

NAPA COUNTY AGREEMENT NO. 220246B

**LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT
AGREEMENT NO. 220246B**

**MEMORANDUM OF UNDERSTANDING
FOR RECEIPT OF FUNDS PURSUANT TO THE AMERICAN RESCUE PLAN ACT**

(Lake Berryessa Resort Improvement District Infrastructure Projects)

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into by and between Napa County, a political subdivision of the State of California (“County”), and Lake Berryessa Resort Improvement District, a special district of the State of California (“District”).

RECITALS

WHEREAS, on March 11, 2021, the American Rescue Plan Act (“ARPA”) was signed into law, establishing the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program; and

WHEREAS, County has received funds from the federal government through ARPA and the SLFRF program; and

WHEREAS, statutory eligible uses of an SLFRF award include making necessary investments in water and sewer infrastructure; and

WHEREAS, District is a local water and sewer service provider with pending infrastructure projects needed to continue providing reliable service, as further described in Exhibit “A” to this MOU; and

WHEREAS, County is willing to provide ARPA funds to be used towards the infrastructure projects in an amount of up to one million, three hundred and fifty thousand dollars (\$1,350,000);

NOW, THEREFORE, in consideration of the foregoing and other consideration the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Term. This MOU shall become effective on the date of the last signature below and shall expire on December 31, 2026, unless terminated earlier in accordance with this MOU.

2. Transfer of ARPA Funds. County agrees and hereby directs the Auditor-Controller to issue and deliver to District the amount of One Million Three Hundred and Fifty

Thousand Dollars (\$1,350,000) in ARPA funds upon written request from District. County is not obligated to provide any funds to District that are not ARPA funds, and County's obligation is contingent on there being sufficient ARPA funds available to County.

3. Use of Funds by District. District shall use all ARPA funds provided under this MOU solely and exclusively for the water and sewer infrastructure projects as generally described in Exhibit A (the "Projects"). District must complete the Projects no later than December 31, 2026. County does not warrant that the funds provided under this MOU are sufficient to complete the Projects, and District shall complete the Projects whether or not the funding provided by County is enough to cover the entire cost. If District completes the Projects without spending all the ARPA funds, or has not fully expended the ARPA funds by the date of expiration or other termination of this MOU, then District shall return to County the remaining unspent funds within thirty (30) days afterwards unless otherwise agreed by the parties.

4. Project Review by County. District shall submit, and County shall review, all contract documents involving the construction and implementation phases of the Projects, and any modifications to the Projects, to ensure ARPA funding eligibility and reasonableness of costs. All such contract documents are subject to the approval of the County, which shall not be unreasonably withheld or conditioned. Any alterations to the Projects must maintain eligibility for ARPA funding.

5. Return of Funds. If District fails to fulfill in a timely and proper manner District's obligations under this MOU or otherwise breaches this MOU or fails to complete the Projects in a timely fashion, District shall return to County all unspent ARPA funds upon written demand by the County Executive Officer. If District uses any portion of the grant funds provided under this MOU for a purpose other than the Projects, District shall reimburse County the portion of such grant funds not used for the Projects upon written demand by the County Executive Officer. District shall return or reimburse County within thirty (30) days of receipt by District of written demand from County, and shall include any interest earned thereon by District. Return of grant funds under this paragraph shall be in addition to any other remedies available to County by law.

6. Compliance with Funding Requirements. District shall comply with all federal and state laws, regulations, and requirements associated with the receipt of ARPA funds and the SLFRF Program, including but not limited to competitive bidding, prevailing wages, award of contracts, record keeping, reporting, and any other requirements as may be set forth in the Compliance and Reporting Guidance manual for the SLFRF Program issued by the United States Department of the Treasury on June 24, 2021, as may amended from time to time, and the ARPA Interim Final Rule found at Part 35 of Title 31 of the Code of Federal Regulations, both of which are hereby incorporated by reference as if fully set forth herein.

7. Termination. This MOU may be terminated by County for any reason and at any time by giving thirty (30) days prior written notice of such termination to District. County hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this MOU on behalf of County for the convenience of County.

Termination shall relieve District of any further obligation under this MOU, other than the return of unused grant funds and any other obligations of District that accrued prior to the effective date of termination.

