

**EXHIBIT "A" TO THE MEMORANDUM OF UNDERSTANDING FOR THE NAPA VALLEY  
DROUGHT CONTINGENCY PLAN**

**Consultant's Agreement**

**SERVICES AGREEMENT (PROFESSIONAL SERVICES)**  
*NAPA VALLEY DROUGHT CONTINGENCY PLAN*

City Agreement No. \_\_\_\_\_

City Budget Code: \_\_\_\_\_

This Services Agreement (Professional Services) for the Napa Valley Drought Contingency Plan (“**Agreement**”) by and between the City of Napa, a California charter city (“**City**”), and Brown and Caldwell, a California corporation (“**Consultant**”), is effective on the Effective Date identified on the signature page.

**RECITALS**

A. The City desires to obtain the services more particularly described in this Agreement and Exhibit “A,” and generally includes the coordination and preparation of the Napa Valley Drought Contingency Plan.

B. Brown and Caldwell has extensive technical experience in the field of water resources, engineering and drought contingency planning.

C. The project will be partially funded by a \$200,000 grant from the Bureau of Reclamation.

D. Other Napa Valley agencies including American Canyon, Yountville, St. Helena, Calistoga, Napa County and Napa Sanitation District (“Participating Agencies”) will participate in the project and proportionally share costs based on separate agreements with the City of Napa.

NOW, THEREFORE, the City and the Consultant, for the mutual consideration described herein, agree as follows:

1. SCOPE OF SERVICES.

1.1. Services. Consultant, acting in its capacity as an engineering firm, licensed and in good standing under California law, will perform the services described in the *Scope of Services and Schedule of Performance*, attached hereto as **Exhibit “A”** and incorporated herein by reference (“**Services**”), in accordance with the terms and conditions of this Agreement and to the reasonable satisfaction of the City’s authorized representative, Philip L. Brun, Utilities Director, or his designee (“**City’s Authorized Representative**”).

1.2. Standard of Care. In performing the Services, Consultant will be performed in accordance with the applicable standard of care for, and exercise the degree of skill and diligence ordinarily used by reputable professionals within the greater San Francisco Bay Area who provide the same or similar type of professional services as the Services required under this Agreement. Consultant will require that all of its employees, subconsultants, or agents performing or contributing to the Services will comply with the requirements of this Agreement.

1.3. Independent Contractor. Consultant will control the manner and means for performing the Services, acting as an independent contractor and not as an employee of the City. Consultant will not be entitled to any of the benefits that the City provides to its employees, including, but not limited to, health or retirement benefits.

1.4. Subcontracting. If Consultant subcontracts with a subconsultant to perform any of the Services, the City is deemed an intended beneficiary of that subcontract and the subconsultant will owe a duty of due care to the City. City reserves the right to approve or reject any proposed subconsultant, based on the subconsultant’s qualifications, relevant experience, or reputation.

1.5. Third Party Beneficiaries. The parties to this Agreement understand and agree that the

Participating Agencies, and their respective officers, directors, agents and employees, are intended third-party beneficiaries of the Services performed hereunder, including all rights, duties, and obligations provided under this Agreement. Except to the extent expressly stated herein, this Agreement will not be construed to create any rights in any other third parties.

1.6. Time for Performance. Time is of the essence for the performance of all Services and duties under this Agreement. Consultant will commence and complete all Services by the date and within any timeframes set forth in Exhibit "A." Services for which times for performance are not specified in this Agreement will be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction from the City's Authorized Representative. Consultant will submit all requests for extensions of time to the City in writing no later than ten days after the start of the circumstances or events giving rise to the delay, and no later than the time by which performance is due. The City's approval of any extension of time for performance of the Services will not operate to waive the City's rights or remedies with respect to damages caused by Consultant's delay.

1.7. Errors and Omissions. Consultant is solely responsible for costs arising from its negligent or wrongful errors and omissions, including increased construction costs or delay costs. Upon City's request, Consultant will promptly correct its errors and omissions, at no cost to the City.

1.8. Unsatisfactory Services. Upon written notice from the City that any of the Services are unsatisfactory or fail to comply with the requirements of this Agreement (collectively, "**Unsatisfactory Services**"), Consultant will promptly correct or cure any such Unsatisfactory Services as specified in the City's written notice. Consultant will not be entitled to any additional compensation or extension of time to correct or cure the Unsatisfactory Services. Consultant's correction or cure of Unsatisfactory Services will not operate to waive the City's rights or remedies with respect to any damages caused by the Unsatisfactory Services, the cost of which may be recovered by the City as an offset from payment otherwise due or to become due to Consultant.

## 2. COMPENSATION.

2.1. Payment. The City will pay Consultant for Consultant's time and authorized expenses necessary to perform the Services, at the rates and charges set forth in the *Compensation Rates and Charges* attached hereto as **Exhibit "B"** and incorporated herein by reference, as compensation in full for Services satisfactorily performed in compliance with this Agreement. Consultant's total compensation for performing the Services may not exceed \$429,886, without prior written authorization from the City. If the City authorizes Consultant to perform services in addition to the Scope of Services set forth in Exhibit "A," Consultant will be compensated in accordance with the rates and charges in Exhibit "B." Consultant will not be entitled to any compensation for additional services performed without the City's prior written consent, or which exceed the scope of the City's written consent.

