

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is entered into this 15<sup>th</sup> day of December, 2004, by and between the **CITY OF CALISTOGA** herein called the "City", and **BOYS & GIRLS CLUB OF ST. HELENA INC.**, herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain personal or subcontract services and/or advice in connection with a youth development program; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

**NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:**

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The term of this agreement shall be for the period of January 1, 2005 through December 31, 2007. Any changes to these dates must be approved in writing by the City Manager or his representatives.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "B". Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services may be made on an annual basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amounts listed on Exhibit "B".

47 D. Written Consent for Changes in Compensation. In case of changes  
48 affecting project scope resulting from new findings, unanticipated conditions,  
49 unanticipated regulatory changes, or other conflicts or discrepancies, Consultant shall  
50 promptly notify City of the identified changes and advise City of the recommended  
51 solution. Consultant shall not receive compensation for work performed on such  
52 changes without prior written authorization from City.

53  
54 E. Litigation Support. Consultant agrees to testify at City's request if  
55 litigation is brought against City in connection with Consultant's written report. Unless  
56 the action is brought by Consultant or is based upon Consultant's negligence, City will  
57 compensate Consultant for the preparation and the testimony at Consultant's standard  
58 hourly rates.

59  
60 4. Ownership of Documents. City agrees that all Boys & Girls Club materials  
61 maybe or are protected proprietary documents and cannot be used by the City during  
62 or after the expiration of this contract for the City's use in implementing children's or  
63 tee program of any kind by itself or any other agent. The City may retain ownership of  
64 all written reports compiled for the City by the Boys & Girls Club during the length of  
65 this Agreement and may use them to their own discretion.

66  
67 5. Employment of Other Consultants, Specialists or Experts. Consultant may  
68 employ or otherwise incur obligations to pay other consultants, specialists or experts for  
69 services in connection with this Agreement without the prior written approval of the  
70 City. If said employment incurs an expense for which Consultant wants the City to pay,  
71 Consultant must first obtain prior written consent of the City.

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73 6. Interest of Consultant.

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75 A. Consultant (including principals, associates and professional  
76 employees) covenants and represents that it does not now have any investment or  
77 interest in real property and shall not acquire any interest, direct or indirect, in the area  
78 covered by this contract or any other source of income, interest in real property or  
79 investment which would be affected in any manner or degree by the performance of  
80 Consultant's services hereunder. Consultant further covenants and represents that in  
81 the performance of its duties hereunder no person having any such interest shall  
82 perform any services under this contract.

83  
84 Consultant is not a designated employee within the meaning of the  
85 Political Reform Act because Consultant:

86  
87 (1) will conduct research and arrive at conclusions with respect  
88 to his/her rendition of information, advice, recommendation or counsel independent of  
89 the control and direction of the City or of any City official, other than normal contract  
90 monitoring; and  
91

92 (2) possesses no authority with respect to any City decision  
93 beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg.  
94 18700 (a) (2)).  
95

96 7. Interest of Members and Employees of City. No member of the City and  
97 no other officer, employee or agent of the City who exercises any functions or  
98 responsibilities in connection with the carrying out of any project to which this  
99 Agreement pertains, shall have any personal financial interest, direct or indirect, in this  
100 Agreement, nor shall any such person participate in any decision relating to this  
101 Agreement which affects his/her personal financial interests or the financial interest of  
102 any corporation, partnership or association in which he/she is directly or indirectly  
103 interested. Notwithstanding this provision, members and employees of the City may  
104 enroll their children in the programs offered by the Consultant.  
105

106 8. Liability of Members and Employees of City. No member of the City and  
107 no other officer, employee or agent of the City shall be personally liable to Consultant or  
108 otherwise in the event of any default or breach of the City, or for any amount which  
109 may become due to Consultant or any successor in interest, or for any obligations  
110 directly or indirectly incurred under the terms of this Agreement.  
111

112 9. Indemnification of City. Consultant hereby agrees to defend, indemnify  
113 and save harmless the City, its officers, agents, employees and servants, from and  
114 against any and all claims, liability or obligations based on negligence or willful  
115 misconduct brought on account of or arising out of any acts, errors or omissions of  
116 Consultant undertaken pursuant to this Agreement, when the City had no direct or  
117 indirect duty to injured party otherwise. The City has no liability or responsibility for  
118 any accident, loss or damage to any work performed under this Agreement whether  
119 prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and  
120 hold harmless, as set forth herein, shall include the duty to defend as set forth in  
121 Section 2778 of the California Civil Code.  
122

