

**NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT  
AGREEMENT NO. 250010B**

**PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_ day of June 2024, by and between the NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT, a special district of the State of California, hereinafter referred to as “DISTRICT,” 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**, DISTRICT wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide operations, management and maintenance (OM&M) services of the District’s water and wastewater facilities; and

**WHEREAS**, DISTRICT issued a Request for Proposals (RFP) on February 27, 2024 and received two proposals by the March 27, 2024 due date from contractors interested in performing such OM&M services; and

**WHEREAS**, based on review of the proposals and interviews conducted by a DISTRICT staff review panel pursuant to the evaluation procedures described in the RFP, CONTRACTOR was recommended by DISTRICT staff and selected by the Governing Board for the award of this Agreement;

**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:

**TERMS**

1. **Term of the Agreement.** The term of this Agreement shall be effective on July 1, 2024 and shall expire on June 30, 2027, 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, for a maximum of two additional years, under the terms and conditions then in effect, 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 1st and ending on June 30<sup>th</sup> of the following calendar year.

2. **Scope of Services.** CONTRACTOR shall provide DISTRICT those services as described in Exhibit “A,” in accordance with the Contract Documents. The Contract Documents consist of this Agreement and its Exhibits, the RFP, and CONTRACTOR’s proposal dated March 27, 2024.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR’s fulfillment of the scope of services, DISTRICT shall pay CONTRACTOR at the monthly rate set forth in Section II of Exhibit “A” attached hereto and hereby incorporated by reference, subject to annual adjustment as set forth in subparagraph (e).

(b) Expenses. No travel or other expenses will be reimbursed by DISTRICT unless otherwise agreed as part of Additional Services in subparagraph (c).

(c) Additional Services. DISTRICT may require that CONTRACTOR perform additional services beyond those described in the Scope of Services. The cost of Additional Services shall be based on the hourly rates set forth in Section II of Exhibit “A” and expenses actually incurred. The total cost of any additional services performed under this Agreement shall not exceed TWENTY THOUSAND FOUR HUNDRED DOLLARS (\$20,400) annually, and CONTRACTOR is not obligated to perform Additional Services in excess of this amount.

(d) Maximum Amount. Notwithstanding subparagraphs (a) and (c), the maximum payments under this Agreement shall not exceed a total of THREE HUNDRED NINETY-SIX THOUSAND DOLLARS (\$396,000) per fiscal year, which consists of a monthly maximum base fee of THIRTY ONE THOUSAND THREE HUNDRED DOLLARS (\$31,300) for OM&M services, and TWENTY THOUSAND FOUR HUNDRED DOLLARS (\$20,400) to compensate CONTRACTOR for Additional Services.

(e) Annual Adjustment. On July 1 of each year, beginning on July 1, 2025, the monthly compensation described in subparagraph (a), the compensation for Additional Services in subparagraph (c), and the maximum annual amount in subparagraph (d) shall all be adjusted for that fiscal year (July 1 through the next June 30) in an amount equal to the increase in the Consumer Price Index for the San Francisco-Oakland-Hayward area for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics for the preceding year. If the CPI-U is a negative number, then the maximum compensation shall not be adjusted for that year (the compensation will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later years.

4. **Method of Payment.**

(a) Invoices. 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, a description of the services provided during the billing period, and the approved monthly or task rate. CONTRACTOR shall submit one invoice per month 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 the date of the last signature to this Agreement.

(b) 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.

(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 paragraph 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 the 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 paragraph 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in paragraph 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 with the evidence of coverage an endorsement waiving subrogation.

(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 DISTRICT's Risk Manager. 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, CONTRACTOR shall provide financial assurance to be agreed upon by CONTRACTOR and DISTRICT.

(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 indemnify, and hold harmless the DISTRICT and its officers, agents, employees, volunteers 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), including but not limited to DISTRICT employees, and the public, or damage to the property of any person or entity, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of CONTRACTOR includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. 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's Purchasing Agent 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 DISTRICT for any reason and at any time by giving prior written notice of such termination to CONTRACTOR specifying the effective date thereof at least thirty (30) days prior to the effective date; 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 Napa County Executive Officer 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 Berryessa Resort Improvement District  
Christopher M. Silke, P.E.  
District Engineer  
804 First Street  
Napa, CA 94559

CONTRACTOR  
Specialized Utility Services Program  
Dan DeMoss  
Executive Director  
1234 N. Market Blvd  
Sacramento, CA 95834

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) Napa County “Waste Source Reduction and Recycled Product Content Procurement Policy” which is found in the Napa County Policy Manual Part I, Section 8D.
- (b) Napa County “Policy for Maintaining a Harassment and Discrimination Free Work Environment” which is found in the Napa County Policy Manual Part I, Section 37K.
- (c) Napa County “Drug and Alcohol Policy” which is found in the Napa County Policy Manual Part I, Section 37O.
- (d) “Napa County Information Technology Use and Security Policy” which is found in the Napa County Policy Manual Part I, Section 31A.
- (e) Napa County “Workplace Violence Policy,” which is found in the Napa County Policy Manual Part I, Section 37U.