2.2. Invoices. Consultant will submit a monthly itemized invoice to the City's Authorized Representative for the Services provided during the preceding month. At a minimum, the invoice will identify the Services performed, the hours spent performing the Services, the applicable hourly rate(s), and any authorized expenses based on the rates and charges authorized in Exhibit "B." The City will pay the Consultant within 30 days after approval of each invoice, with the exception of any disputed amounts.

3. AUTHORIZED REPRESENTATIVE. Consultant hereby assigns Patrick S. Sullivan, Senior Vice President, to serve as the Consultant's authorized representative ("**Consultant's Authorized Representative**"), to personally participate in and manage the Services provided under this Agreement, and to serve as the primary point of contact for all matters pertaining to this Agreement.

3.1. Substitutions. As a material inducement to entering into this Agreement, the City has relied upon Consultant's representations regarding Consultant's qualifications (including the qualifications of Consultant's Authorized Representative, its personnel, and its subconsultants, if any, as identified on Exhibits "A" and "B"). Consultant will not replace Consultant's Authorized Representative (or any of its personnel or its subconsultants, if any, as identified on Exhibits "A" and "B") without the City's prior written

consent.

4. **NOTICES.** All notices or requests required or contemplated by this Agreement will be in writing and delivered to the other party's Authorized Representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

TO CITY: Philip L. Brun  
Utilities Director  
CITY OF NAPA  
P.O. Box 660  
NAPA, CA 94559-0660  
[pbrun@cityofnapa.org](mailto:pbrun@cityofnapa.org)

TO CONSULTANT: Rene Guillen  
201 North Civic Drive  
Walnut Creek, CA 94596  
Phone: 925-210-2464  
Email: [RGuillen@BrwnCald.com](mailto:RGuillen@BrwnCald.com)

5. **TERM.** The term of this Agreement begins on the date it is signed by the City Clerk, below, attesting full execution of the Agreement by both parties ("**Effective Date**"), and ends upon Consultant's completion of the Services required by this Agreement, unless terminated earlier as provided herein. The following provisions will survive expiration or termination of this Agreement: Section 7.2 (Dispute Resolution), Section 8.1 (Confidentiality), Section 8.4 (Records of Performance), Section 10 (Indemnification), Section 11.4 (Professional Liability), Section 13.3 (Taxes), and Section 14 (General Provisions).

6. **CITY'S RIGHT TO TERMINATE.** The City may terminate this Agreement for convenience (with or without cause) by providing written notice of termination to Consultant, effective upon the date stated in the notice. If the City terminates the Agreement it will pay Consultant for all Services satisfactorily performed up to and including the effective date of the termination, subject to the provisions of Sections 2 and 8.2.

7. **DEFAULT AND DISPUTE RESOLUTION.**

7.1. **Default.** Consultant will be deemed in default of this Agreement if Consultant is not materially complying with the terms of this Agreement, or the City has reason to believe that Consultant's ability to perform the Services has been or will be impaired. If either of these circumstances exist, the City may give written notice of default to Consultant and demand that the default be cured or corrected within ten days of the notice, unless the City determines that additional time is reasonably necessary to cure the default. If Consultant fails to cure the default within of the time specified in the notice, and the Consultant fails to give adequate written assurance of due performance within the specified time, then the City may terminate this Agreement in accordance with Section 6, or the City may pursue dispute resolution in accordance with Section 7.2.

7.2. **Dispute Resolution.** If any dispute arises between the parties in relation to this Agreement, the Authorized Representatives for each party will meet, in person, as soon as practicable, to engage in a good faith effort to resolve the dispute informally. If the parties are unable to resolve the dispute, in whole or in part, through informal discussions, the parties agree to participate in mediation. Notwithstanding the existence of a dispute, except for a dispute regarding payment to Consultant, the Consultant will continue providing the Services during the course of any dispute, unless otherwise directed by the City.

7.2.1. Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session will take place within 60 days of the date that such notice is given, or sooner

if reasonably practicable. The parties will jointly appoint a mutually acceptable mediator. The parties will share equally the costs of the mediator; however, each party will pay its own costs of preparing for and participating in the mediation, including any legal costs.

7.2.2. Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute. In addition, any claims by Consultant arising from or related to this Agreement, are subject to the claim presentment requirements in the Government Claims Act (Government Code section 900 et seq.).

## 8. INFORMATION AND RECORDS.

8.1. Confidentiality Consultant will not disclose any information or records related to the performance of this Agreement, including information and records received from the City, as well as information and records created by the Consultant, to any person other than a City employee, unless and only to the extent that the City provides the Consultant with prior written consent to make a disclosure. Consultant will notify the City's Authorized Representative of any request for disclosure of information, or any actual or potential disclosure of information, under this Agreement. Consultant's obligations under this section will survive the termination of this Agreement. Consultant shall have no confidentiality obligation with respect to information that:

- 1) becomes generally available to the public other than as a result of disclosure by Consultant or its agents or employees;
- 2) was available to Consultant on a non-confidential basis prior to its disclosure by City;
- 3) becomes available to Consultant from a third party who is not, to the knowledge of Consultant, bound to retain such information in confidence.

In the event Consultant is compelled by subpoena, court order, or administrative order to disclose any confidential information, Consultant shall promptly notify City and shall cooperate with City prior to disclosure so that City may take necessary actions to protect such confidential information from disclosure.

