpose for permanent and temporary rights easement rights.
- Design information and construction plans.
- Environmental site assessments, if applicable.
- Prompt comments on appraisals generally within 10 business days of District receipt.

APPRAISAL REVIEW

AR/WS to subcontract Appraisal Reviews with a qualified independent review appraiser (49 CFR Part 24.104) 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 will prepare draft acquisition documents. District letterhead will be used. Documents typically 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 brochure. District will review and approve documents. All deeds including specific intent and purpose of easement deeds (permanent and temporary) as well as respective legal descriptions will be provided to AR/WS by District.
- At District's direction, AR/WS will present offers of just compensation on behalf of District and negotiate to acquire property interests determined by District as necessary for the Project. 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 District approved appraisal or District approved administrative settlement, AR/WS will prepare a transmittal to District. In the event an administrative settlement is to be considered by District, AR/WS will prepare a summary memorandum of the settlement outline and pursuant to 49 CFR Part 24.102(i). This memorandum will require District approval before implementation of any settlement agreement.
- AR/WS will make every reasonable effort to acquire property on behalf of the District expeditiously through agreement with the property 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. District will provide ongoing feedback to AR/WS as to potential negotiated settlements. In some cases, where there is a tenant in possession, AR/WS will assist the owner in soliciting a Quitclaim Deed and/or tenant release/tenant's consent.
- AR/WS will work with the title company and 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 if possible. Approval of conditions of title and escrow instructions, including but not limited to, "subject to" title exceptions, will be done by District. In those instances where District determines that they wish to pursue a subordination agreement to an existing deed of trust, the title company will take the lead in coordinating with the financial institution in preparing and soliciting the subordination agreement. District will communicate the subordination agreement request to AR/WS as early in the negotiations process as possible so that AR/WS can coordinate the District's request with the title company.

- If agreement with all owners cannot be reached, AR/WS will advise District that negotiations have reached an impasse. The District will consider scheduling of an action in eminent domain including the required public necessity hearing. Budget permitting, AR/WS will provide condemnation support as needed and requested.

DELIVERABLES

- Draft Acquisition Documents for approval.
- Transmittal.
- Administrative Settlement summary (if applicable).
- Notice that negotiations have reached an impasse (if needed).

DISTRICT OBLIGATIONS

- Written approval of all acquisition documents in a timely manner.
- Deeds for permanent and temporary rights.
- Direction as to administrative settlements, negotiating authority and condition of title acceptance.
- Providing any formats to be used by AR/WS on District's behalf.
- Review and approval of escrow instructions.

RELOCATION ASSISTANCE

Relocation assistance services will be provided pursuant to applicable Relocation Law (Government Code 7267 et seq.) and will include:

- Appropriate noticing.
- Manage the relocation of personal property of owners/tenants.
- Provide research on estimated moving costs, available storage locations and costs, as needed.
- Meet with the business representative to determine the market area, personal property, and replacement site needs.
- Provide business with the following documentation, when appropriate:
 - General Information Notice
 - Notice of Eligibility
 - 90-day Notice to Vacate (to be signed by District)
- Work with area brokers, District, and other resources to identify available replacement sites.
- Work with the business in order to secure estimated relocation costs.
- Prepare claims for payment and present them for signature.
- Submit all signed claims and necessary documentation to District for review and processing.
- Establish and maintain a detailed relocation file in order to document specific relocation efforts, including a relocation diary to track all contact with occupant.
- Provide continuing information to District staff to keep staff apprised of relocation efforts and vacate status.

DELIVERABLES

- Relocation Assistance Package.
- Notice to Vacate.
- Complete Claim Forms.

DISTRICT OBLIGATIONS

- Approve and process documents and claims in a timely manner.

MISCELLANEOUS ADDITIONAL TO SCOPE SERVICES

- Eminent domain support.
- Relocation appeals support.
- Reviews of owner appraisals.
- Updating relocation memo document.

(Note: Efforts in the above items are unknown and will be provided pursuant to District request and budget permitting.)

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.

