

City of Napa Agreement No. _____

Napa Sanitation District Agreement No. _____

**MEMORANDUM OF UNDERSTANDING FOR THE NAPA VALLEY DROUGHT
CONTINGENCY PLAN**

This Memorandum of Understanding for the preparation of the Napa Valley Drought Contingency Plan (this "Agreement") by and between the City of Napa, a California charter city ("CITY"), and the Napa Sanitation District, a county sanitation district, formed pursuant to Health & Safety Code Sections 4700, et seq. (the "DISTRICT") is effective as of the effective date identified on the signature page. CITY and DISTRICT may be identified as "a Party," or collectively, as "the Parties". The Parties are public entities organized and operating under the laws of the State of California and each is a public agency as defined in California Government Code Section 6500.

RECITALS

A. In 2019, there will be a need for the CITY, American Canyon, Yountville, St. Helena, Calistoga, the County of Napa, and the Napa Sanitation District to conduct a regional effort to determine current water supplies and demands for each agency, develop a drought monitoring process and identify mitigation actions, response actions and individual and regional projects to respond to drought conditions.

B. In 2017, the Sonoma County Water Agency in conjunction with Brown and Caldwell ("Consultant") applied for and was awarded a \$200,000 Drought Contingency Planning Grant ("Grant") from the Bureau of Reclamation to prepare a regional Drought Contingency Plan ("Plan") for Marin, Sonoma and portions of Napa counties.

C. In 2018, staff from water agencies in Marin, Sonoma and Napa counties met to develop a plan to prepare the Plan and determined that Marin and Sonoma counties were conducting a regional resiliency plan and therefore would not participate in the Plan; and

D. The CITY, American Canyon, Yountville, St. Helena, Calistoga, the County of Napa, and Napa Sanitation District proposed to use the Grant funds for a Napa Valley Plan with the City as the lead agency; and

E. The Sonoma County Water Agency agreed with this approach and in conjunction with Brown and Caldwell worked with the Bureau of Reclamation to modify the geographical area where the Grant could be used and change the fiscal agent for the Grant funds to the CITY.

F. The CITY in conjunction with the other participating Napa Valley agencies worked with the Consultant to develop a scope and budget for the preparation of the Plan.

G. The CITY and DISTRICT would benefit from the preparation of a Plan.

H. The Parties desire to share the costs of preparing the Plan.

I. The Parties wish to enter into this Agreement in order to set forth the terms and conditions upon which the Parties will cooperate to develop the Plan and share the associated costs.

NOW, THEREFORE, the CITY and DISTRICT for the considerations hereinafter set forth, mutually agree as follows:

1. TERM; TERMINATION FOR CAUSE. This Agreement shall commence on the date it is signed by the City Clerk, below, attesting to full execution of the Agreement by both parties ("Effective Date"). This Agreement may be terminated only by either: (1) mutual agreement of the Parties; or (2) as a

result of a material breach by the other Party of Paragraphs 2 or 3 of this Agreement. Following receipt of written notice by the non-defaulting Party specifying the nature of such breach, the defaulting Party shall have thirty (30) days from the date of receipt to cure the breach. If after 30 days from receipt of the notice of default the breach has not been cured, the non-defaulting Party may terminate this Agreement by giving the other Party no less than (7) days prior written notice of the termination, specifying the effective date of the termination.

Notwithstanding the foregoing, if the Consultant's Agreement (defined below) is terminated for any reason, this Agreement shall automatically terminate at the same time. Upon termination, DISTRICT shall pay to CITY, DISTRICT's Share (defined below) of any costs incurred by CITY under the Consultant's Agreement prior to the date of such termination of the Consultant's Agreement.

2. PROFESSIONAL SERVICES.

(a) Award and Administration of Consultant's Agreement. CITY shall enter into that certain Services Agreement (Professional Services) for the Napa Valley Drought Contingency Plan with Consultant substantially in the form attached hereto as Exhibit "A" in an amount not to exceed \$429,886 ("Consultant's Agreement"). CITY shall be responsible for administering the Consultant's Agreement, including paying the Consultant in accordance with the Consultant's Agreement (including any amendment thereto).