8.2. Title to Records. All original documents or records ("**work product**"), whether paper or electronic, required by this Agreement to be prepared by Consultant (including its employees and subconsultants), whether complete or in progress, are the property of the City. Consultant will promptly deliver all such work product to the City at the completion of the Services, upon termination, or upon demand by the City. However, Consultant may make and keep copies of the work product. The parties agree to grant the Participating Agencies legal authorization and license to obtain and use Consultant's work product.

8.3. Contract Cost Disclosure. For any document or report prepared in whole or in part by Consultant pursuant to this Agreement, Consultant will include the numbers and dollar amounts of related contracts or subcontracts as further specified by Government Code Section 7550.

8.4. Records of Performance. Consultant will maintain adequate records of performance under this Agreement (including Services provided, invoices for payment, and payments received) and make these records available to the City for inspection, audit, and copying, during the term of this Agreement and until four years after the Agreement has expired or been terminated.

8.5. Electronic Communications. Consultant will use reasonable good faith efforts to avoid transmitting electronic viruses or other damaging coding, and will promptly advise the City if Consultant discovers that an electronic virus or similar destructive coding may have been transmitted to the City.

8.6. Copyrights/Patents. In performing the Services under this Agreement, Consultant will not unlawfully infringe on any copyrighted or patented work. Consultant is solely responsible for the cost of any authorizations necessary to use any copyrighted or patented work.

9. ACCIDENT REPORT. If any death, personal injury, or property damage occurs in connection with the performance of the Services, Consultant will promptly submit to the City Clerk's Office a written notice of

the incident of damage with the following information:

9.1. A description of the damage including date, time, and location, and whether any City property was involved;

9.2. Name and contact information of any witness;

9.3. Name and address of the injured or deceased person(s); and

9.4. Name and address of Consultant's insurance company.

10. **INDEMNIFICATION.** To the full extent permitted by law, Consultant will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "**Liability**") to the extent arising out of, pertaining to, or relating to Consultant's negligence, recklessness, or willful misconduct in the performance of this Agreement. Consistent with Civil Code Section 2782, Consultant will not be obligated to indemnify City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. In accordance with Civil Code Section 2782.8, the cost to defend charged to the Consultant will not exceed the Consultant's proportionate percentage of fault. Consultant's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by Consultant, including, but not limited to, workers' compensation insurance.

11. **INSURANCE.** Without limiting Consultant's indemnification obligations in section 10, Consultant will procure and maintain throughout the period of this Agreement, the following policies of insurance and endorsements from insurers (if other than the State Compensation Fund) with a current A.M. Best rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Consultant, its agents, employees or subcontractors:

11.1. **General Liability Policy.** Comprehensive or Commercial General Liability Insurance ("**CGL**") at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence. If the Services involve explosive, underground or collapse risks, XCU will be included. If a general aggregate limit is used, either the general aggregate limit will apply separately to this Agreement or the general aggregate will be twice the required occurrence limit.

11.2. **Automobile Liability Policy.** Automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto) or equivalent, for vehicles used in the performance of this Agreement with minimum coverage of not less than \$1,000,000 per accident, combined single limit.

11.3. **Workers' Compensation.** Workers' Compensation insurance meeting statutory limits of the Labor Code. The workers' compensation policy will contain or be endorsed to contain a waiver of subrogation against the City, its officials, officers, agents, and employees.

11.4. **Professional Liability.** Professional liability insurance insuring against Consultant's negligent errors and omissions in performing the Services, with a policy limit of at least \$1,000,000 each claim and aggregate. The professional liability insurance will include prior acts coverage sufficient to cover all Services provided by Consultant, and which will remain in effect for four years following expiration or termination of this Agreement.

11.5. **Endorsements.** The CGL and automotive liability policies will contain or be endorsed with the following provisions:

11.5.1. The City, its officers, elected or appointed officials, employees, volunteers, and agents, are covered as additional insureds for liability arising out of the operations performed by or on behalf of Consultant. The coverage will contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, volunteers, and agents.

11.5.2. The Consultant's insurance is primary and no insurance held by the City will be called upon to contribute to a loss.

11.5.3. The inclusion of more than one insured will not operate to impair or limit the rights of one insured against another, and the coverage will apply as though separate policies have been issued to each insured.

#### 11.6. All Policies.

11.6.1. For all insurance policies required under this Agreement, prior to the City's execution of this Agreement, Consultant will furnish the City with certificates and endorsements effecting the required coverage. Each certificate of insurance will state that the coverage afforded by the policy or policies will not be cancelled, or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case at least 10 days written notice is required. Notice required under this subsection will be sent by regular mail. The Workers' Compensation policy will include an endorsement providing that the insurer agrees to waive any right of subrogation it may have against the City. The endorsements will be on forms provided by City or as approved by City's Risk Manager.

11.6.2. Any deductible or self-insured retention of \$100,000 or more will be disclosed to the City prior to the City's execution of this Agreement and is subject to approval by the City.

11.6.3. If Consultant does not keep all required insurance policies in full force and effect, the City may, in addition to other remedies under this Agreement, terminate or suspend this Agreement.

12. CONFLICTS OF INTEREST. Consultant represents that as of the Effective Date of this Agreement it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services. Consultant further represents that in the performance of the Services, Consultant will not employ or enter into a subcontract with any person or entity having any such conflict of interest. City agrees that Consultant's participation in this collaborative effort does not and will not be claimed to create a conflict as to any separate engagement Consultant may undertake in the future with City or Participating Agencies.

