

**PROFESSIONAL SERVICES AGREEMENT
Community Action Napa Valley (CANV)
for
Homeless & Emergency Support Services**

Authorizing Agreement No. _____

1 THIS AGREEMENT is entered into as of this _____ day of _____, 2011, by
2 and between the CITY OF CALISTOGA herein called the "City", and COMMUNITY
3 ACTION NAPA VALLEY (CANV), herein called the "Consultant".
4

5 Recitals
6

7 WHEREAS, City desires to obtain homeless and emergency housing services for
8 Calistogans in need; and
9

10 WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and
11 able to provide such services described in Section 1 of this Agreement; and
12

13 WHEREAS, City desires to retain Consultant pursuant to this Agreement to
14 provide the services described in Section 1 of this Agreement.
15

16 Agreement
17

18 NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:
19

20 1. Scope of Services. Subject to such policy direction and approvals as the
21 City through its staff may determine from time to time, Consultant shall perform the
22 services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated
23 herein by reference.
24

25 2. Time of Performance. The services of Consultant are to commence no
26 sooner than July 1, 2011 and, subject to City Council approval, be completed not later
27 than June 30, 2012. Any changes to these dates must be approved in writing by the
28 City Manager or his or her designee.
29

30 3. Compensation and Method of Payment.
31

32 A. Compensation. The compensation to be paid to Consultant,
33 including both payment for professional services and reimbursable expenses, shall in
34 no event exceed Six Thousand, Fifty-Three Dollars (\$6,053). Payment by City under
35 this Agreement shall not be deemed a waiver of defects, even if such defects were
36 known to the City at the time of payment.
37

38 B. Timing of Payment. Billing for said services may be made on an
39 annual basis. City shall review Consultant's statement and pay Consultant for services
40 rendered within 30 days of receipt of the Consultant's statement.
41

42 C. Changes in Compensation. Consultant will not undertake any work
43 for which the City is obligated to pay that will incur costs in excess of the amount of Six
44 Thousand, Fifty-Three Dollars (\$6,053) during the term of this Agreement.
45

46 D. Litigation Support. Consultant agrees to testify at City's request if
47 litigation is brought against City in connection with Consultant's report. Unless the
48 action is brought by Consultant or is based upon Consultant's negligence, City will
49 compensate Consultant for the preparation and the testimony at Consultant's standard
50 hourly rates.
51

52 4. Interest of Consultant.
53

54 A. Consultant (including principals, associates and professional
55 employees) covenants and represents that it does not now have any investment or
56 interest in real property and shall not acquire any interest, direct or indirect, in the area
57 covered by this contract or any other source of income, interest in real property or
58 investment which would be affected in any manner or degree by the performance of
59 Consultant's services hereunder. Consultant further covenants and represents that in
60 the performance of its duties hereunder no person having any such interest shall
61 perform any services under this contract.
62

63 Consultant is not a designated employee within the meaning of the
64 Political Reform Act because Consultant:
65

66 (1) will conduct research and arrive at conclusions with respect
67 to his/her rendition of information, advice, recommendation or counsel independent of
68 the control and direction of the City or of any City official, other than normal contract
69 monitoring; and
70

71 (2) possesses no authority with respect to any City decision
72 beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg.
73 18700(a)(2).)
74

75 5. Interest of Members and Employees of City. No member of the City and
76 no other officer, employee or agent of the City who exercises any functions or
77 responsibilities in connection with the carrying out of any project to which this
78 Agreement pertains, shall have any personal interest, direct or indirect, in this
79 Agreement, nor shall any such person participate in any decision relating to this
80 Agreement which affects his/her personal interests or the interest of any corporation,
81 partnership or association in which he/she is directly or indirectly interested.
82

83 6. Liability of Members and Employees of City. No member of the City and
84 no other officer, employee or agent of the City shall be personally liable to Consultant or
85 otherwise in the event of any default or breach of the City, or for any amount which may
86 become due to Consultant or any successor in interest, or for any obligations directly or
87 indirectly incurred under the terms of this Agreement.

88
89 7. Indemnification of City. Consultant hereby agrees to defend, indemnify
90 and save harmless the City, its officers, agents, employees and servants, from and
91 against any and all claims, liability or obligations based on negligence or willful
92 misconduct brought on account of or arising out of any acts, errors or omissions of
93 Consultant undertaken pursuant to this Agreement. The City has no liability or
94 responsibility for any accident, loss or damage to any work performed under this
95 Agreement whether prior to its completion and acceptance or otherwise. Consultant's
96 duty to indemnify and hold harmless, as set forth herein, shall include the duty to
97 defend as set forth in Section 2778 of the California Civil Code.