8. Access to Records/Retention. County shall have access to any books, documents, papers, and records of District which are related to this MOU or the Projects for the purpose of confirming compliance with this MOU or as may be required by federal or state authorities. Except where longer retention is required by any federal or state law, District shall maintain all records related to this MOU for at least five (5) years after the expiration or termination of this MOU, and this obligation shall hereby survive the expiration or termination of this MOU.

9. Third Party Beneficiaries. Nothing contained in this MOU shall be construed to create any rights in third parties and the parties do not intend to create such rights, except such rights of the federal and state governments as may be required as a condition of the receipt of ARPA funds or the SLFRF Program.

10. Severability. If any provision of this MOU 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 MOU.

11. Amendment of Agreement. This MOU may only be amended or modified by mutual agreement of the parties, in writing and signed by both parties.

12. Entirety of Contract. This MOU constitutes the entire agreement between the parties relating to the subject of this MOU and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

13. Counterparts. This MOU 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 MOU is executed by Napa County, acting by and through its County Executive Officer as authorized by the Board of Supervisors on February 8, 2022, and by the Lake Berryessa Resort Improvement District, acting by and through its District Engineer as authorized by its Governing Board on February 8, 2022.

LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT, a special district of the State of California

By: _____
CHRISTOPHER M. SILKE, District Engineer

NAPA COUNTY, a political subdivision of the State of California

By: _____
MINH C. TRAN, County Executive Officer

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u> Interim County Counsel</p> <p>Date: <u>February 7, 2022</u></p>	<p>APPROVED BY THE GOVERNING BOARD OF THE LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT</p> <p>Date: _____ Processed By: _____ Deputy Secretary of the District</p>	<p>ATTEST: NEHA HOSKINS Secretary of the District</p> <p>By: _____</p>
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<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: _____ Deputy County Counsel</p> <p>Date: _____</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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EXHIBIT A

Lake Berryessa Resort Improvement District Infrastructure Upgrade Projects

Project Descriptions

1. Water Treatment Plant Upgrades – Demolish and replace process air compressors, refrigerated air dryer, add cross-flow ventilation, small pipe, metal door, protective coatings. Move chemicals to outdoor storage. Construct process upgrades.
2. Sewer Lift Station A Tank Demolition and Replacement – Demolish and replace the Sewer Lift Station Tank A. Replace the bolted steel tank with a reinforced concrete structure or similar steel tank of equal storage capacity that resists deterioration, pit corrosion, seepage, and corrosion attack from sewer gasses. A new tank is critical to prevent raw sewerage spills into nearby Putah Creek prompting regulatory enforcement action by Central Valley Regional Water Quality Control Board. Solicit Engineering Consultant RFP for design, bid, and construction administration professional services. Prepare plans and specifications to bid the construction and demolition work. File CEQA Notice of Determination Form and Supplements with Napa County PBES. Record Notice of Categorical Exemption, Class 1, Section 15301. Construct, inspect, hydrostatic test, and activate new wastewater tank.
3. SCADA System Updates – Over the past ten (10) years pump stations, treatment and water storage tanks have been integrated into the Rockwell Factory Talk Human Machine Interface (HMI) platform. While functional, the older generation HMI software does not provide advanced level of automation, remote control, alarm alerts, sufficient network speed, trend charts, and dependability needed by the District in a more stringent regulatory environment. New mobile Supervisory Control and Data Acquisition (SCADA) platforms shall be installed and feature remote access to the SCADA terminal during wildfires and winter storms when AT&T landlines are experiencing outages. Drinking water, clean water, environmental, and regulatory permit compliance are integral to real-time data retention and reports.
4. Water Treatment Plant Standby Generator Replacement - A standby generator shall be replaced at the Water Treatment Plant. The existing generator provides emergency power to the water treatment plant and associated pump operations, as well as to the District's central sewer lift station (Station A) and ancillary lift station (Station E). Standby power at this location is essential to maintaining both water and sewer service during scheduled PG&E Public Safety Power Shutdowns, emergencies (e.g. wildfires and storms), or when PG&E power is unstable.

Project Budgets

1. Water Treatment Plant Upgrades - \$150,000
2. Sewer Lift Station A Tank Demolition and Replacement - \$800,000
3. SCADA System Updates - \$300,000
4. Water Treatment Plant Standby Generator Replacement - \$100,000

Project Justification

All four (4) water and sewer infrastructure projects will benefit public health and safety for Berryessa Estates residents.

ARPA Project Appropriations Total: \$1,350,000