12.1. Financial Interest. Consultant will not make or participate in making or in any way attempt to use Consultant's position to influence a City decision in which Consultant knows, or has reason to know, Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that it has diligently conducted a search and inventory of its financial interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have a financial interest that would conflict with Consultant's duties under this Agreement. Consultant will immediately notify the City in writing if Consultant learns of a financial interest that may conflict with Consultant's obligations under this Agreement.

12.2. Covenant Against Contingent Fees. Consultant warrants that it has not employed, retained, or entered into a contract with any person or entity, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement; and that it has not paid or agreed to pay any person or entity, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the making of this Agreement. For breach or violation of this warranty, the City may void this Agreement without liability or any further obligation to Consultant, or, alternatively, may elect to deduct from payments due or to become due to Consultant, the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

12.3. Statement of Economic Interest. If the City determines Consultant (or any of its employees or subconsultants) is subject to disclosure requirements under the Political Reform Act (Government Code section 87100 et seq.), Consultant (including any required employees or subconsultants) will complete and file a "Statement of Economic Interest" (Form 700) with the City Clerk's Office disclosing Consultant's financial interests.

### 13. COMPLIANCE WITH LAW.

13.1. Legal and Licensing Compliance. Consultant will comply with all applicable federal, state and local laws, rules, and regulations related to the Services under this Agreement. Consultant represents to City that Consultant has and will keep in effect during the term of this Agreement all licenses (including, but not limited to, the City of Napa business license), permits, qualifications, and approvals of whatsoever nature which are legally required for Consultant to practice Consultant's profession or perform the Services.

13.2. Nondiscrimination. During the performance of this Agreement, Consultant and its subcontractors shall not deny the benefits thereof to any person on the basis of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or use of family care leave. Consultant 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, Consultant 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 Consultant services or works required of City by the State of California pursuant to agreements between City 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 Consultant 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.

13.3. Taxes. Consultant will file tax returns as required by law and pay all applicable taxes on amounts paid pursuant to this Agreement. Consultant will be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes.

13.4. Documentation of Right to Work. Consultant agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of Consultant 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. Consultant shall make the required documentation available upon request to City for inspection.

13.5. Provisions Deemed Inserted. Every provision of law required to be inserted or referenced in this Agreement will be deemed to be inserted or referenced.

### 14. GENERAL PROVISIONS.

14.1. Headings. The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

14.2. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.



14.3. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.

14.4. Attorney's Fees. If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

14.5. Assignment and Delegation. This Agreement will not be assigned or transferred in whole or in part, nor will any of the Consultant's duties be delegated, without the City's prior written consent. Any attempt to assign, transfer, or delegate this Agreement, in whole or any part, without the City's prior written consent will be void and of no force or effect. Any consent by the City to one assignment, transfer, or delegation will not be deemed to be consent to any subsequent assignment, transfer, or delegation.

14.6. Modifications. This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in a writing signed by both parties.

14.7. Waivers. No waiver of a breach, default, or duty under this Agreement will be effective unless it is in writing and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.

14.8. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

14.9. Interpretation. Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code Section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

## 15. SIGNATURES.

15.1. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

15.2. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

**CITY:**  
**CITY OF NAPA, a California charter city**

**CONSULTANT:**  
**Brown and Caldwell, a California corporation**

By: \_\_\_\_\_  
Philip L. Brun, Jr., Utilities Director

By:  \_\_\_\_\_  
Jeffrey R. Kivett, Vice President

**ATTEST:**

\_\_\_\_\_  
Tiffany Carranza, City Clerk

Date: \_\_\_\_\_  
("Effective Date")

**COUNTERSIGNED:**

\_\_\_\_\_  
Desiree Brun, City Auditor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael W. Barrett, City Attorney

**EXHIBIT “A”**

**SCOPE OF SERVICES AND SCHEDULE OF PERFORMANCE**

1.0. **SCOPE OF SERVICES.** Consultant will perform the Services described in this Exhibit “A,” in accordance with the terms of the Agreement.