123 10. Consultant Not an Agent of City. City retains all rights of approval and  
124 discretion with respect to the projects and undertakings contemplated by this  
125 Agreement. Consultant, its officers, employees and agents shall not have any power to  
126 bind or commit the City to any decision.  
127

128 11. Independent Contractor. It is understood that Consultant, in the  
129 performance of the work and services agreed to be performed by Consultant, shall act  
130 as and be an independent contractor and not an agent or employee of City; and as an  
131 independent contractor, Consultant shall obtain no rights to retirement benefits or other  
132 benefits which accrue to City's employees, and Consultant hereby expressly waives any  
133 claim it may have to any such rights.  
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12. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession.

B. Special Rules for Employees Working with Children. Consultant agrees that it will assure that each employee or volunteer hired for a position having supervisory or disciplinary authority over any minor must 1) complete an application that inquires as to whether or not that individual has been convicted of any offenses as specified in the California Penal Code, 2) submit to a screening for that person's criminal background, and 3) provide a set of fingerprints, which may be taken by the City. Consultant further agrees to comply with all applicable laws and regulations regarding working with children, including but not limited to the provisions of the California Public Resources Code, Section 5164 and the California Penal Code section 11105.3 discussed herein. Failure to comply with any of these provisions will be deemed a material breach of this Agreement.

C. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

13. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

184           **14. Insurance.**

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186           **A. Minimum Scope of Insurance.**

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188           (1) Consultant agrees to have and maintain, for the duration of  
189 the contract, a General Liability insurance policy insuring him/her and his/her firm to an  
190 amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single  
191 limit per occurrence and in the aggregate for bodily injury, personal injury and property  
192 damage.

193  
194           (2) Consultant agrees to have and maintain for the duration of  
195 the contract an Automobile Liability insurance policy insuring him/her and his/her staff  
196 to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined  
197 single limit per accident for bodily injury and property damage.

198  
199           (3) Consultant shall maintain professional errors and omissions  
200 liability insurance for protection against claims alleging negligent acts, errors or  
201 omissions which may arise from Consultant's operations under this Agreement, whether  
202 such operations be by Consultant or by its employees, subcontractors, or  
203 subconsultants. The amount of this insurance shall not be less than *Two Million Dollars*  
204 *(\$2,000,000.00)* on a claims-made annual aggregate basis.

205  
206           (4) A Workers' Compensation and Employers' Liability policy  
207 written in accordance with the laws of the State of California and providing coverage for  
208 any and all employees of Consultant:

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210           (a) This policy shall provide coverage for Workers'  
211 Compensation (Coverage A).

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213           (b) This policy shall also provide coverage for One  
214 Hundred Thousand Dollars (\$100,000.00) Employers' Liability (Coverage B).

215  
216           (5) All of the following endorsements are required to be made a  
217 part of each of the required policies, except for the Professional Liability and Workers'  
218 Compensation and Employers' Liability policies, as stipulated below:

219  
220           (a) "The City of Calistoga, its employees, officers, agents  
221 and contractors are hereby added as additional insureds, but only as respects work  
222 done by, for on behalf of the named insured."

223  
224           (b) "This policy shall be considered primary insurance as  
225 respects any other valid and collectible insurance the City may possess, including any  
226 self-insured retention the City may have, and any other insurance the City does possess  
227 shall be considered excess insurance only and shall not contribute with it."  
228

229 (c) "This insurance shall act for each insured and  
230 additional insured as though a separate policy had been written for each. This,  
231 however, will not act to increase the limit of liability of the insuring company."  
232

233 (6) Consultant shall provide to the City all certificates of  
234 insurance with original endorsements affecting coverage required by this paragraph.  
235 Certificates of such insurance shall be filed with the City on or before commencement of  
236 performance of this Agreement. The City reserves the right to require complete,  
237 certified copies of all required insurance policies at any time.  
238

239 B. General Liability.

240 (1) Any failure to comply with reporting provisions of the policies  
241 shall not affect coverage provided to the City, its officers, officials, employees or  
242 volunteers.  
243

