

FINAL

**AGREEMENT BETWEEN COUNTY OF NAPA AND CITY OF CALISTOGA  
FOR PROVISION OF PUBLIC LIBRARY SERVICES**

**IN THE CITY OF CALISTOGA**

County of Napa Agreement # 5089

City of Calistoga Agreement # 0009

This Agreement made and entered into as of the 22nd day of April 2003, by the COUNTY OF NAPA, a political subdivision of the State of California (hereinafter "COUNTY"), and the CITY OF CALISTOGA, a Municipal Corporation (hereinafter "CITY").

**RECITALS**

**WHEREAS**, COUNTY and CITY are legally authorized to enter into intergovernmental agreements for services; and

**WHEREAS**, COUNTY has governance authority over the Napa City-County Library (hereinafter "LIBRARY"); and

**WHEREAS**, LIBRARY, which is a department of COUNTY, currently provides public library services to CITY under County Agreement No. 2974, executed November 13, 1990, relating to operation of the LIBRARY branch located in CITY (hereinafter "BRANCH" or "CALISTOGA LIBRARY"); and

**WHEREAS**, BRANCH is located in the building located at 1108 Myrtle, Calistoga, California, which building was purchased by COUNTY and is held under a constructive trust by CITY for "public purposes", as described in the trial court ruling (No. 23665 September 19, 1979) and affirmed by the Court of Appeal in Calistoga Civic Club v. City of Calistoga ((1983) 143 Cal. App. 3d. 111); and

**WHEREAS**, COUNTY, CITY and LIBRARY are desirous to continue providing quality public library services to the residents of CITY at the CALISTOGA LIBRARY;

**TERMS**

**NOW, THEREFORE**, the parties hereto mutually agree in accordance with the terms and conditions set forth herein:

**Section 1.0 DEFINITIONS**

Unless otherwise required by the context, the following definitions shall apply:

- 1.1 Minimum Service Level. "Minimum Service Level" is defined as staffing, collection, programming activities and open hours that are funded by this Agreement, as follows:

- a. Staffing: BRANCH shall be staffed with a minimum of one paid employee during all open hours.
- b. Collection: BRANCH shall include a collection of items that is appropriate in size to the service area population and is typical of other library branches in the LIBRARY system.
- c. Programming: BRANCH shall include programming and services as typically provided by the LIBRARY system to the other library branches, including but not limited to, the children's summer reading program.
- d. Hours: Except for being closed on COUNTY holidays, BRANCH shall be open 38 hours per week, contingent on adequate funding sources as described in Sections 5 and 6 below.
- e. Holidays: BRANCH shall be closed on COUNTY holidays, unless otherwise provided by recommendation of the LIBRARY Commission and approved by the Napa County Board of Supervisors.

- 1.2 Collection. "Collection" is defined as the materials and electronic resources available in BRANCH for public use, which may include, but is not limited to:
  - a) items owned by LIBRARY, such as books, magazines, newspapers, cassettes, CD's, videos, DVD's and other audio-visual materials; and
  - b) electronic resource services provided by the LIBRARY, such as licensed databases and computers for Internet access.
- 1.3 Service area. "Service area" is defined as the areas located within the boundaries of CITY and the Calistoga Unified School District. For population statistics, the U. S. Census for CITY and the CCD (Calistoga County Division) shall be included.
- 1.4 Operating Expenses. "Operating expenses" is defined as all costs pertaining to regular, ongoing operations of BRANCH, including, but not limited to, salaries and benefits, acquisition of Collection materials, database licenses, telecommunications, office expenses, equipment costs, building and landscape maintenance, delivery, utilities (electricity, gas, water, sewer), administrative overhead, and technical services.
- 1.5 Fiscal Year. "Fiscal Year" is defined as the period from July 1 of one calendar year through June 30 of the next calendar year.

## **Section 2.0 TERM OF AGREEMENT**

- 2.1 The term of this Agreement shall be from July 1, 2002, and shall remain in effect until terminated pursuant to the terms of this Agreement.

**Section 3.0 POLICIES**

The CALISTOGA LIBRARY shall operate as a branch of LIBRARY and is subject to the memoranda of understanding and all policies, procedures, rules, and regulations that govern COUNTY and LIBRARY employees, facilities and operations.