<b>Table 1. Detailed Work Plan</b>	
<b>Task</b>	<b>Activities</b>
<b>Task 1. Initial Drought Contingency Plan Steps</b>	
<ul style="list-style-type: none"> <li>Engage the Drought Contingency Plan Task Force.</li> </ul>	<ul style="list-style-type: none"> <li>In coordination with the Task Force, kickoff activities will include a summit session defining the objectives, timeline, and financial obligations of each Task Force agency and/or organization represented. The Task Force list of members is defined below.</li> </ul>
<ul style="list-style-type: none"> <li>Implementation of the Work Plan</li> </ul>	<ul style="list-style-type: none"> <li>Initiate the Work Plan tasks included in the DCP</li> <li>Provide a final detailed project schedule</li> <li>Identify data needs from the Task Force agencies and schedule contact as needed to follow up on data requests for each agency</li> </ul>
<ul style="list-style-type: none"> <li>Implementation of the Outreach Plan</li> </ul>	<ul style="list-style-type: none"> <li>Develop a distribution list that includes additional interests not specifically represented on the Task Force to be informed of and review Task Force proposals and provide vital feedback. Identify who these initial key stakeholders are and acquire their contact information.</li> <li>Develop and schedule relevant topical Workshops or Public Informational meetings to inform stakeholders, the public, and local media of project progress and highlights from the studies.</li> <li>Confirm stakeholder list with the Task Force, identify issues to be addressed/discussed during the DCP.</li> <li>Work with Napa to post DCP related content to their existing website for easy access by stakeholders and public.</li> </ul>
<b>Task 2. Background, Study Area, and Participating Agencies</b>	<ul style="list-style-type: none"> <li>Collect existing relevant water contingency and drought planning documents for review, such as drought plans, response policies, emergency response plans, urban water management plans, surface and groundwater water management plans, general plans, California Department of Water Resources and Reclamation drought planning guidelines, and other relevant information.</li> <li>Review and summarize the history of drought in the area, current drought situation, severity of drought conditions, recent drought experiences, and the period of time that the area has been experiencing drought conditions.</li> <li>Historical drought frequency and magnitude, including multi-year droughts and seasonal droughts will be described.</li> <li>Highlight historical drought trends, if any.</li> </ul>
<b>Task 3. Water Supplies and Demands</b>	<ul style="list-style-type: none"> <li>Review and summarize existing water supply and demand data for pertinent water agencies and end users. Describe the availability and quality of existing data and models applicable to the proposed DCP.</li> <li>Describe existing water supplies and the key water supply facilities. These sources include river surface water, groundwater, recycled water, wastewater, stormwater, agricultural return water, and interconnections with neighboring systems. Quantify stream flows, reservoir storage levels and yield, water quality, historic flow patterns, and flow requirements, including magnitude and timing of release.</li> <li>Define the drought impacts to each Task Force agency’s water supply, water quality, and the vulnerability of the existing water supply sources. Describe water quality impacts of drought conditions. The water supply</li> </ul>

**Table 1. Detailed Work Plan**

Task	Activities
	<p>and demand comparison will compare the water supply sources available in normal and dry periods to the projected water demands.</p>
<p><b>Task 4. Drought Monitoring Process</b></p>	<ul style="list-style-type: none"> <li>• Identify drought indicators and trigger levels that are currently being used by each Task Force agency to signal pending drought conditions and severity. Summarize current drought monitoring strategies used by each major user and Task Force agency.</li> <li>• Establish a process for monitoring near and long-term water availability, and a framework for predicting the probability of future droughts and confirming an existing drought.</li> <li>• Develop a process for the collection, analysis, and dissemination of water availability and other drought-related data. Explain how this data will be used to predict, confirm, and mitigate droughts, including identifying the metrics and triggers to be used to define stages of drought, trigger mitigation or response actions, and define the various levels of severity of drought.</li> <li>• Develop, as necessary, specific parameters and triggers to monitor for drought conditions. Provide recommendations for drought indicators and triggers to use for deciding when a drought starts and when it ends.</li> </ul>
<p><b>Task 5. Vulnerability Assessment</b></p>	<ul style="list-style-type: none"> <li>• Evaluate the vulnerability of water supplies to drought. Describe the reliability and vulnerability of the water supply and water quality to historical seasonal or climatic shortage.</li> <li>• Review and summarize the climate change work being done by Reclamation, the State of California, and other federal and state agencies.</li> <li>• Calculate future water demands and compare water supply and water quality vulnerabilities with a range of future climatic conditions, including the effects of climate change.</li> <li>• Describe the severity of the consequences to water supplies if no action is taken and drought risks are not addressed. Describe existing or potential risks to human health and safety including water quality risks; endangered, threatened, or candidate species; agricultural water supplies; hydropower production; fish and wildlife habitat; recreation; and any other significant areas of risk. The consequences of seawater intrusion and sea level rise will be identified.</li> <li>• Provide an analysis of the drought impacts from climate change and the resulting practical implications for drought planning for the Task Force agencies. Identify future impacts to water supplies and water quality for a range of possible drought and climate change scenarios.</li> <li>• Prepare agenda and presentation, notify attendees, and conduct Task Force meetings to discuss background documentation and the vulnerability assessment.</li> </ul>
<p><b>Task 6. Mitigation Actions</b></p>	<ul style="list-style-type: none"> <li>• Research and identify the best practices and most effective measures used for drought mitigation in the Western states.</li> <li>• Identify, evaluate, and prioritize mitigation actions and activities that will build long-term resiliency to drought, mitigate the risks posed by drought, decrease sector vulnerabilities, and reduce the need for response actions.</li> <li>• Identify drought actions, responses, programs, and strategies. Review, compare, and summarize the staged demand reduction program used by each Task Force agency. Identify and evaluate additional potential responses for use at each stage of drought. Provide recommendations to improve the consistency of the region's drought response.</li> <li>• Identify potential mitigation projects that would build long-term resilience to drought and reduce the need for emergency response</li> </ul>