244 (2) Consultant's insurance shall apply separately to each insured  
245 against whom a claim is made or suit is brought, except with respect to the limits of the  
246 insurer's liability.  
247

248 C. All Coverages. Each insurance policy required in this item shall  
249 provide that coverage shall not be canceled, except after 30 days' prior written notice  
250 by certified mail, return receipt requested, has been given to the City. Current  
251 certification of such insurance shall be kept on file with the City Secretary at all times  
252 during the term of this Agreement.  
253

254 D. Acceptability of Insurers. Insurance is to be placed with insurers  
255 with a A.M. Best rating of no less than A:VII.  
256

257 E. Deductibles and Self-Insured Retentions. Any deductibles or self-  
258 insured retentions must be declared to and approved by the City. At the City's option,  
259 Consultant shall demonstrate financial capability for payment of such deductibles or  
260 self-insured retentions.  
261

262 15. Assignment Prohibited. Neither the City nor Consultant may assign any  
263 right or obligation pursuant to this Agreement. Any attempted or purported assignment  
264 of any right or obligation hereunder shall be void and of no effect.  
265

266 16. Termination of Agreement.

267 A. This Agreement and all obligations hereunder may be terminated at  
268 any time, with or without cause, by the City upon written notice to the Consultant upon  
269 5 days' written notice. Consultant may terminate this Agreement upon 30 days' written  
270 notice.  
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274 B. If Consultant fails to perform any of its material obligations under  
275 this Agreement, in addition to all other remedies provided by law, City may terminate  
276 this Agreement immediately upon written notice.

277  
278 C. Upon termination with or without cause, all finished and unfinished  
279 documents, project data and reports shall, at the option of the City, become its sole  
280 property and shall, at Consultant's expense, be delivered to the City or to any party it  
281 may so designate.

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283 D. In the event termination is without cause, Consultant shall be  
284 entitled to any compensation owing to it hereunder up to the time of such termination,  
285 it being understood that any payments are full compensation for services rendered prior  
286 to the time of payment; provided, however, that Consultant shall be entitled to  
287 compensation for work in progress at the time of termination.

288  
289 17. Amendment. This Agreement constitutes the complete and exclusive  
290 statement of the Agreement to City and Consultant. It may be amended or extended  
291 from time to time by written agreement of the parties hereto.

292  
293 18. Litigation Costs. If either party becomes involved in litigation arising out  
294 of this Agreement or the performance thereof, the court in such litigation shall award  
295 reasonable costs and expenses, including attorneys' fees, to the prevailing party. In  
296 awarding attorneys' fees, the court will not be bound by any court fee schedule, but  
297 shall, if it is in the interest of justice to do so, award the full amount of costs, expenses,  
298 and attorneys' fees paid or incurred in good faith.

299  
300 19. Time of the Essence. Time is of the essence of this Agreement, however,  
301 the Consultant shall not be held responsible for delays caused by acts outside of  
302 Consultant's control.

303  
304 20. Written Notification. Any notice, demand, request, consent, approval or  
305 communications that either party desires or is required to give to the other party shall  
306 be in writing and either served personally or sent by prepaid, first class mail. Any such  
307 notice, demand, etc. shall be addressed to the other party at the address set forth here  
308 in below. Either party may change its address by notifying the other party of the  
309 change of address. Notice shall be deemed communicated within 48 hours from the  
310 time of mailing if mailed as provided in this section.

311 If to City: City Of Calistoga  
312 City Manager  
313 1232 Washington Street  
314 Callistoga, CA 94515

315  
316 If to Consultant: Boys & Girls Club of St. Helena Inc.  
317 Executive Director  
318 1420 Tainter Street  
319 St. Helena, CA 94574

320           **21.    Consultant's Books and Records.**

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322           **A.    Consultant shall maintain any and all ledgers, books of account,**  
323 **invoices, vouchers, canceled checks, and other records or documents evidencing or**  
324 **relating to charges for services, or expenditures and disbursements charged to City for**  
325 **a minimum period of three (3) years, or for any longer period required by law, from the**  
326 **date of final payment to Consultant to this Agreement.**

327  
328           **B.    Consultant shall maintain all documents and records, which**  
329 **demonstrate performance under this Agreement for a minimum period of three (3)**  
330 **years, or for any longer period required by law, from the date of termination or**  
331 **completion of this Agreement.**

