

**AMENDMENT NO. 3 TO NAPA BERRYESSA RESORT
IMPROVEMENT DISTRICT AGREEMENT NO. 190142B (NBRID)**

PROFESSIONAL SERVICES AGREEMENT

THIS AMENDMENT NO. 3 TO NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT AGREEMENT NO. 190142B (NBRID) is made and entered into effective as of the 6th day of June, 2023, by and between the NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT, a special district of the State of California, hereinafter referred to as "DISTRICT", and SPECIALIZED UTILITY SERVICES PROGRAM (SUSP), a California corporation, whose business address is 1234 N. Market Boulevard, Sacramento, CA 95834, hereinafter referred to as "CONTRACTOR." DISTRICT and CONTRACTOR may be referred to below individually as "Party" and together as "Parties."

RECITALS

WHEREAS, on October 1, 2018, DISTRICT and CONTRACTOR entered into Agreement 190142B (Agreement) for operations, management and maintenance (OM&M) services of the DISTRICT's water and wastewater facilities; and

WHEREAS, on May 18, 2021, the Governing Board of the DISTRICT approved Amendment No. 1, increasing the amount of the Agreement by \$40,000 for Fiscal Year 2020-21, to compensate CONTRACTOR for additional non-scheduled oversight of the water and wastewater systems after the 2020 LNU Lightning Complex Wildfires burned through the Berryessa Highlands community destroying over 100 homes and damaging water and sewer infrastructure managed by the CONTRACTOR; and

WHEREAS, on April 19, 2022, the Governing Board of the DISTRICT approved Amendment No. 2, increasing the amount of the Agreement by \$20,000 for Fiscal Year 2021-22, to compensate CONTRACTOR for additional non-scheduled oversight of the water and wastewater systems required as a result of multiple process and control malfunctions at the water and wastewater treatment plants; and

WHEREAS, due to equipment and pipe failures in the water distribution and sewer collection systems, and process and control malfunctions at the water and wastewater treatment facilities during the heavy periods of rainfall spanning December 2022 through March 2023, CONTRACTOR was and is required to increase operational oversight, including procurement of necessary materials and services, to maintain operations of the water and wastewater facilities as required by the Agreement; and

WHEREAS, the additional oversight required to maintain operations of the water and wastewater facilities as required by the Agreement will exceed the maximum amount allowed under the Agreement by the end of Fiscal Year 2022-2023; and

WHEREAS, the Parties now wish to amend the Agreement to increase the maximum compensation payable under the Agreement for Fiscal Year 2022-2023 by \$135,000 to pay CONTRACTOR for the additional OM&M costs incurred, or will incur, through the remainder of the fiscal year; and

WHEREAS, the term of the Agreement will expire on June 30, 2023, but the Parties wish to extend the term of the Agreement by one year, to allow DISTRICT staff more time to prepare a

Request for Proposals for the next OM&M services contract while concurrently focusing on major capital projects underway at the DISTRICT;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby amend NBRID Agreement No. 190142B as follows:

TERMS

1. Paragraph 1 of the Agreement is amended to read in full as follows:

1. **Term of the Agreement.** The term of this Agreement shall commence on October 1, 2018, and shall expire on June 30, 2024, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Termination for Convenience) 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).

2. Paragraph 3 of the Agreement is amended to read in full as follows:

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, subject to the provision below regarding annual review for possible adjustment based on and equal to the change in the San Francisco Bay Area-All Urban Consumers Price Index for the preceding year.

- (b) **Expenses.** No travel or other expenses will be reimbursed by DISTRICT, except for non-scheduled work as set forth in Exhibit "B."

- (c) **Maximum Amount.** The maximum payments under this Agreement shall not exceed a monthly maximum base amount of Twenty-Two Thousand Two Hundred Seventy Four Dollars and Thirty-Eight Cents (\$22,274.38), subject to annual adjustments pursuant to subsection (d) below; provided, however, such amount shall not be construed as a guaranteed sum, and payments shall be based upon services actually rendered and expenses actually incurred. For the remainder of Fiscal Year 2018-2019 starting on October 1, 2018, this equals Two Hundred Thousand Four Hundred Sixty-Nine Dollars and Thirty-Eight Cents (\$200,469.38), and Two Hundred Sixty-Seven Thousand Two Hundred Nine-Two Dollars and Fifty-Six Cents (\$267,292.56) for each subsequent fiscal year as adjusted pursuant to subsection (d). Notwithstanding the foregoing, any non-scheduled work or additional services approved by DISTRICT are not subject to these not-to-exceed amounts, and due to such services provided in Fiscal Years 2020-2021, 2021-2022, and 2022-2023, the maximum payment in Fiscal Year 2020-2021 shall not exceed Three Hundred Thirty-Two Thousand One Hundred Fifty-Nine Dollars (\$332,159.00), the maximum payment in Fiscal Year 2021-2022 shall not exceed Three Hundred Seventeen Thousand Two Hundred

Thirty-Eight Dollars (\$317,238.00), and the maximum payment in Fiscal Year 2022-2023 shall not exceed Four Hundred Forty-Seven Thousand Five Hundred Fifty Three Dollars (\$447,553).

(d) Annual Adjustment based on Consumer Price Index. On July 1 of each year, beginning on July 1, 2019, the Maximum Amount of compensation described above shall be adjusted for that fiscal year then beginning (July 1 through the next June 30) in an amount equal to the change in the San Francisco Bay Area-All Urban Consumers Price Index for the preceding year, exclusive of the Forty Thousand Dollars (\$40,000) added to the maximum compensation in Fiscal Year 2020-2021 in Amendment No. 1, the Twenty Thousand Dollars (\$20,000) added to the maximum compensation in Fiscal Year 2021-2022 in Amendment No. 2, and the One Hundred Thirty-Five Thousand Dollars (\$135,000) added to the maximum compensation in Fiscal Year 2022-2023 in this Amendment No. 3.

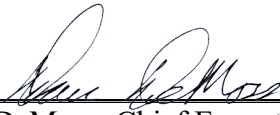
3. This Amendment No. 3 represents all the changes to the Agreement agreed to by the Parties. No enforceable oral representations or other agreements have been made by the Parties except as specifically stated herein. All other provisions of the Agreement and prior amendments not addressed in this Amendment No. 3 shall remain in full force and effect.

4. This Amendment No. 3 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 intentionally blank]

IN WITNESS WHEREOF, this Amendment No. 3 to NBRID Agreement No. 190142B (NBRID) is executed by the Napa Berryessa Resort Improvement District, acting by and through the Chair of its Governing Board, and by the Contractor through its duly authorized officers.

SPECIALIZED UTILITY SERVICES PROGRAM,
a California Corporation

By: 
Dan DeMoss, Chief Executive Officer

By: 
Dustin Hardwick, Secretary

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

By: _____
BELIA RAMOS,
Chair of the Governing Board

APPROVED AS TO FORM Office of County Counsel / District Legal Counsel By: <u>Thomas C. Zeleny</u> Chief Deputy County Counsel Date: <u>April 14, 2023</u> PL Doc. No. 89366	APPROVED BY BOARD OF SUPERVISORS, AS THE GOVERNING BOARD OF THE NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors / Secretary of the District By: _____
--	--	--