**Table 1. Detailed Work Plan**

Task	Activities
	<p>actions. Work with the Task Force agencies to include projects that have been previously identified and discussed, regardless of the level of planning and development that has been done to date.</p> <ul style="list-style-type: none"> <li>• Develop a list of screening criteria to evaluate mitigation projects, mitigation actions and response actions. This criteria list will be compiled into a matrix with weighted factors and used to evaluate actions.</li> <li>• Evaluate the potential mitigation projects, mitigation actions and response actions using the screening criteria and develop a short list of the best projects and actions along with their associated triggers.</li> <li>• The short list shall describe: each mitigation project, how the identified project would address the existing or potential drought risks; the steps necessary to implement the project; cost estimates and project schedule; if the project has a connection to other Reclamation activities; the benefits expected from implementing the project; and the impacts expected from not implementing the project, including economic, social, public health, and number of people affected by the risks.</li> <li>• For up to three of the top prioritized mitigation projects identified in this task, further develop a preliminary analysis to describe the regulatory constraints and requirements as well as the conceptual level infrastructure needs such as for treatment and conveyance. Planning level costs for the conceptual level infrastructure and operations and maintenance will be described to further characterize these projects.</li> <li>• Describe opportunities for the identified projects or actions to dovetail into proposed or existing initiatives by Task Force agencies.</li> <li>• Prepare agenda and presentation, notify attendees, and conduct stakeholder outreach meetings to discuss mitigation actions analysis and screening approach.</li> </ul>
<p><b>Task 7. Response Actions</b></p>	<ul style="list-style-type: none"> <li>• Identify, evaluate, and prioritize drought response actions and activities that can be implemented quickly during a drought to mitigate the impacts and provide rapid benefits.</li> <li>• Establish a staged approach to implementing response actions, depending on the severity of the drought. Use the metrics and triggers developed in Task 4 that define stages of drought, when mitigation or response actions are triggered, and the various levels of severity of drought. Further define the stages of drought when the response actions are triggered to manage the limited supply and decrease the severity of immediate impacts.</li> <li>• Develop bundles of response actions that would be implemented at each stage of a drought. Estimate the expected ability each stage of response actions is expected to have on reducing water demands on a temporary basis. If necessary, redefine or update the metrics and triggers from Task 4 to deliver better short-term benefits.</li> </ul>
<p><b>Task 8. Organizational and Implementation Framework and Stakeholder Outreach</b></p>	<ul style="list-style-type: none"> <li>• Develop an operational and administrative framework to identify who is responsible for undertaking the actions necessary to implement each element of the DCP plan, including communicating with the public about those actions.</li> <li>• Review the organizational structure currently used by each of the participating agencies to respond to a drought, and suggest any update, if appropriate.</li> <li>• The Task Force agencies process for the development of the Drought Contingency Plan will consist of having regular progress meetings, providing status reporting, and conducting workshops. See the Communications and Outreach plan below.</li> </ul>

Table 1. Detailed Work Plan	
Task	Activities
	<ul style="list-style-type: none"> <li>Prepare agenda and presentation, notify attendees, and conduct Task Force meetings to discuss organizational and implementation framework and responsibilities moving forward.</li> </ul>
<b>Task 9. Update Process</b>	<ul style="list-style-type: none"> <li>Develop an organizational framework and process to routinely update the Drought Contingency Plan. This includes a schedule for monitoring, evaluating, and updating the DCP.</li> <li>Develop guidelines to determine what triggers will identify when an update needs to be done.</li> </ul>
<b>Task 10. Drought Contingency Plan Document</b>	<ul style="list-style-type: none"> <li>Summarize task efforts and findings into a Drought Contingency Plan document. Prepare the Drought Contingency Plan document and associated appendices, maps, figures, tables, and computer models.</li> <li>Submit first draft for Task Force review and second draft of the Drought Contingency Plan for Reclamation review and comment. Based on the results of Task Force and Reclamation input, a final submittal will be prepared. Twenty copies of each submittal, as well as one electronic/digital copy, will be provided.</li> </ul>
<b>Task 11. Project Management</b>	<ul style="list-style-type: none"> <li>Provide monthly updates of project status, issues, and concerns to the fiscal agent.</li> <li>Maintain project schedule.</li> <li>Provide project documentation, quality control checks on project deliverables, management of progress against budget and schedule commitments, and submittal of monthly invoices and monthly project status reports.</li> <li>Prepare for and meet with Task Force to kick off the DCP project.</li> <li>Prepare agenda and presentation, notify attendees, and conduct stakeholder outreach meeting to present the draft DCP.</li> </ul>

Table 2. Project Milestone Schedule		
Milestone/ Task/ Activity	Planned Start Date	Planned Completion
Establish Task Force and schedule Task Force kickoff meeting	May 2019	June 2019
Submit Draft Work Plan for Reclamation review	June 2019	July 2019
Consult with Reclamation to address Work Plan comments, finalize plan, and submit to Reclamation for acceptance	July 2019	August 2019
Implement Work Plan and develop Drought Contingency Plan	August 2019	February 2021
Submit final draft Drought Contingency Plan to Reclamation for review and determination that program requirements are met	March 2021	July 2021
Respond to Reclamation comments and finalize plan	August 2021	December 2021

## Task Force

### Lead Agency Contact:

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### DCP Task Force Participants

1. Phil Miller, Napa County Flood Control and Water Conservation District
2. Steven Lederer, County of Napa
3. Joe Tagliaboschi, Town of Yountville
4. Debra Hight, Town of Yountville
5. Mike Kirn, City of Calistoga
6. Derek Rayner, City of Calistoga
7. Phil Brun, City of Napa
8. Joy Eldredge, City of Napa
9. Erica Smithies, City of St Helena
10. Felix Hernandez, City of St. Helena
11. Steve Hartwig, City of American Canyon
12. Steve Moore, City of American Canyon
13. Tim Healy, Napa San

## Communication and Outreach Plan

### Geographic Project Area and Community Overview

This Communication and Outreach Plan describes how stakeholders and the public will be informed of and involved in the planning process, including providing input on the drafting of the Drought Contingency Plan (DCP) and providing feedback to the DCP Task Force.