332  
333           **C.    Any records or documents required to be maintained pursuant to**  
334 **this Agreement shall be made available for inspection or audit, at any time during**  
335 **regular business hours, upon written request by the City Attorney, City Auditor, City**  
336 **Manager, or a designated representative of any of these officers. Copies of such**  
337 **documents shall be provided to City for inspection at City Hall when it is practical to do**  
338 **so. Otherwise, unless an alternative is mutually agreed upon, the records shall be**  
339 **available at Consultant's address indicated for receipt of notices in this Agreement.**

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341           **D.    Where City has reason to believe that such records or documents**  
342 **may be lost or discarded due to dissolution, disbandment or termination of Consultant's**  
343 **business, City may, by written request by any of the above-named officers, require that**  
344 **custody of the records be given to City and that the records and documents be**  
345 **maintained in City Hall. Access to such records and documents shall be granted to any**  
346 **party authorized by Consultant, Consultant's representatives, or Consultant's successor-**  
347 **in-interest.**

348  
349           **22.    Equal Employment Opportunity. Consultant is an equal opportunity**  
350 **employer and agrees to comply with all applicable state and federal regulations**  
351 **governing equal employment opportunity. Consultant will not discriminate against any**  
352 **employee or applicant for employment because of race, age, sex, creed, color, sexual**  
353 **orientation, marital status or national origin. Consultant will take affirmative action to**  
354 **ensure that applicants are treated during such employment without regard to race, age,**  
355 **sex, creed, color, sexual orientation, marital status or national origin, or any other class**  
356 **protected by law. Such action shall include, but shall not be limited to, the following:**  
357 **employment, upgrading, demotion or transfer; recruitment or recruitment advertising;**  
358 **lay-offs or termination; rates of pay or other forms of compensation; and selection for**  
359 **training, including apprenticeship. Consultant further agrees to post in conspicuous**  
360 **places, available to employees and applicants for employment, notices setting forth the**  
361 **provisions of this nondiscrimination clause.**

362  
363           **23.    Waiver. No failure on the part of either party to exercise any right or**  
364 **remedy hereunder shall operate as a waiver of any other right or remedy that party**  
365 **may have hereunder.**



366 24. Captions. Captions to sections of this Agreement are for convenience  
367 purposes only, and are not part of this Agreement.  
368

369 25. Execution. This Agreement may be executed in several counterparts,  
370 each of which shall constitute one and the same instrument and shall become binding  
371 upon the parties when at least one copy hereof shall have been signed by both parties  
372 hereto. In approving this Agreement, it shall not be necessary to produce or account  
373 for more than one such counterpart.  
374

375 26. Facility Use and Utilities. No rental fees will be charged to the  
376 Consultant for use of the Monhoff Center. City will be responsible for payment of all  
377 utility costs (i.e. electric, water, sewer, telephone) at the site where Consultant is  
378 providing services in performance of this agreement. Consultant will allow City usage of  
379 Consultant's equipment and materials located on site during those hours when  
380 Consultant is not providing services in performance of this agreement. Consultant  
381 understands that the City may renovate or demolish the Monhoff Center during the  
382 term of this agreement. If such actions disrupt the operations of the Teen Center, the  
383 City and the Consultant will meet and confer concerning an alternate site. If no  
384 alternate site is agreed upon, this agreement may be terminated in accordance with  
385 Section 16 provisions.  
386

387 27. Right of Entry. City reserves the right to enter its property at the site  
388 where Consultant is providing services in performance of this agreement at all times by  
389 its agents, employees and representatives.  
390

391 28. Venue. In the event that suit shall be brought by either party hereunder,  
392 the parties agree that trial of such action shall be held exclusively in a state court in the  
393 County of Napa, California.

394 IN WITNESS WHEREOF, the City and Consultant have executed this Agreement  
395 as of the date first above written.  
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398 CITY OF CALISTOGA

CONSULTANT

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404 By: \_\_\_\_\_

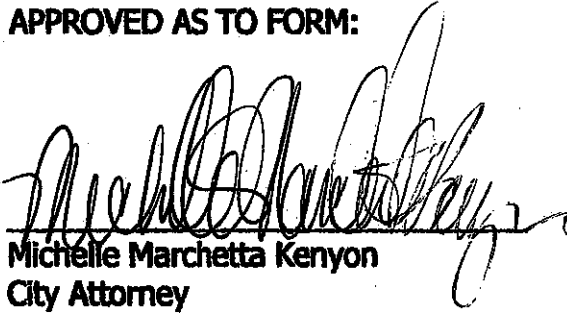
James C. McCann  
City Manager

By: \_\_\_\_\_

Frank Sottile  
Executive Director

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**APPROVED AS TO FORM:**



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**Michelle Marchetta Kenyon  
City Attorney**