98
99 8. Consultant Not an Agent of City. City retains all rights of approval and
100 discretion with respect to the projects and undertakings contemplated by this
101 Agreement. Consultant, its officers, employees and agents shall not have any power to
102 bind or commit the City to any decision.

103
104 9. Independent Contractor. It is understood that Consultant, in the
105 performance of the work and services agreed to be performed by Consultant, shall act
106 as and be an independent contractor and not an agent or employee of City; and as an
107 independent contractor, Consultant shall obtain no rights to retirement benefits or other
108 benefits which accrue to City's employees, and Consultant hereby expressly waives any
109 claim it may have to any such rights.

110
111 10. Compliance with Laws.

112
113 A. General. Consultant shall use the standard of care in its profession
114 to comply with all applicable federal, state and local laws, codes, ordinances and
115 regulations. Consultant represents and warrants to City that it has all licenses, permits,
116 qualifications, insurance and approvals of whatsoever nature, which are legally required
117 for Consultant to practice its profession. Consultant represents and warrants to City
118 that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times
119 during the term of this Agreement any licenses, permits, insurance and approvals which
120 are legally required for Consultant to practice its profession. Consultant shall maintain
121 a City of Calistoga business license.

122
123 B. Workers' Compensation. Consultant certifies that it is aware of the
124 provisions of the California Labor Code, which require every employee to be insured
125 against liability for workers' compensation or to undertake self-insurance in accordance
126 with the provisions of that Code, and Consultant certifies that it will comply with such
127 provisions before commencing performance of this Agreement.

128

129 C. Injury and Illness Prevention Program. Consultant certifies that it is
130 aware of and has complied with the provisions of California Labor Code Section 6401.7.
131

132 D. City Not Responsible. The City is not responsible or liable for
133 Consultant's failure to comply with any and all of said requirements.
134

135 11. Confidential Information. All data, documents, discussions or other
136 information developed or received by or for Consultant in performance of this
137 Agreement are confidential and not to be disclosed to any person except as authorized
138 by City, or as required by law.
139

140 12. Insurance.

141 A. Minimum Scope of Insurance.

142 (1) Consultant agrees to have and maintain, for the duration of
143 the contract, a General Liability insurance policy insuring him/her and his/her firm to an
144 amount not less than One Million Dollars (\$1,000,000.00) combined single limit per
145 occurrence and in the aggregate for bodily injury, personal injury and property damage.
146
147
148

149 (2) Consultant agrees to have and maintain for the duration of
150 the contract an Automobile Liability insurance policy insuring him/her and his/her staff
151 to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined
152 single limit per accident for bodily injury and property damage.
153

154 (3) Consultant shall maintain professional errors and omissions
155 liability insurance for protection against claims alleging negligent acts, errors or
156 omissions which may arise from Consultant's operations under this Agreement, whether
157 such operations be by Consultant or by its employees, subcontractors, or
158 subconsultants. The amount of this insurance shall not be less than One Million Dollars
159 (\$1,000,000.00) on a claims-made annual aggregate basis.
160

161 (4) A Workers' Compensation and Employers' Liability policy
162 written in accordance with the laws of the State of California and providing coverage for
163 any and all employees of Consultant:
164

165 (a) This policy shall provide coverage for Workers'
166 Compensation (Coverage A).
167

168 (b) This policy shall also provide coverage for One Million
169 Dollars (\$1,000,000.00) Employers' Liability (Coverage B).
170

171 (c) Contractor shall provide to the City an endorsement
172 that the insurer waives the right of subrogation against the City, its officials, officers,
173 employees, volunteers, and agents.
174

175 (5) All of the following endorsements are required to be made a
176 part of each of the required policies, except for the Professional Liability and Workers'
177 Compensation and Employers' Liability policies, as stipulated below:
178

179 (a) "The City of Calistoga, its employees, officers, agents
180 and contractors are hereby added as additional insureds, but only as respects work
181 done by, for on behalf of the named insured."
182

183 (b) "This policy shall be considered primary insurance as
184 respects any other valid and collectible insurance the City may possess, including any
185 self-insured retention the City may have, and any other insurance the City does
186 possess shall be considered excess insurance only and shall not contribute with it."
187

188 (c) "This insurance shall act for each insured and
189 additional insured as though a separate policy had been written for each. This,
190 however, will not act to increase the limit of liability of the insuring company."
191

192 (6) Consultant shall provide to the City all certificates of
193 insurance with original endorsements affecting coverage required by this paragraph.
194 Certificates of such insurance shall be filed with the City on or before commencement
195 of performance of this Agreement. The City reserves the right to require complete,
196 certified copies of all required insurance policies at any time.
197

198 B. General Liability.
199

200 (1) Any failure to comply with reporting provisions of the policies
201 shall not affect coverage provided to the City, its officers, officials, employees or
202 volunteers.
203