(b) Shared Costs. CITY shall be the fiscal agent for the Grant funds. The costs of the Plan to be shared by the Parties shall equal the costs incurred by the CITY pursuant to the Consultant's Agreement minus the amount of Grant funds received by the City, which the Parties estimate is approximately \$229,886 as set forth in Exhibit B attached hereto and incorporated herein by reference ("Shared Costs"). DISTRICT's proportionate share of the Shared Costs is 4.4% ("DISTRICT's Share") as set forth in Exhibit B.

(c) Collaboration Between the Parties. The Parties agree to the following to ensure the Plan meets both Parties' needs:

- Each Party will notify the other Party of any meetings scheduled with the Consultant and will give the other Party the opportunity to attend such meeting.
- Each Party shall include the other Party in all written communications with the Consultant and any sub-consultants.
- The Parties shall mutually agree upon any changes to the Scope of Services attached as Exhibit A to the Consultant's Agreement prior to CITY's execution of the Consultant's Agreement, or an amendment to the Consultant's Agreement, with the Consultant.
- Neither Party shall release information from the Plan to any third party without coordinating with the other Party. Both Parties agree to notify the other immediately upon any request for any records created pursuant to the Consultant's Agreement that the Parties have not previously agreed to be released. To the extent that a Party receives a request to disclose any such records, and the Party does not identify a legal basis to withhold such records, the Party shall provide written notice to the other Party, and the other Party shall be given a reasonable opportunity to seek a court order to preclude the Party to whom the request was made from disclosing such records, or applicable portion thereof, provided that in such event the other Party shall defend, indemnify, and hold the Party to whom the request was made harmless regarding any claim or litigation by a third party, and such obligation shall survive termination of this Agreement. Except as expressly provided herein, this provision shall not impact either Party's ability to timely respond to any legally required release of such records.

3. INVOICING AND PAYMENT. Each month following CITY's payment to the Consultant

pursuant to the Consultant's Agreement, CITY shall invoice DISTRICT for DISTRICT's Share of the Shared Costs. The invoice shall document the full amount paid by the CITY to the Consultant, and the amount owed by DISTRICT to CITY for DISTRICT's Share. DISTRICT shall pay CITY within thirty (30) days of receipt of each invoice.

4. INSURANCE. CITY 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 or equivalent amounts of self-insurance:

(a) Workers' Compensation insurance. To the extent required by law, workers' compensation insurance in the performance of any of CITY's duties under this Agreement; and upon request by DISTRICT, CITY shall provide certification of such coverage.

(b) Liability insurance.

(1) Commercial general liability insurance coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, issued by a company having a A.M. Best rating of A:VII or better, covering liability 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 CITY or any officer, agent, or employee of CITY under this Agreement except for acts or omissions performed in strict compliance with express direction of DISTRICT's governing board, officers or personnel.

(2) Comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CITY's activities under this Agreement of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence.

(c) Certificates of Coverage. Where the foregoing coverages are provided by insurance rather than by self-insurance (written proof of which shall be provided to DISTRICT upon request), the coverages shall be evidenced by a Certificate of Coverage which shall be filed with DISTRICT's General Manager upon request; shall name DISTRICT, its officers, employees, and agents as additional insureds; 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; shall provide that the insurance provided is primary coverage to DISTRICT with respect to any insurance or self-insurance programs maintained by DISTRICT; 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. Upon request of DISTRICT's General Manager, CITY shall provide or arrange for the insurer to provide DISTRICT with certified copies of the actual insurance policies or relevant portions thereof within thirty (30) days of the request.