**Section 4.0 OWNERSHIP**

- 4.1. The CALISTOGA LIBRARY property at 1108 Myrtle, Calistoga, California, and all improvements thereon, are owned by COUNTY. Pursuant to an Order of the Napa County Superior Court in Case #23665, issued September 19, 1978, CITY has been provided with a constructive trust over the building to assure that it continues to be used for "public purposes," as described in the decision of Calistoga Civic Club v. City of Calistoga ((1983) 143 Cal. App. 3d. 111).
- 4.2. LIBRARY shall retain full title to all purchases made by LIBRARY for the BRANCH. This includes the Collection and all other assets such as furnishings and equipment.

**Section 5.0 DUTIES, FUNDING AND RESPONSIBILITIES**

- 5.1 LIBRARY. LIBRARY shall:
  - a. Provide library services, which includes a collection of books and other materials for check out and in-house usage;
  - b. Provide staff to check out materials, answer informational questions, assist patrons with the use of LIBRARY facilities and services and provide programming activities;
  - c. Provide access to materials not physically housed in BRANCH via the public access catalog, interlibrary borrowing, and delivery services;
  - d. Provide thirty-eight (38) open hours per week, subject to funding from various sources further described below;
    - 1) LIBRARY shall provide a minimum of twenty-eight (28) open hours per week funded by the LIBRARY funds generated within the Calistoga Unified School District outside the CITY limits and by the CITY and COUNTY as described in Sections 5.2 and 5.3 below.
    - 2) LIBRARY shall provide an additional ten (10) open hours per week, funded by other LIBRARY revenues unless overall LIBRARY revenues, excluding specific-purpose grants, fall below the actual amount received into the LIBRARY fund in the immediately preceding fiscal year. Any increase or reduction in the LIBRARY-funded open hours shall be consistent with other LIBRARY branches.
  - e. Pay all operating expenses necessary to provide the open hours of service as defined in Section 1.1(d), contingent on receiving revenues set forth in this

Agreement and other LIBRARY revenues, excluding specific-purpose grants, with such expenses incorporated into the annual budget of the LIBRARY;

- f. Be responsible for the development and maintenance of the Collection, including the selection, purchase, processing and withdrawal of items, and the determination of database license agreements; and
- g. Continue to provide ongoing library service unless interrupted by a force majeure including, but not limited to, war, civil disturbance, labor dispute, or other cause beyond the LIBRARY's or COUNTY's direct control.

5.2 CITY. CITY shall:

- a. Provide minor building maintenance service to CALISTOGA LIBRARY on an as needed basis, to the extent provided in Exhibit A "CITY Minor Building Maintenance Services to the CALISTOGA LIBRARY;
- b. Agree that in fiscal year 2002-2003, the COUNTY Auditor shall apportion and transfer property tax revenue in the amount of \$43,250 from the CITY's tax code 15100 in tax rate area 001-000 to the LIBRARY Fund (tax code 11500). This apportioned offset amount shall be transferred from the second installment of property tax revenue;
- c. Agree that in future fiscal years, the apportioned offset amount transferred shall be \$43,250 plus the percentage increase or decrease of the total revenue in tax rate area 001-000, tax code 15100, for that fiscal year in relation to the total revenue received in tax rate area 001-000, tax code 15100, for fiscal year 2002-2003. One-half of this amount shall be transferred from the first installment of property tax revenue and the remaining one-half shall be transferred from the second installment of property tax revenue; and
- d. Agree that any LIBRARY revenues resulting from this Agreement shall be applied to providing CALISTOGA LIBRARY operations at the Minimum Service Level.

5.3 COUNTY. COUNTY shall:

- a. Agree that in fiscal year 2002-2003, the COUNTY Auditor shall apportion and transfer property tax revenue in the amount of \$43,250 from the COUNTY's tax code 10000 in tax rate area 001-000 to the LIBRARY Fund (tax code 11500). This apportioned offset amount shall be transferred from the second installment of property tax revenue;
- b. Agree that in future fiscal years, the apportioned offset amount transferred shall be \$43,250, plus the percentage increase or decrease of the total revenue in tax rate area 001-000, tax code 10000, for that fiscal year in relation to the total revenue received in tax rate area 001-000, tax code 10000, for fiscal year 2002-2003. One-half of this amount shall be transferred from the first installment of property tax revenue and the remaining one-half shall be transferred from the second installment of property tax revenue;
- c. Agree that any LIBRARY revenues resulting from this Agreement shall be applied to providing CALISTOGA LIBRARY operations at the Minimum Service Level; and

- ~~8~~ d. Agree that the Property Tax revenues collected in the Calistoga Unified School District outside the CITY limits, which are apportioned to the LIBRARY Fund, shall be applied to providing CALISTOGA LIBRARY operations at the Minimum Service Level.