15. **Confidentiality. Maintenance of Confidential Information.** Confidential information is defined as all information disclosed to CONTRACTOR which 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.

16. **Prevailing Wage Requirements.** The scope of services may include “public works” as defined in the California Labor Code. CONTRACTOR shall comply with all State prevailing wage requirements, including but not limited to, those set forth in Exhibit B. In instances where federal (Davis-Bacon) prevailing wages also apply to the trade or work, CONTRACTOR shall pay the higher of the two wages.

17. **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.

18. **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

**19. Interpretation; Venue.**

(a) **Interpretation.** This Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by, the laws of the State of California without regard to the conflicts or choice of law provisions thereof. It is the intent of the Contract Documents to completely describe the goods and services to be provided. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be supplied whether or not specifically called for or identified in the Contract Documents. When words or phrases which have a well-known technical or industry or trade meaning are used to describe work, materials, equipment, goods, or services such words or phrases shall be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as set forth below in descending order of precedence (the document in paragraph 19.1 having the highest precedence). Provisions of the Contract Documents addressing the same subject which are consistent but have different degrees of specificity shall not be considered to be in conflict, and the more specific language shall control. Order of Precedence:

- 19.1 This Agreement.
- 19.2 The Exhibits to this Agreement.
- 19.3 The RFP issued by DISTRICT.
- 19.4 CONTRACTOR's proposal.

(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 County, California; however, nothing in this sentence shall obligate either Party to submit to mediation or arbitration any dispute arising under this Agreement.

**20. 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.

(d) Changes in Regulations, Laws, or Facilities. In the event there are changes in any regulations or laws necessitating a change to the Scope of Services, or changes to the facilities materially affecting CONTRACTOR's performance of the Scope of Services, with at least a 10-day written notice both Parties agree to meet and discuss potential adjustments to the Scope of Services and compensation. These changes include, but are not limited to:

1. Changes in local, state, or federal law regarding employment, employee health care laws, taxes, safety, or work schedules or conditions.
2. Changes in the physical facilities or changes to treatment plant flow rates or loading.
3. Changes in operating regulations including Waste Discharge Requirements, Water Supply and System Permits, compliance orders, water regulations, operator certification, or plant classification.

21. **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.

22. **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.

23. **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.

24. **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 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. By executing this Agreement, the District Engineer is

confirming the Scope of Services does not trigger a requirement for CONTRACTOR to file a statement of economic interests.

**25. Standard of Care.** CONTRACTOR represents that the professional services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. CONTRACTOR shall correct any professional services falling below this standard at its sole cost and expense, if notified by DISTRICT within one year after completion of such services. This standard of care is in addition to any other remedies that may be available to DISTRICT in law or equity.

**26. Annual Performance Reviews.** Each fiscal year before March 1st, DISTRICT staff will photograph and catalog the condition of pump stations, water and wastewater treatment plants, control rooms, irrigation fields, standby generators, pressure reducing valve vaults and storage areas. Wire-to-water efficiency tests shall be performed by a DISTRICT retained electrician on pumps greater than 5 Hp. A general upkeep assessment and asset deterioration report will be prepared by DISTRICT and presented to CONTRACTOR within 30 days. Any maintenance related deficiencies of facilities, grounds or equipment will trigger an Action Plan by CONTRACTOR to be filed with DISTRICT within 15 days after notification. If CONTRACTOR fails to provide an Action Plan or fails to comply with an approved Action Plan, this shall constitute a breach of this Agreement and provide the DISTRICT with grounds for termination for cause and any other remedies available to DISTRICT as a matter of law.

**27. 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.

**28. Attorney's Fees.** In the event that either Party commences legal action of any kind or character to either 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.

**29. 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.

**30. 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.

**31. Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

**IN WITNESS WHEREOF**, this Agreement is executed by the Napa Berryessa Resort Improvement District, acting by and through the Chair of the Governing Board, and by the Contractor through its duly authorized officers.

