

**AMENDMENT NO. 1 TO NAPA BERRYESSA RESORT  
IMPROVEMENT DISTRICT AGREEMENT NO. 200263D (NBRID)**

**PROFESSIONAL SERVICES AGREEMENT**

**THIS AMENDMENT NO. 1 TO NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT AGREEMENT NO. 200263D (NBRID)** is made and entered into this \_\_\_\_ day of March 2021, by and between the NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT, a special district of the State of California, hereinafter referred to as "DISTRICT", and ROBERT D. NIEHAUS, INC. (RDN), a California corporation, whose business address is 140 E. Carrillo Street, Santa Barbara, CA 93101, hereinafter referred to as "CONTRACTOR." DISTRICT and CONTRACTOR may be referred to below individually as "Party" and collectively as "Parties."

**RECITALS**

**WHEREAS**, on February 18, 2020, DISTRICT and CONTRACTOR entered into Agreement 200263D (the Agreement) for the preparation of a Cost of Service rate analysis of the DISTRICT's water and wastewater system user fees and charges; and

**WHEREAS**, CONTRACTOR completed the draft Cost of Service Rate Analysis prior to the loss of over 100 homes in DISTRICT's service area during the August 19, 2020 LNU Lightning Wildfire Complex; and

**WHEREAS**, this loss of approximately a third of the DISTRICT's customer base in the wildfire substantially changed the fiscal standing of the DISTRICT beyond what was assumed during the completion of the Cost of Service Rate Analysis; and

**WHEREAS**, DISTRICT staff adjusted the models to post fire conditions using the rate models provided by CONSULTANT as part of the Cost of Service Rate Analysis; and

**WHEREAS**, before the DISTRICT can move forward with a rate adjustment, revised rate models require peer review by the CONSULTANT to determine their accuracy; and

**WHEREAS**, the Parties now wish to amend the Agreement to extend the term and Scope of the Agreement and to increase the maximum compensation payable under the Agreement to pay CONTRACTOR for their peer review of the adjusted rate models;

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby amend NBRID Agreement No. 200263D 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 February 18, 2020, and shall expire on June 30, 2021, 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).

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

2. **Scope of Services.** CONTRACTOR shall perform the scope of work set forth in the Request for Proposals (Attachment 2 of Exhibit "A"), in accordance with the tasks described in CONTRACTOR's Proposal (Exhibit "B"). CONTRACTOR shall complete the tasks in accordance with the project schedule on page 12 of the CONTRACTOR's Proposal. CONTRACTOR shall further review the DISTRICT's post-fire budget projections and evaluate three optional rate scenarios that may be used to proceed with the Proposition 218 rate implementation process, as described in CONTRACTOR's letter dated February 18, 2021, attached and incorporated herein as Exhibit "A-1."

3. 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 in Exhibit "A," and payable upon completion of such work, DISTRICT shall pay CONTRACTOR a fixed price of Thirteen Thousand One Hundred Thirty Five Dollars (\$13,135) as described in the attached Exhibit "C." For the promised work in Exhibit "A-1," DISTRICT shall pay CONTRACTOR an amount not to exceed Seven Thousand Nine Hundred and Twenty Dollars (\$7,920) at the rates and charges set forth in Exhibit "A-1," payable upon completion of such work.

(b) Expenses. No travel or other expenses will be reimbursed by DISTRICT, unless otherwise set forth in Exhibits "A" and "A-1."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall not exceed a total of Twenty-One Thousand and Fifty Five Dollars (\$21,055) provided, however, the compensation for the work in Exhibit "A-1" shall not be construed as a guaranteed sum, and payments shall be based upon services actually rendered and expenses actually incurred.

4. This Amendment No. 1 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 not addressed in this Amendment No. 1 shall remain in full force and effect.

5. This Amendment No. 1 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, the parties hereto have executed this Amendment No. 1 to NBRID Agreement No. 200263-D as of the date written on the first page of this Amendment.

Robert D. Niehaus, Inc., a California Corporation

By Robert D. Niehaus  
Robert D. Niehaus, President

By Margaret L. Niehaus  
Margaret Niehaus, Treasurer

"CONTRACTOR"

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

By \_\_\_\_\_  
Christopher M. Silke, District Engineer

"DISTRICT"

**APPROVED AS TO FORM**  
Office of DISTRICT  
Counsel

By: Thomas C. Zeleny

Date: March 11, 2021

## **EXHIBIT "A-1"**

### **SCOPE OF WORK**

#### **I. SCOPE OF SERVICES**

In addition to the Scope of Services set forth in Exhibit A, the Scope of Services also includes the review of District post-fire budget projections and evaluation of three optional rate scenarios that may be used to proceed with the Proposition 218 rate implementation process, as further described in CONTRACTOR Quote dated February 18, 2021, which includes all travel expenses, miscellaneous fees and surcharges, and labor takeoff cost from actual work performed, a true and correct copy of which is attached hereto as Attachment "A-1."