### Study Overview

The DCP Communication and Outreach Plan coincides with the Scope of work and elaborates on outreach efforts as part of the development of this DCP. Develop a process to identify appropriate stakeholders and interested parties who would contribute to the process by participating. Potential stakeholders include water agencies, County agencies, business groups, agricultural interest groups, property owners, environmental groups, and special interest groups in the DCP area.

### Study Audience and Participants

- Key Stakeholders
- General Public

### Outreach Goals

The purpose of this effort is to build understanding, involvement, and support for drought contingency planning throughout the defined affected region.

The DCP Task Force will coordinate, gather data from existing sources, and make initial planning

decisions to be vetted by various stakeholders and the Napa Valley communities through a series of collaborative activities.

At various intervals during the process, data collection and assessment will reach plateaus or milestones. These are opportune times in the process where key stakeholders and the public could be briefed on the status of assessments and provide comment and input to the DCP Task Force. These intervals in the process may be difficult to initially pinpoint but it is anticipated that at key points these DCP Task Force and stakeholder outreach meetings will occur during the process as identified in the later section “Opportunities for Providing Input - Public Involvement Workshops”.

### **Internal Engagement: Task Force**

The Task Force will be convened for a kickoff workshop to introduce team members, project purpose, scope, schedule, and committee operating guidelines. The kickoff workshop will solicit and document stakeholder issues and values pertaining to drought management and risk levels that will serve as guiding principles throughout the project.

### **External Engagement**

- Stakeholders
- Public

It is essential for Task Force members to identify groups (stakeholders) that have a stake in drought contingency planning, and to understand their interests (environmental, civic, agricultural, etc.). These groups will be early and continuously in the interest of fair representation and effective drought management and planning. Opportunities to discuss and understand diverse viewpoints will be an integral part of the process. It is envisioned that the series of stakeholder forums will take place locally in the form of DCP Task Force and stakeholder outreach meetings.

Interested organizations and groups could include, but are not limited to, the following:

- Hospitality: Visit Napa Valley.
- Agriculture: Napa County Farm Bureau, Carneros Wine Alliance, Napa Valley Grape Growers Association, Napa Valley Vintners, Napa County Resource Conservation Districts, Wine Growers of Napa County, and those working on Groundwater Sustainability issues.
- Environmental: Environmental Education Coalition of Napa County, Friends of the Napa River, and Napa County Parks and Open Space District.

### **Drought Summit Stakeholder Outreach**

- Assist with coordinating and conducting up to two stakeholder outreach meetings. Assist with promoting the workshops and inviting stakeholders. Provide workshop agendas and handout materials as necessary including PowerPoint presentations, study summaries and relevant maps and graphical charts. Assist with preparing a summary documenting the meeting discussions and outcomes.
- DCP Task Force Meetings – Monthly Task Force Meeting
  - Participation
  - Feedback/Input
  - Venues – TBD
- Public Meetings – Schedule to be determined
  - Participation
  - Feedback/Input
  - Venues – TBD



## **Outreach Tactics and Tools**

A series of relevant topical Workshops or public informational meetings will be developed to inform and involve stakeholders, the public, and media (e.g. stakeholder outreach meetings). Topics would be determined by the Task Force based on informational objectives and progress toward reaching key milestones. Outcomes of each topical Workshop will be documented and provided to the Task Force and public/stakeholders.

### **Outreach Tools**

Notification/Announcements. Possible subjects for the stakeholder outreach meetings include: criteria for defining water shortages, potential actions in advance of water shortage, priorities of water use, instream flows, recreational needs, and overall drought equity issues.

1. Prepare announcements and distribute via email of the DCP task force and stakeholder outreach meetings for notification.

### **Informational Materials**

For simplification, the following list of activities is categorized, though there is overlap between some of the categories and actions.

- DCP related Web content: Work with Napa to post pages with DCP project-related information, maps, data, and documents onto their existing website.
- Written communications: produce and distribute email updates, informational project fact sheet, and press releases as needed.
- Initiate articles for appropriate newspapers and other publications and websites as needed.
- If appropriate, arrange for face-to-face activities including personal briefings with small stakeholder groups, presentations at neighborhood meetings, and offer to make DCP related presentations.
- Assist the project team with creating PowerPoint presentations and other informational materials for workshops and DCP Task Force meetings.
- Use email to generate community interest and direct the public and stakeholders to project-related web content at Napa website as mentioned above.

### **Opportunities for Providing Input – Public/ Stakeholder Involvement Workshops**

The DCP Task Force and stakeholder outreach meetings will focus on the following topics (potential dates of the summits are shown in the Work Plan Project schedule):

1. Discuss preliminary supply & demand Discuss goals, objectives and measures of success for screening mitigation actions (March 2020).
2. Discuss the definition of vulnerability and define the needs to be addressed with mitigation actions (August 2020).
3. Discuss early results of mitigation action screening and implementation and receive input to adjust analysis as needed (January 2021).