204 (2) Consultant's insurance shall apply separately to each
205 insured against whom a claim is made or suit is brought, except with respect to the
206 limits of the insurer's liability.
207

208 C. All Coverages. Each insurance policy required in this item shall
209 provide that coverage shall not be canceled, except after 30 days' prior written notice by
210 certified mail, return receipt requested, has been given to the City. Current certification
211 of such insurance shall be kept on file with the City Secretary at all times during the
212 term of this Agreement.
213

214 D. Acceptability of Insurers. Insurance is to be placed with insurers
215 approved by the California Department of Insurance with a Best/Es rating of no less
216 than A:VII.
217

218 E. Deductibles and Self-Insured Retentions. Any deductibles or self-
219 insured retentions must be declared to and approved by the City. At the City's option,

220 Consultant shall demonstrate financial capability for payment of such deductibles or
221 self-insured retentions.
222

223 13. Assignment Prohibited. Neither the City nor Consultant may assign any
224 right or obligation pursuant to this Agreement. Any attempted or purported assignment
225 of any right or obligation hereunder shall be void and of no effect.
226

227 14. Termination of Agreement.
228

229 A. This Agreement and all obligations hereunder may be terminated at
230 any time, with or without cause, by the City upon written notice to the Consultant upon
231 90 days' written notice. Consultant may terminate this Agreement upon 90 days' written
232 notice.
233

234 B. If Consultant fails to perform any of its material obligations under
235 this Agreement, in addition to all other remedies provided by law, City may terminate
236 this Agreement immediately upon written notice.
237

238 C. Upon termination with or without cause, all finished and unfinished
239 documents, project data and reports shall, at the option of the City, become its sole
240 property and shall, at Consultant's expense, be delivered to the City or to any party it
241 may so designate.
242

243 D. In the event termination is without cause, Consultant shall be
244 entitled to any compensation owing to it hereunder up to the time of such termination, it
245 being understood that any payments are full compensation for services rendered prior
246 to the time of payment; provided, however, that Consultant shall be entitled to
247 compensation for work in progress at the time of termination.
248

249 15. Amendment. This Agreement constitutes the complete and exclusive
250 statement of the Agreement to City and Consultant. It may be amended or extended
251 from time to time by written agreement of the parties hereto.
252

253 16. Litigation Costs. If either party becomes involved in litigation arising out of
254 this Agreement or the performance thereof, the court in such litigation shall award
255 reasonable costs and expenses, including attorneys' fees, to the prevailing party. In
256 awarding attorneys' fees, the court will not be bound by any court fee schedule, but
257 shall, if it is in the interest of justice to do so, award the full amount of costs, expenses,
258 and attorneys' fees paid or incurred in good faith.
259

260 17. Time of the Essence. Time is of the essence of this Agreement, however,
261 the Consultant shall not be held responsible for delays caused by acts outside of
262 Consultant's control.
263

264 18. Written Notification. Any notice, demand, request, consent, approval or
265 communications that either party desires or is required to give to the other party shall be

266 in writing and either served personally or sent by prepaid, first class mail. Any such
267 notice, demand, etc. shall be addressed to the other party at the address set forth
268 herein below. Either party may change its address by notifying the other party of the
269 change of address. Notice shall be deemed communicated within 48 hours from the
270 time of mailing if mailed as provided in this section.

271
272 If to City: City of Calistoga
273 City Manager
274 1232 Washington Street
275 Calistoga, CA 94515
276

277 If to Consultant: Community Action Napa Valley (CANV)
278 Drene Johnson, Executive Director
279 3273 Claremont Way, Suite 207
280 Napa, CA 94559
281

282 19. Consultant's Books and Records.
283

284 A. Consultant shall maintain any and all ledgers, books of account,
285 invoices, vouchers, canceled checks, and other records or documents evidencing or
286 relating to charges for services, or expenditures and disbursements charged to City for
287 a minimum period of three (3) years, or for any longer period required by law, from the
288 date of final payment to Consultant to this Agreement.
289

290 B. Consultant shall maintain all documents and records, which
291 demonstrate performance under this Agreement for a minimum period of three (3)
292 years, or for any longer period required by law, from the date of termination or
293 completion of this Agreement.
294

295 C. Any records or documents required to be maintained pursuant to
296 this Agreement shall be made available for inspection or audit, at any time during
297 regular business hours, upon written request by the City Attorney, City Auditor, City
298 Manager, or a designated representative of any of these officers. Copies of such
299 documents shall be provided to City for inspection at City Hall when it is practical to do
300 so. Otherwise, unless an alternative is mutually agreed upon, the records shall be
301 available at Consultant's address indicated for receipt of notices in this Agreement.
302