SPECIALIZE SERVICES UTILITY PROGRAM,  
a California Corporation

By: \_\_\_\_\_  
Dan DeMoss, Chief Executive Officer

By: \_\_\_\_\_  
Dustin Hardwick, Secretary President

NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT,  
a Special District of the State of California,

By: \_\_\_\_\_  
JOELLE GALLAGHER, Chair of the Governing Board of  
Napa Berryessa Resort Improvement District

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u> Chief Deputy County Counsel</p> <p>Date: <u>June 13, 2024</u></p>	<p>APPROVED BY THE BOARD OF SUPERVISORS, AS THE GOVERNING BOARD OF THE NAPA 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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## EXHIBIT "A"

### SCOPE OF WORK AND COMPENSATION

#### I. SCOPE OF SERVICES

A. Base or Planned Services. CONTRACTOR shall furnish supervision, labor, and limited technical/engineering support for the operation, maintenance, and management of water and wastewater facilities owned by the DISTRICT as described in the RFP, in the manner and according to the schedules set forth in CONTRACTOR's Proposal.

B. Additional Services. Services beyond the base or planned services include:

(1) Non-Scheduled work outside of the DISTRICT's normal business hours (8:00 am to 5:00 pm Monday - Friday). Critical process SCADA alarm response, report of water main break or sewer spill, major storm events / natural disasters, chemical release, water service disruption, sustained power outage / generator problems and emergency repairs order by the DISTRICT will be eligible for payment as non-scheduled work. Other non-emergency Contractor tasks not listed under Exhibits H and H1 Supplement Baseline Task Order shall be pre-approved by DISTRICT before execution as Non-Scheduled work.

(2) Construction Coordination Tasks. As may be required from time to time, the DISTRICT will implement Capital Improvement Projects to correct process deficiencies and or improve facilities. During construction of capital improvement projects, DISTRICT may require CONTRACTOR to assist with various tasks. These tasks are listed below and may not include all activities which will be required of CONTRACTOR. Tasks associated with construction coordination will be billed to DISTRICT as Non-Scheduled work.

- i) Assist DISTRICT staff, contractors, construction manager, manufacturer vendors, and inspectors with the operational activities associated with construction.
- ii) Assist with the location of existing facilities in the field;
- iii) Upon completion of the facilities DISTRICT and CONTRACTOR will initiate the start-up and commissioning period. CONTRACTOR shall provide appropriate staff for a minimum of 5 working days on-site to operate equipment, systems, and facilities requiring start-up as part of construction.
- iv) During the start-up and commissioning of facilities CONTRACTOR will note any defects in workmanship, equipment, or materials, not previously discovered that are the responsibility of the DISTRICT'S Construction Contractor to repair, correct, modify, or replace prior to final acceptance.

## II. COMPENSATION

### 1) BUDGET

#### ANNUAL MANAGEMENT AND REPORT FEE

A fee of \$375,600 will be divided into twelve (12) equal amounts (\$31,300) and invoiced at the end of each month services will be provided.

#### NON-SCHEDULED OVERTIME WORK and REIMBURSABLE EXPENSES

- i) Add \$20,400 per year to the annual fee.
- ii) Non-scheduled work is defined as any authorized or emergency work performed by CONTRACTOR outside the Scope of Work listed in Exhibit H and H1– Task Order and Laboratory Sampling Schedule; and although an allowance is provided shall not be subject to any kind of guaranteed maximum price or not to exceed limits of this Agreement.
- iii) All non-scheduled work will be billed on a Time and Materials basis according to the Labor Rates included in Exhibit “B.” All non-scheduled work will be authorized in advance by the DISTRICT. In case of an emergency, to prevent or mitigate loss of property, safety or health, CONTRACTOR is authorized to initiate non-scheduled work and notify the DISTRICT as soon as possible. Non-scheduled work will be billed at the next billing cycle. Time and mileage for non-scheduled work is portal to portal from DISTRICT’S Napa office. This is a maximum, time and mileage may be less when scheduling allows more efficient use of circuit operators and technicians.
- iv) Non-scheduled work is paid for and performed outside the compensation limits of the Annual Management Fee and approved Task Order.
- v) For time sensitive purchases where the health and safety of the public, and or protection of DISTRICT facilities and assets is concerned, CONTRACTOR may procure services and supplies for DISTRICT facilities and inform DISTRICT promptly of said purchases. Direct CONTRACTOR procurement of services and supplies under normal operating conditions is only allowed with prior approval from the DISTRICT.
- vi) CONTRACTOR agrees to follows invoicing requirements as outlined in the terms of the Agreement under paragraph 4(a) – Method Of Payment, including inclusion of documentation of purchases and description of need.