2.1 REQUESTS FOR SERVICES. Upon request by City, Consultant will provide the Services described above, beginning on Effective Date of agreement and ending upon completion of tasks not to exceed \$429,886. The Services will be provided for a variety of individual matters, as required by the City. Upon request by the City's Authorized Representative for Consultant to perform Services for a particular matter, Consultant will provide a written estimate of the time within which Services for the matter will be completed, and the estimated cost for providing the requested Services. Following written authorization from the City's Authorized Representative, Consultant will perform and complete the Services as specified in the written authorization. Consultant is not entitled to payment for any Services performed without a written authorization, or for Services that exceed the scope of a written authorization. For purposes of this Section,

the written estimate and written authorization may be provided on paper or in an electronic form.

**EXHIBIT "B"**

**COMPENSATION RATES AND CHARGES**

**1. AUTHORIZED HOURLY RATES:**

Consultant will be compensated for time reasonably necessary to provide the Services based on the following hourly rate schedule, subject to the not-to-exceed limit in Section 2.1 of the Agreement:

**See the attached hourly rate schedule.**

<b>Table 2. Rate Schedule</b>			
<b>Personnel</b>			
<b>Engineering</b>	<b>Technical/Scientific</b>	<b>Administrative</b>	<b>Hourly Rate</b>
		Office/ Support Services I	\$57.46
Drafter Trainee	Field Service Technician I	Word Processor I Office/ Support Services II	\$59.57
Assistant Drafter	Field Service Technician II	Word Processor II Office/ Support Services III	\$66.78
Drafter Engineering Aide Inspection Aide	Field Service Technician III	Accountant I Word Processor III Office/ Support Services III	\$88.85
Engineer I Senior Drafter Senior Illustrator Inspector I	Geologist/ Hydrogeologist I Scientist I Senior Field Service Technician Project Analyst II	Accountant II Word Processor IV	\$100.38
Engineer II Inspector II Lead Drafter Lead Illustrator	Geologist/ Hydrogeologist II Scientist II	Accountant III Area Business Operations Mgr. Technical Writer Word Processing Supervisor	\$113.24
Engineer III Inspector III Senior Designer Supervising Drafter Supervising Illustrator	Geologist/ Hydrogeologist III Scientist III	Accountant IV Administrative Manager	\$130.79
Senior Engineer Principal Designer Senior Construction Engineer Senior Engineer	Senior Geologist/ Hydrogeologist Senior Scientist	Senior Technical Writer	\$155.25
Principal Engineer Principal Construction Engineer Supervising Designer	Principal Geologist/ Hydrogeologist Principal Scientist	Corp. Contract Administrator	\$189.64
Supervising Engineer Supervising Constriction Engineer	Managing Geologist/ Hydrogeologist Principal Scientist	Assistant Controller	\$214.40

Table 2. Rate Schedule			
Personnel			
Engineering	Technical/Scientific	Administrative	Hourly Rate
Managing Engineer	Supervising Geologist/ Hydrogeologist Supervising Scientist	Area Bus. Ops. Mgr. IV	\$247.73
Chief Engineer Executive Engineer	Chief Geologist/ Hydrogeologist Chief Scientist	Corp. Marketing Comm. Mgr.	\$267.89
Vice President			\$306.95
Vice President/ Project Manager			\$306.95
Senior Vice President			\$429.97
President/ Executive Vice President			\$586.03

**2. AUTHORIZED EXPENSES AND RATES:**

Consultant will be reimbursed for costs incurred to provide the Services only as follows and subject to the not-to-exceed limit in Section 2.1 of the Agreement:

**See the attached table for authorized expenses and rates.**

Table 3. Expenses	
Item	Cost
Subconsultant	At cost + 5%
Long Distance Telephone	At cost
Copies	\$0.10 per page
Postage	At cost
Overnight mail	At cost
Mileage for personal car	IRS standard mileage rate for business
Travel Expenses:	
Rental Car (midsize)	Daily rate, at cost
Hotel	At cost not to exceed \$300 per night
Airfare (coach class)	At cost not to exceed \$550 per night
Meals	At cost, alcohol excluded



**EXHIBIT "B" TO THE MEMORANDUM OF UNDERSTANDING FOR THE NAPA VALLEY  
DROUGHT CONTINGENCY PLAN**

**COST SHARE**

Agency	Water Delivered in 2013			Population in 2017			Total Cost Share	Total%
	Acre-feet	%	Cost Share	Population	%	Cost Share		
American Canyon	2,665	13.0%	\$14,981	20,247	14.5%	\$16,629	\$31,610	13.8%
Napa	13,033	63.7%	\$73,262	79,774	57.0%	\$65,519	\$138,780	60.4%
Yountville	429	2.1%	\$2,412	1,021	0.7%	\$839	\$3,250	1.4%
St. Helena	1,781	8.7%	\$10,011	6,196	4.4%	\$5,089	\$15,100	6.6%
Calistoga	740	3.6%	\$4,160	5,273	3.8%	\$4,331	\$8,490	3.7%
NapaSan	1,800	8.8%	\$10,118		0.0%	\$0	\$10,118	4.4%
Napa County		0.0%	\$0	27,441	19.6%	\$22,537	\$22,537	9.8%
<b>Total</b>	<b>20,448</b>	<b>100.0%</b>	<b>\$114,943</b>	<b>139,952</b>	<b>100.0%</b>	<b>\$114,943</b>	<b>\$229,886</b>	