303 D. Where City has reason to believe that such records or documents
304 may be lost or discarded due to dissolution, disbandment or termination of Consultant's
305 business, City may, by written request by any of the above-named officers, require that
306 custody of the records be given to City and that the records and documents be
307 maintained in City Hall. Access to such records and documents shall be granted to any
308 party authorized by Consultant, Consultant's representatives, or Consultant's
309 successor-in-interest.
310

311 20. Equal Employment Opportunity. Consultant is an equal opportunity
 312 employer and agrees to comply with all applicable state and federal regulations
 313 governing equal employment opportunity. Consultant will not discriminate against any
 314 employee or applicant for employment because of race, age, sex, creed, color, sexual
 315 orientation, marital status or national origin. Consultant will take affirmative action to
 316 ensure that applicants are treated during such employment without regard to race, age,
 317 sex, creed, color, sexual orientation, marital status or national origin. Such action shall
 318 include, but shall not be limited to, the following: employment, upgrading, demotion or
 319 transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or
 320 other forms of compensation; and selection for training, including apprenticeship.
 321 Consultant further agrees to post in conspicuous places, available to employees and
 322 applicants for employment, notices setting forth the provisions of this nondiscrimination
 323 clause.

324
 325 21. Waiver. No failure on the part of either party to exercise any right or
 326 remedy hereunder shall operate as a waiver of any other right or remedy that party may
 327 have hereunder.

328
 329 22. Execution. This Agreement may be executed in several counterparts,
 330 each of which shall constitute one and the same instrument and shall become binding
 331 upon the parties when at least one copy hereof shall have been signed by both parties
 332 hereto. In approving this Agreement, it shall not be necessary to produce or account
 333 for more than one such counterpart.

334
 335 23. News Releases/Interviews: All Consultant and subconsultant news
 336 releases, media interviews, testimony at hearings and public comment shall be
 337 prohibited unless expressly authorized by the City.

338
 339 24. Venue. In the event that suit shall be brought by either party hereunder,
 340 the parties agree that trial of such action shall be held exclusively in a state court in the
 341 County of Napa, California.

342
 343 IN WITNESS WHEREOF, the City and Consultant have executed this
 344 Agreement as of the date first above written.

345
346
347 CITY OF CALISTOGA

CONSULTANT

348
349
350
351
352 By: _____
353 Richard D. Spitler

By: _____
Drene Johnson

354
355 Title: City Manager

Executive Director

356

357 APPROVED AS TO FORM:

ATTEST

358

359

360

361 _____
Michelle Marchetta Kenyon

362 City Attorney

363

Susan Sneddon, City Clerk

EXHIBIT "A"

Napa Valley Shelter Project

Homeless Shelters

Samaritan Family Center – SFC is an entry point to services for homeless families. Emergency shelter is offered for up to 90 days along with coaching and case management to assist families in becoming financially self sufficient and sustainably housed. It has room for seven families. In addition, up to 3 families may stay for one night only while other temporary shelter is arranged.

The South Napa Shelter, a facility for clean and sober individuals 18 and older has two primary goals for its guests – increasing income and securing sustainable housing. We help them achieve those goals through weekly coaching/case management, requiring that they volunteer at the center and in the community, and providing the tools and encouragement to succeed. All guests are held accountable for their behavior at the center and in the community. All guests must be referred through the HOPE Center.

The Emergency Winter Shelter provides a safe, warm and dry place to sleep for Napa's most difficult to reach homeless population. There are few requirements for this shelter beyond basic civil behavior. Each year however, people move from the facility into other shelters and eventually sustainable housing. All guests must be referred through the HOPE Center.

Shelter Project Services

The HOPE Resource Center provides showers, toilets, mail, phones, laundry, and other basic services for more than 85 homeless adults daily. A second tier of services, including medical care, job development, housing assistance, legal aid, mental health outreach, and any other services identified to assist this most-hard-to-reach population are also available and encouraged. Screening and referral for the South Napa Shelter is done at the HOPE Center. Vouchers for the Winter Shelter are distributed at this site.

Project Ninety is a 24 hour, alcohol and drug contracted treatment program under Health and Human Services Agency, Alcohol and Drug Services Division. It provides detoxification and residential treatment services to eligible clients in Napa County. They run a 4 to 7 day detoxification treatment services program and a 90 day, short term, residential treatment program for clients with alcohol and drug issues. They provide individual, group, and collateral services. Room and board are services included under this contract. They also provide linkage and referral services to residents of Napa County. Napa County funds 30 beds of the 55 beds that P90 is licensed for by the State Department of Alcohol and Drug Programs. Eight of the 30 beds are designated for Probation and Corrections eligible clients. P90 also operates a 12 bed sober living program for clients that have used P90 services. Currently, some of these beds are available to Napa County alcohol and drug clients under the Proposition 36 program.