

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council Members
FROM: Susan Sneddon, City Clerk
DATE: June 3, 2008
SUBJECT: One-year contract for publication of legal advertisements for the period ending June 30, 2009

APPROVAL FOR FORWARDING:


 James C. McCann, City Manager

1 **ISSUE:** Consideration of a Resolution awarding a one-year contract to the Calistoga Tribune for
 2 publication of legal notices for the period ending June 30, 2009 and authorizing the City Manager
 3 to execute the contract.

4
 5 **RECOMMENDATION:** Adopt Resolution.

6
 7 **BACKGROUND:** Each year, in accordance with Public Contract Code §20169, cities that have
 8 more than one newspaper of general circulation must publish a notice inviting bids for the
 9 publication of legal notices. The City currently has two adjudicated newspapers within the City:
 10 the Weekly Calistogan, published by the Napa Valley Publishing Company (NVP), and the
 11 Calistoga Tribune. The Calistoga Tribune is the City's current provider.

12
 13 **DISCUSSION:** On March 13, 2008 staff published a notice inviting written bids for legal
 14 advertising to be submitted to the City Clerk by Friday, April 25, 2008, we also sent the Request
 15 for Proposal (RFP) to the Calistoga Tribune and NVP on this date. Proposals were received
 16 from NVP and the Calistoga Tribune by the required due date.

17
 18 After review of the bids it was determined that both the Calistoga Tribune and the NVP's
 19 proposal were responsive to the points in the RFP.

20
 21 Proposal Evaluation

22 The City Clerk established the following as the criteria for review of the proposals received:

- 23 1. Completeness of proposal and responsiveness to the RFP.
 24 2. Compliance with State and Federal requirements.
 25 3. Circulation and coverage.
 26 4. Frequency of publication.
 27 5. Cost.

28 The following lists the **Calistoga Tribune's** response to the four criteria:

29 1. Completeness of proposal and responsiveness to the RFP. Staff determined the proposal
30 to be complete and responsive to the RFP.

31 2. Compliance with State and Federal Requirements. State law requires publication of legal
32 notices in a "newspaper of general circulation." The Calistoga Tribune meets this
33 requirement of the State definition and the Federal requirement for publication of notices for
34 projects or programs utilizing grant funding (such as Community Development Block
35 Grants).

36 3. Circulation and Coverage for Aug '06-Sept '07 (Postal Report). Following is data for the
37 circulation amounts for August 2006 thru September 2007:

817	Subscriptions mailed in-County
<u>205</u>	"Single copy" (sold through newsracks and vendors or subscriptions delivered within the Napa County)
1,022	Total

38
39 4. Frequency of Publication. The Calistoga Tribune publishes one time per week (Fridays).

40
41 The following lists the **NVP's (Weekly Calistogan)** response to the four criteria:

42 Completeness of proposal and responsiveness to the RFP. Staff determined the proposal
43 to be complete and responsive to the RFP.

44 Compliance with State and Federal Requirements. State law requires publication of legal
45 notices in a "newspaper of general circulation." The NVP meets this requirement of the
46 State definition and the Federal requirement for publication of notices for projects or
47 programs utilizing grant funding (such as Community Development Block Grants).

48 Circulation and Coverage for Aug '06-Sept '07 (Postal Report). Following is data for the
49 circulation amounts for August 2006 thru September 2007:

327	Subscriptions mailed in-County
<u>589</u>	"Single copy" (sold through newsracks and vendors or subscriptions delivered within the Napa County)
916	Total

50
51 Frequency of Publication. The Weekly Calistogan publishes one time per week
52 (Thursday).

53 The following is the cost for publishing legal and display advertisements in the **Calistoga**
54 **Tribune** and the **Weekly Calistogan**:

55 Legal Advertisement: Both newspapers prepared the same sample legal advertisement
56 and provided the cost to run the ad. The Calistoga Tribune charges \$10.50 per column
57 inch for legal notices; however they use a font size and column width which results in a
58 lower cost of \$86.62, as compared to the Weekly Calistogan charge of \$9.19 per
59 column inch plus \$35 per ad for bolding, totaling \$117.19 (\$80.10+\$35.00) for the same
60 ad.

61
62 Display Advertisement: Both newspapers prepared the same sample display
63 advertisement and provided the cost to run the ad. The Calistoga Tribune's cost results
64 in a lower cost of \$126.00 (\$10.50 per column inch). The Weekly Calistogan cost to
65 run the display ad was \$152.40 (\$12.70 per column inch).