**ATTEST**



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**Su Sneddon  
City Clerk**

## **SCOPE OF WORK**

Services to be rendered to **CITY** by **CONTRACTOR** are as follows:

- Contractor shall operate the Calistoga Teen Center at the Monhoff Center for thirty to thirty six (30-36) hours per week, generally Monday through Friday after school hours and during at least one weekend day. Hours may vary for programming needs, special events, and for school holidays and summer vacation.
- Contractor shall implement Youth Development Programs relating to character and leadership development, education and career development, health and life skills, the arts, and fitness. Programs will be made available to all youth in Calistoga grades seven (7) through twelve (12) as further described in the attached Boys & Girls Club Youth Development Program Proposal document.
- The Boys & Girls Club reserves the right to refuse or discontinue services to individual youth in accordance with the Club's rules and related procedures and policies.
- Contractor shall hire, train, and supervise staff members and enrichment class instructors.
- Contractor shall provide staff that will include a part-time Program Director and two part-time Youth Development Coordinators for fifty-two (52) weeks per year. Staff to student ratio will be approximately fifteen (15) to one (1).
- Contractor shall have exclusive use of the designated area within the Monhoff Center for the Teen Center program during the hours of operation of the Calistoga Teen Center, and unrestricted access to the Monhoff Center's restrooms. Requests by the public or City Recreation staff to use the Teen Center's designated area must be made to Teen Center Director and permission to use the Teen Center area may or may not be given based on programming needs.

**Consultant Services Agreement  
Boys & Girls Club of St. Helena Inc.  
EXHIBIT "A"**

- **Contractor may place two mounted signs that contain the Teen Center's logo and name, address and telephone number and conform to City standards. Signs shall remain mounted during the term of this Agreement and shall be removed at Contractor's expense at the termination of the Agreement. One sign to be mounted on the Grant Street side of the Monhoff Center and the other near the Teen Center entrance door.**
- **Contractor shall process and disburse the staff payroll and program expenses.**
- **Contractor shall require daily registration (sign-in) of all youths who attend the Calistoga Teen Center.**
- **Contractor shall keep premises clean of trash and debris during hours of operation and at closing. Cleaning of the Monhoff public restroom is the responsibility of the City, unless it was exclusively used by the Teen Center.**
- **Contractor shall prepare and provide a budget and quarterly expenditure and performance review reports.**
- **The Calistoga Chief of Police will oversee the enforcement of the Consultant Services Agreement between the City of Calistoga and the Boys & Girls Club of St. Helena Inc.**
- **Any program and administrative disagreements between the Boys & Girls Club Teen Center and other City Departments or programs should first be resolved between the Boys & Girls Club Program Director and the City Recreation Director. If an agreement cannot be reached, the issue should be brought to the attention of the Boys & Girls Club's Executive Director and/or the Calistoga Chief of Police for final resolution. If the Executive Director and the Chief of Police are unable to reach a final resolution, the parties will submit the issue to a three-member panel consisting of a representative selected by the Boys & Girls Club, the City of Calistoga, and the Safe Kids Committee or the Calistoga Unified School District.**
- **It is understood that the Boys & Girls Club of Calistoga Teen Center is separate from the City Recreation Department as set forth in Paragraph 1.1 of the Consultant Services Agreement. This refers to staffing, programming, and the supervision of both staff and programs.**

**COMPENSATION**

**CONTRACTOR** will submit to the **CITY** in such form and reasonable detail as may be required, an invoice(s), supported by back-up documentation of the claimed payment sought in their performance of this Agreement. Upon presentation of the invoice(s) and upon invoice approval, the **CONTRACTOR** will be paid in accordance with the following:

- A. On or about January 1, 2005, **CONTRACTOR** will be paid \$40,000.
- B. On or about January 1, 2006, **CONTRACTOR** will be paid \$30,000.
- C. On or about January 1, 2007, **CONTRACTOR** will be paid \$20,000.