### 2) REGULAR BUSINESS LABOR RATES

For purposes of determining the cost of Additional Services:

Project Manager -	\$75.00 / hour
Chief Operator -	\$85.00 / hour
Lead Operator -	\$65.00 / hour
Maintenance Support -	\$50.00 / hour
Administrative -	\$50.00 / hour

**Note:** Hourly rates include all components of CONTRACTOR's personnel expense for those assigned to the performance of Services, including but not limited to salary and fringe benefits. Overtime rates for non-scheduled work shall be no greater than 1.5 x Regular Business Hourly Labor by position. On July 1 of each year, beginning on July 1, 2025, the hourly rates shall all be adjusted for that fiscal year (July 1 through the next June 30) in an amount equal to the increase in the Consumer Price Index for the San Francisco-Oakland-Hayward area for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics for the preceding year. If the CPI-U is a negative number, then the maximum compensation shall not be adjusted for that year (the compensation will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later years.

**III. 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"

### CALIFORNIA PREVAILING WAGE REQUIREMENTS

Pursuant to California Labor Code sections 1720 and 1771, construction, alteration, demolition, installation, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. State prevailing wage laws require certain provisions be included in all contracts for public works. The Contractor and any subcontractors shall comply with State prevailing wage laws including but not limited to the requirements listed below.

**1. Compliance with Prevailing Wage Requirements.** Pursuant to California Labor Code sections 1720 through 1861, the Contractor and all subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including but not limited to inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the post-construction phases of construction, including but not limited to all cleanup work at the jobsite.

**1.1.** Copies of such prevailing rate of per diem wages are on file at the Napa County Public Works Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The Contractor and all subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

**1.2.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

**2. Penalties for Violations.** The Contractor and all subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under California Labor Code sections 1720 through 1861.

**3. Payroll Records.** The Contractor and all subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. The Contractor shall require all subcontractors to also comply with section 1776. The Contractor and all subcontractors shall furnish records specified in section 1776 on a monthly basis, both to the County and directly to the Labor Commissioner in the manner required by California Labor Code section 1771.4. The Contractor shall ensure its subcontractors prepare and submit payroll records to the County and the DIR as required by this section.

**3.1.** If the Contractor or a subcontractor is exempt from the DIR registration requirement pursuant to section 9.4 below, then the Contractor or such subcontractor is not required to furnish payroll records directly to the Labor Commissioner but shall retain the records for at least three years after completion of the work, pursuant to California Labor Code section 1771.4(a)(4).

**3.2.** The County may require the Contractor and its subcontractors to prepare and submit records specified in section 1776 to the County and the Labor Commissioner on a weekly basis, at no additional cost to the County.

**4. Apprentices.** The Contractor and all subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. The Contractor is responsible for compliance with this section for all apprenticeable occupations pursuant to California Labor Code section 1777.5(n).

**5. Working Hours.** The Contractor and all subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on contractors and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

**6. Required Provisions for Subcontracts.** The Contractor shall include, at a minimum, a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

**7. Labor Code Section 1861 Certification.** In accordance with California Labor Code section 3700, the Contractor is required to secure the payment of compensation of its employees. By signing the Agreement, to which this is an exhibit, the Contractor certifies that:

“I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

**8. Compliance Monitoring and Enforcement.** This project is subject to compliance monitoring and enforcement by the DIR. The County must withhold contract payments from the Contractor as directed by the DIR, pursuant to California Labor Code section 1727.

**9. Contractor and Subcontractor Registration Requirements.** The Contractor and all subcontractors shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of California Public Contract Code section 4104, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by California Business and Professions Code section 7029.1 or California Public Contract Code sections 10164 or 20103.5, provided the Contractor is registered to perform public work pursuant to section 1725.5 at the time the contract is awarded.

**9.1.** A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a protest or grounds for considering the bid or proposal non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to the proposal due date; (2) within 24 hours after the proposal due date, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to California Public Contract Code section 4107.

**9.2.** By submitting a bid or proposal to the County, the Contractor is certifying that the Contractor has verified that all subcontractors used on this project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5. The Contractor shall provide proof of registration for themselves and all listed subcontractors to the County at the time of the bid or proposal due date or upon request.

**9.3.** The County may ask the Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this project at any time during performance of this Agreement, and the Contractor shall provide the list within ten (10) working days of the County's request.

**9.4.** This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work, pursuant to California Labor Code sections 1725.5(f) and 1771.1(n).

**10. Stop Order.** Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of California Labor Code sections 1725.5 or 1771.1, the Labor Commissioner must issue and serve a stop order prohibiting the use of the unregistered contractor or subcontractor on ALL public works until the unregistered contractor or subcontractor is registered. Failure to observe a stop order is a misdemeanor.