Legal Advertisement Contract

June 3, 2008

Page 3 of 3

66

67 Following is a summary of the City's advertising costs (both legal notices and display
68 advertising) for Fiscal Year 2006/2007 and Fiscal Year 2007/2008 to current:

69

70	Fiscal Year 2006/2007	\$2,500
71	Fiscal Year 2007/2008	\$2,800 (estimate)

72

73 **ANALYSIS:**

74 In the RFP a copy of the U.S. Postal Service "Statement of Ownership Management and
75 Circulation" (Postal Report) filed for August 2006 through September 2007, and the circulation
76 amounts for February 2008 were requested (the number of mailed newspapers is verified in this
77 report by the U.S. Postal Service). Comparing the two newspapers using the Postal Report the
78 in-County subscriptions (majority within the City) for the Calistoga Tribune was 817 and the
79 Weekly Calistogan was 327.

80

81 Comparing the two newspapers in-County vendor sales (dealers/carriers, street vendors,
82 counter sales, and other paid distribution) the Calistoga Tribune was 205 and the Weekly
83 Calistogan was 589. These figures are provided by the newspapers themselves and are not
84 independently confirmed. Staff acknowledges that the total distribution of each paper (the
85 verified mailed subscriptions and the self reported distribution) are very close (within 12% of
86 each other). However, the City's main intent in contracting for legal advertising is to provide
87 legal notices to the largest percentage of the community with certainty. We believe that the
88 assurance available through the significant subscription base established by the Calistoga
89 Tribune will provide superior notice of formal municipal actions (Planning Department land use
90 application public hearing notices, City Council Municipal Code amendments, Ordinance
91 adoptions, etc.) to the general Calistoga public.

92

93 The City has contracted with the Calistoga Tribune for regular legal noticing purposes during
94 Fiscal Year 2007/2008. During this period staff has been pleased with the superior appearance
95 of advertisements provided by the Calistoga Tribune, and staff has found the Calistoga Tribune
96 to be flexible in publishing deadlines and thorough and accurate in notice publishing.

97

98 Given the above, staff recommends a contract with the Calistoga Tribune based upon
99 completeness and responsiveness to the RFP, compliance with State and Federal
100 requirements, the higher number of paid in-County subscribers as compared to the Weekly
101 Calistogan, and reasonableness of the fees for legal and display advertising.

102

103 **FISCAL IMPACT:** The estimated cost for publishing City legal notices and display
104 advertisements not including personnel advertising in Fiscal Year 2008/2009 is \$3,000, which is
105 included in the Fiscal Year 2008/2009 budget.

106

107 **ATTACHMENTS:**

- 108 1. Resolution
- 109 2. Comparison spreadsheet
- 110 3. Calistoga Tribune Proposal
- 111 4. Professional Services Agreement

RESOLUTION NO. 2008-_____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA,
STATE OF CALIFORNIA, AWARDDING A ONE-YEAR CONTRACT TO THE CALISTOGA
TRIBUNE FOR PUBLICATION OF LEGAL ADVERTISEMENTS FOR THE PERIOD ENDING
JUNE 30, 2009 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT**

Authorizing Agreement No. _____

1 **WHEREAS**, the City of Calistoga (City) publishes legal notices in a newspaper of general
2 circulation pursuant to California Government Code § 6060 et al; and
3

4 **WHEREAS**, each year, in accordance with Public Contract Code §20169, cities that have
5 more than one newspaper of general circulation must publish a notice inviting bids for the
6 publication of legal notices; and
7

8 **WHEREAS**, the City currently has two adjudicated newspapers within the City: the
9 Weekly Calistogan, published by the Napa Valley Publishing Company (NVP), and the Calistoga
10 Tribune; and
11

12 **WHEREAS**, on March 13, 2008, the City filed a Notice Inviting Written Bids for Legal
13 Advertising, said bids to be submitted by Friday, April 25, 2008; and
14

15 **WHEREAS**, the City determined that proposals submitted by the Calistoga Tribune and the
16 Weekly Calistogan, published by the NVP, were complete and responsiveness; and
17

18 **WHEREAS**, the City desires to enter into an agreement with the Calistoga Tribune for City-
19 wide legal advertising.
20

21 **NOW, THEREFORE BE IT RESOLVED** that subsequent contract must be awarded by the
22 City Council by June 30, 2008.
23