III. ASSUMPTIONS AND LIMITATIONS

1. AR/WS estimated budget assumes timely assignment by Client of all appraisals, acquisition parcels, and relocation cases. Deferring or “piece meal” assignments adds to level of effort and costs.
2. Client to provide written appraisal approval. Client to sign Offers of Just Compensation as reflected in the Appraisal Summary Statement(s). Client letterhead to be used for offers and significant correspondence, including Notices of Decision to Appraise and acquisition and relocation notices. Initiation of acquisition work assumes that Client has secured any required environmental certification as well as any federal or state approvals to begin right of way services.
3. All services to be provided pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act and applicable state and federal laws, related guidelines, and regulations.
4. Client to provide adequate appraisal maps, plat maps, construction plans, mitigation measures, preliminary title reports, legal descriptions, and deed sheets (*for easements*).
5. Unless noted otherwise, pre-acquisition activities for soliciting Permits to Enter for soils/testing/contract work, Rights of Entry, Agreements for Possession and Use are not included.
6. Except for appraisals, which are typically charged lump sum; this is a “time charged” contract in accordance with the AR/WS Fee Schedule. Material changes to the contracted Scope of Work after services begin will add to the original budget/contract amount. Material changes, for which AR/WS is not responsible, include, but are not limited to, addition of new parcels, schedule changes, new and revised legislation, regulations, statutes, or ordinances by any public entity or legislature, extended negotiations, multiple vestings, title complications, relocation complications, hard to house households, unrecorded claims, extended site searches, eminent domain actions, design changes, revised or updated appraisals. This Agreement is not a guarantee of property rights requested or displacements completed for a fixed budget amount. Unless otherwise agreed, preparation for or attendance at depositions, relocation appeals, expert witness testimony, or court appearances are not included in the budget.
7. Budget to be reviewed periodically. AR/WS may reapportion budget allocations among categories. Team composition may be adjusted by AR/WS.
8. Unless other arrangements have been made, escrow costs and title reports shall be paid by Client. Escrow instructions to be prepared by Title Company with AR/WS coordination. Client to determine acceptable condition of title and what, if any, title exceptions to take “subject to.” AR/WS to assist and consult as requested.
9. Upon written notice from Client, AR/WS will suspend, delay, or interrupt all or a part of its services. In such event, AR/WS will resume services upon written notice from Client. An extension of time and added costs will be mutually agreed upon within a reasonable time following re-initiation of all or any part of services.
10. Client will give prompt notice to AR/WS whenever Client observes or becomes aware of any development that affects the scope or timing of AR/WS’ services, or any defect in the work of AR/WS.
11. Unless otherwise noted, preparation of Caltrans Right of Way Certification documents is not included in the Scope of Services.
12. AR/WS understands that construction and design plans are subject to some change. AR/WS will accommodate changes in the property requirements, including number or parcels, acquisitions, and relocations. Changes in proposed acquisitions after appraisals have begun or negotiations/relocations have commenced will add time and expense to assignments. The parties acknowledge that such revisions may add to costs.
13. AR/WS reviews and adjusts billing rates and fees from time to time, generally as of January 1st of each year, but no more than once annually. Any rate adjustments will be reflected in the AR/WS monthly invoice.
14. Except for Client’s obligations to pay for services rendered, no liability will attach to either AR/WS or Client from delay in performance or non-performance caused by circumstances or events beyond the reasonable control of the party affected, including, but not limited to, acts of God, fire, flood, explosion, war, request or intervention of a governmental authority, court order, labor relations, accidents, unanticipated delays, or inability to obtain materials, equipment, fuel, or transportation.
15. Once AR/WS has completed an appraisal, the fee for that appraisal is due and payable upon Client’s receipt of invoice. If any formal or informal appraisal review requires additional appraisal services after AR/WS has completed an appraisal, these additional appraisal services will be billed on a time-charged basis in accordance with the AR/WS Fee Schedule.
16. AR/WS submits invoices on a monthly basis. If AR/WS is a sub-consultant to a prime consultant, that prime consultant agrees to bill its Client within thirty (30) calendar days of receipt of the AR/WS monthly invoice.