(d) Inclusion in Subcontracts. CITY agrees to require the Consultant 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 4 and to require the Consultant to name DISTRICT as an additional insured. CITY also agrees to require the Consultant and any other entity or person who is involved in providing services under this Agreement to obtain and maintain in full force and effect throughout the term of this Agreement professional liability/errors and omissions insurance in an amount of not less than One Million Dollars (\$1,000,000) combined single limit for each occurrence, covering all professional acts or omissions of Consultant or its agents arising out of or in connection with this Agreement.

5. INDEMNIFICATION.

(a) By CITY. CITY shall defend, indemnify and hold harmless DISTRICT and the officers, agents and employees of DISTRICT from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by CITY or its officers, agents, or employees, of activities or obligations required of CITY under this Agreement except where the loss was proximately caused by acts or omissions of DISTRICT performed in strict compliance with express direction from CITY's governing board, officers or

personnel other than direction based upon and conforming to advice from DISTRICT.

(b) By DISTRICT. DISTRICT shall defend, indemnify and hold harmless CITY and the officers, agents and employees of CITY from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by DISTRICT or its officers, agents, or employees, of obligations required of DISTRICT under this Agreement as well as for claims where the loss was proximately caused by acts or omissions of CITY performed in strict compliance with express direction from DISTRICT's governing board, officers or personnel other than direction based upon and conforming to advice from CITY.

6. NO WAIVER. The waiver by any of the parties 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.

7. 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 any party desires to give any other party shall be addressed to the other party at the address set forth below. Any party may change its address by notifying the other parties 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	CITY
General Manager	Utilities Director
Napa Sanitation District	City of Napa
1515 Soscol Ferry Rd	P.O. Box 660
Napa, CA 94558	Napa, CA 94559

8. COMPLIANCE WITH LAWS. In performing any services required under this Agreement to be reimbursed by DISTRICT, CITY shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall also include, but not be limited to, the following, except where otherwise prohibited by state or local law:

(a) Non-Discrimination. During the performance of this Agreement, CITY 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. CITY 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, CITY 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 CITY services or works required of DISTRICT by the State of California pursuant to agreements 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 CITY 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. CITY agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CITY

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. CITY 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 CITY under this Agreement are subcontracted to a third party, CITY shall include the provisions of (a) and (b), above, in all such subcontracts as obligations of the subcontractor.

9. AUTHORITY TO CONTRACT. CITY and DISTRICT each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

10. INDEPENDENT ENTITIES. Although this Agreement is a Joint Powers Agreement as authorized by California Government Code Sections 6500 *et seq*, CITY and DISTRICT are independent entities, and CITY and DISTRICT and the respective officers, agents and employees of CITY and DISTRICT are not, and shall not be deemed, employees of the other agency for any purpose, including but not limited to worker's compensation and employee benefits.

11. PRIVILEGES, IMMUNITIES AND OTHER BENEFITS. In accordance with California Government Code Section 6513, all of the privileges and immunities from liability, all exemptions from laws, ordinances and rules, and all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of the trustees, officers, employees or agents of the Parties when performing their functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties associated with performance of this Agreement.

12. THIRD PARTY BENEFICIARIES. Nothing contained in this Agreement shall be construed to create any rights in third parties and CITY and DISTRICT do not intend to create such rights.

13. ATTORNEY'S FEES. In the event that either of the Parties 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.

14. RECORDS AND TITLE TO DOCUMENTS. Upon completion of the Plan, CITY shall require the Consultant to provide original copies to DISTRICT and CITY.

15. ENTIRETY OF CONTRACT. This Agreement, together with Exhibits A and B, 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.

16. 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, this 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.

17. 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.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF NAPA, a California Charter City:

NAPA SANITATION DISTRICT, a county sanitation district:

Phil Brun, Utilities Director

Jill Techel, Chair of the Board of Directors

ATTEST:

APPROVED BY THE NAPA SANITATION DISTRICT BOARD OF DIRECTORS:

Tiffany Carranza, City Clerk

Date _____

Date: _____
("Effective Date")

COUNTERSIGNED:

ATTEST:

Desiree Brun, City Auditor

Cheryl Schuh, Clerk of the Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney



John Bakker, District Counsel