24 **NOW, THEREFORE BE IT FURTHER RESOLVED** that the City Council of the City of
25 Calistoga hereby authorizes the City Manager to execute an agreement substantially in accordance
26 with the attached Professional Services Agreement for publication of legal notices and legal
27 advertisements with the Calistoga Tribune subject to review and approval by the City Attorney.
28

29 **PASSED, APPROVED, AND ADOPTED** by the City Council of the City at a regular meeting
30 held this 3rd day of June 2008 by the following vote:
31

32
33 **AYES:**

34 **NOES:**

35 **ABSTAIN/ABSENT:**
36
37
38
39

40 _____
41 **JACK GINGLES , Mayor**

42 **ATTEST:**

43 _____
44 **SUSAN SNEDDON, City Clerk**

Contract for publication of legal advertisements (period ending June 30, 2009)

Circulation and Coverage for Aug '06-Sept '07 (Postal Report)

	Aug '06-Sept '07 mailed in-County subscriptions	% of mailed paid subscriptions in-County
Tribune	817	71%
Callistogan	327 *	29%
Totals	1144	

*99 mailed in-County per Postal Report correction provided by NVP after the proposal due date.

Circulation and Coverage for February 2008

	Feb '08 mailed in-County subscriptions	% of mailed paid subscriptions in-County
Tribune	775	75%
Callistogan	262	25%
Totals	1037	

Calistoga Tribune

1007 Washington St. Suite 3 • Calistoga, CA 94515
(707) 942-5181 • FAX (707) 942-6508

PAT HAMPTON & RAMONA ASMUS - PUBLISHERS

CITY OF CALISTOGA
City Clerk

APR 24 2008

RECEIVED

2pm

City Clerk's Office
City of Calistoga
1232 Washington St.
Calistoga, CA 94515

April 24, 2008

Dear City of Calistoga:

Attached please find the completed RFP for the 2008-2009 city legal advertising contract submitted by the Calistoga Tribune.

To condense the requested information:

- 1) Our proposed advertising rate is \$10.50 a column inch for both legal and display advertising, a slight increase over the past two years. Faced with a 4 % increase in printing, newsprint and postage costs, it is an unfortunate reality of business that costs increase.
- 2) Our circulation according to the requested Sept.-Oct. Statement of Circulation postal report submitted to the Calistoga Post Office Sept. 24, 2007:
 - a. 1,191 Paid Distribution
 - b. 817 homes in the 94515 ZIP
 - c. 167 homes outside Napa County
 - d. 205 Newsrack & Vendor Sales
- 3) Our standing as the highest circulation weekly in Calistoga is still unchanged, as is, I believe, our credibility as an accurate and respected newspaper.

Pat Hampton, publisher

13. Publication Title <i>Calistoga Tribune</i>		14. Issue Date for Circulation Data Below <i>Sept, 21, 2007</i>	
15. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)		<i>1250</i>	<i>1250</i>
b. Paid Circulation (By Mail and Outside the Mail)	(1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	<i>167</i>	<i>167</i>
	(2) Mailed In-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	<i>817</i>	<i>817</i>
	(3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®	<i>205</i>	<i>205</i>
	(4) Paid Distribution by Other Classes of Mail Through the USPS (e.g. First-Class Mail®)	<i>2</i>	<i>2</i>
c. Total Paid Distribution (Sum of 15b (1), (2), (3), and (4))		<i>1191</i>	<i>1191</i>
d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)	(1) Free or Nominal Rate Outside-County Copies included on PS Form 3541	<i>0</i>	<i>0</i>
	(2) Free or Nominal Rate In-County Copies Included on PS Form 3541	<i>0</i>	<i>0</i>
	(3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g. First-Class Mail)	<i>0</i>	<i>0</i>
	(4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	<i>0</i>	<i>0</i>
e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3) and (4))		<i>0</i>	<i>0</i>
f. Total Distribution (Sum of 15c and 15e)		<i>1191</i>	<i>1191</i>
g. Copies not Distributed (See Instructions to Publishers #4 (page #3))		<i>59</i>	<i>59</i>
h. Total (Sum of 15f and g)		<i>1250</i>	<i>1250</i>
i. Percent Paid (15c divided by 15f times 100)		<i>100%</i>	<i>100%</i>

16. Publication of Statement of Ownership
 If the publication is a general publication, publication of this statement is required. Will be printed in the *Sept, 28, '07* issue of this publication.
 Publication not required.

17. Signature and Title of Editor, Publisher, Business Manager, or Owner
pathampton, publisher Date *9-26-07*

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).



Processing information request...
Please Wait...

Transactions > Postage Statement Processing
Periodicals - One Issue or One Edition > Receipt

Today's Date: 04/18/2008

Final			
3541	US Postal Service Periodicals Statement of Mailing - P.S. 3541- Regular	TRANS # 200810914394551M1	
Postage Statement: 53300905		Mailer's Job#:	
CALISTOGA TRIBUNE PO BOX 1176 CALISTOGA, CA 94515-6176			
USPS Per. #: 20698	Mailing Date: 04/18/2008	Location: 0301	Finance Number: 05-1134
CAPS Acct NO: N/A		CAPS TRANS NO: N/A	
Issue Number:	Issue Date: 2008-04-18 00:00:00.0	Volume Number:	
Procs cat: Flat (FL)	Comments:	VERIFICATION SUMMARY: No verification errors.	
Issue: 04/18/2008 Edition: N/A Advertising: 34% Wgt of copy: 0.1370 lbs.		3	
Caps Customer Ref. ID: N/A		Mailing at: Post Office Calistoga CA 94515-9998	

In-County

Pound Rate (Per pound or fraction)

Line #	Zone	Subscriber Copies	Nonsubscriber Copies	Total Copies	Total Pounds	Rate	Postage
A01	DDU	690	0	690	95.0000	0.132	\$12.5400
A02	None	85	0	85	12.0000	0.171	\$2.0520
A03	Subtotals	775	0	775	107.0000		\$14.5920

Piece Rate (Presort)

Line #	Level / Description	Copies	Addressed Pcs.	Rate	Postage
A04	Basic - Nonautomation	2	2	0.122	\$0.2440
A09	3-Digit - Automation Flats	8	8	0.099	\$0.7920
A12	5-Digit - Automation Flats	68	68	0.093	\$6.3240
A13	Carrier Route - Basic	697	697	0.056	\$39.0320
A16	Subtotals	775	775		\$46.3920
A17	Number of Addressed Pieces at DDU Rate		690	-0.008	-\$5.5200
A18	Total Piece Rate Discount				-\$5.5200
A19	Piece Rate Subtotal				\$40.8720
A23	Total Part A - Total In-County Postage				\$55.4640

Outside-County

Advertising Pound Rate (Per pound or fraction)

Line #	Zone	Subscriber Copies	Nonsubscriber Copies	Total Copies	Total Pounds	Advertising Pounds	Rate	Postage
B04	1 & 2	90	0	90	12.0000	4.0000	0.239	\$0.9560
B05	3	12	0	12	2.0000	1.0000	0.257	\$0.2570
B06	4	19	0	19	3.0000	1.0000	0.303	\$0.3030
B07	5	5	0	5	1.0000	1.0000	0.372	\$0.3720
B09	7	4	0	4	1.0000	1.0000	0.534	\$0.5340
B10	8	14	0	14	2.0000	1.0000	0.610	\$0.6100
B11	Subtotals	144	0	144	21.0000	9.0000		\$3.0320

Nonadvertising Pound Rate (Per pound or fraction)

Line #	Zone	Total Pounds	Advertising Pounds	Nonadvertising Pounds	Rate	Postage
B15	All Others	21.0000	9.0000	12.0000	0.199	\$2.3880
B16				Subtotals		\$2.3880

B17	Total Part B - Total Pound Rate Postage					\$5.4200
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Piece Rate and Discounts (Per addressed piece)

Machinable Flats

Line #	Level / Description	Copies	Addressed Pcs.	Rate	Postage
C01	Mixed ADC - Barcoded	55	55	0.404	\$22.2200
C03	ADC - Barcoded	30	30	0.350	\$10.5000
C05	3-Digit - Barcoded	43	43	0.331	\$14.2330
C07	5-Digit - Barcoded	16	16	0.268	\$4.2880

C29	Subtotals	144	144		\$51.2410
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C30	Nonadvertising % discount			0.00091	\$8.6486
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C31	Total Part C - Total Piece Rate Postage				\$42.5924
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Bundle Rates

Line #	Container Level	Bundle Level	Bundles	Rate	Postage
D01	Mixed ADC	Mixed ADC	2	0.100	\$0.2000
D02	Mixed ADC	ADC	3	0.129	\$0.3870
D03	Mixed ADC	3-Digit/SCF	2	0.134	\$0.2680
D11	SCF/3-Digit	3-Digit/SCF	5	0.039	\$0.1950
D12	SCF/3-Digit	5-Digit	2	0.084	\$0.1680
D13	SCF/3-Digit	Carrier Route	1	0.095	\$0.0950
D16	5-Digit	Carrier Route	23	0.039	\$0.8970
D18	Total Part D - Total Bundle Rate Postage			38	\$2.2100

Sack/Tray Rates

Line #	Container Level	Entry	Sacks/Trays	Rate	Postage
E03	Mixed ADC Sack/Tray	Origin Post Office/DMU	2	0.420	\$0.8400
E13	3-Digit/SCF Sack/Tray	Origin Post Office/DMU	3	1.900	\$5.7000
E25	Total Part E - Sack and Tray Rate Postage			5	\$6.5400

Pallet Rates

Line #	Container Level	Entry	Pallets	Rate	Postage
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**PROFESSIONAL SERVICES AGREEMENT
FOR PUBLICATION OF LEGAL NOTICES
AND LEGAL ADVERTISEMENTS**

Authorizing Agreement No. ____

THIS AGREEMENT is entered into as of the _____ day of _____, by and between the CITY OF CALISTOGA herein called the "City", and XX, herein called the "Service Provider".

Recitals

WHEREAS, City desires to obtain XX services in connection with XX; and

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

WHEREAS, City desires to retain Service Provider 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, Service Provider 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 services of Service Provider are to commence no sooner than XX and, subject to City Council approval, be completed not later than XX. Any changes to these dates must be approved in writing by the City Manager or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Service Provider, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "B". However, in no event shall the amount exceed Twenty Thousand Dollars (\$20,000). 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 a monthly basis. City shall review Service Provider's statement and pay Service Provider for services rendered within 30 days of receipt of the Service Provider's statement.

C. Changes in Compensation. Service Provider will not undertake any work that will incur costs in excess of the amount of Twenty Thousand Dollars (\$20,000).

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

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Service Provider, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Service Provider for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Service Provider or to any other party. Any modifications made by the City to any of the Service Provider's documents or any partial use or reuse of the documents without the express written consent of the Service Provider will be at the City's sole risk and without liability to the Service Provider and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.

5. Employment of Other Service Providers, Specialists or Experts. Service Provider will not employ or otherwise incur an obligation to pay other Service Providers, specialists or experts for services in connection with this Agreement without the prior written approval of the City.

6. Interest of Service Provider.

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

Service Provider is not a designated employee within the meaning of the Political Reform Act because Service Provider:

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

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

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

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

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

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

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

12. Compliance with Laws.

A. General. Service Provider shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Service Provider represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Service Provider to practice its profession. Service Provider represents and warrants to City that Service Provider 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 Service Provider to practice its profession. Service Provider shall maintain a City of Calistoga business license.

B. Workers' Compensation. Service Provider 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 Service Provider certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Service Provider 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.

D. City Not Responsible. The City is not responsible or liable for Service Provider'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 Service Provider 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.

14. Insurance.

A. Minimum Scope of Insurance.

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

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

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

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Service Provider:

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

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

(c) A waiver of subrogation shall be required for the Worker's Compensation in favor of the City of Calistoga.

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

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

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

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

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

B. General Liability.

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

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

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

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

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

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

16. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Service Provider upon 5 days' written notice. Service Provider may terminate this Agreement upon 30 days' written notice.

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

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

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

17. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Service Provider. It may be amended or extended from time to time by written agreement of the parties hereto.

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

19. Time of the Essence. Time is of the essence of this Agreement, however, the Service Provider shall not be held responsible for delays caused by acts outside of Service Provider's control.

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

If to City: City Of Calistoga
 City Manager
 1232 Washington Street
 Calistoga, CA 94515

If to Service Provider: XX
 XX
 XX

21. Service Provider's Books and Records.

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

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

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

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

22. Equal Employment Opportunity. Service Provider is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Service Provider will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Service Provider will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Service Provider further agrees to post in

conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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

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

25. News Releases/Interviews: All Service Provider and Sub-Service Provider news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

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

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

SERVICE PROVIDER

By: _____
James C. McCann
City Manager

By: Pat Hampton
Title: Publisher

APPROVED AS TO FORM:

ATTEST

Michelle Marchetta Kenyon
City Attorney

Susan Sneddon, City Clerk