5.4 CITY and COUNTY. CITY and COUNTY shall:

- a. Agree that the terms of County Agreement No. 2974 shall cease to be in force and effect upon the execution of the present Agreement and approval of the Stipulation and Order set forth in section 5.4(b) by the Court; and
- b. Obtain a Stipulation and Order of the Court which confirms that the terms of the present Agreement are consistent with the provisions of the Court Order in Napa County Superior Court Case #23665, issued September 19, 1978, and described in Calistoga Civic Club v. City of Calistoga ((1983) 143 Cal. App. 3d. 111), which established a constructive trust for CITY with respect to the CALISTOGA LIBRARY building.
- c. The parties hereby agree that the Napa County Counsel and Calistoga City Attorney are authorized to complete the Stipulation and Order in section 5.4(b), without any further action of the respective parties legislative bodies.
- d. This Agreement shall become immediately effective upon approval of the Stipulation and Order set forth in section 5.4(b).

**Section 6.0 EXPANDED OR REDUCED SERVICE LEVELS**

6.1 Expansion

- ~~8~~ a. LIBRARY reserves the right to provide expanded or enhanced service levels if LIBRARY Fund revenues and CITY and COUNTY apportionments warrant and such expansion and such expansion conforms to overall LIBRARY service goals and COUNTY policy.
- b. CITY reserves the right to contract with COUNTY and LIBRARY under separate agreement for additional service hours.

6.2 Reduction

- a. LIBRARY agrees not to reduce the Minimum Service Level for any subsequent fiscal year, unless one or more of the following conditions occur:
  - 1) LIBRARY revenues, received through apportioned property taxes designated to the LIBRARY Fund collected within the unincorporated area of the Calistoga Unified School District, fall below the actual amount collected from that same tax rate area for the LIBRARY fund in the immediately preceding fiscal year; or
  - 2) Predicted operating expenses of BRANCH for any subsequent fiscal year exceed the revenue provided by this agreement in Section 5.0.
- b. LIBRARY and COUNTY reserve the right not to reduce the CALISTOGA LIBRARY Minimum Service Level, even if the conditions described in Paragraphs a.1 and/or a.2 occur.

**Section 7.0 FACILITY IMPROVEMENTS**

Any major renovation of the existing building to improve and/or expand the facility or any plan to build a new facility shall be mutually planned and negotiated as a partnership among LIBRARY, COUNTY, and CITY.

**Section 8.0 MODIFICATION AND TERMINATION**

- 8.1 This Agreement shall remain in full force and effect until amended, modified or terminated.
- 8.2 If either party desires to terminate this Agreement for cause or for any other reason, that party shall notify the other party in writing by July 31 of the fiscal year in which termination is to occur. The termination date is agreed to be June 30 of the same fiscal year in which said notification occurs.
- 8.3 Upon termination, CITY and COUNTY may negotiate a new Agreement.

**Section 9.0 NOTICE**

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 either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party 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:

COUNTY

Library Director  
580 Coombs Street  
Napa, CA 94559

CITY

City Manager  
1232 Washington  
Calistoga, CA 94515

**Section 10.0 HOLD HARMLESS/DEFENSE/INDEMNIFICATION**

COUNTY and CITY shall each defend, indemnify and hold harmless each other as well as their respective officers, agents and employees 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 acts or omissions of that party or its officers, agents, or employees when performing any activities or obligations required of that party under this Agreement.

**Section 11.0 NO WAIVER**

The waiver by either party 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.

**Section 12.0 AMENDMENT/MODIFICATION**

Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties.

**Section 13.0 INTERPRETATION; VENUE**

- 13.1 Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.
- 13.2 Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

**Section 14.0 AUTHORITY TO CONTRACT**

CITY and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

**Section 15.0 THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

**Section 16.0 ATTORNEY'S FEES**

In the event that either party 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, as determined by the Court, shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

**Section 17.0 SEVERABILITY**

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

**Section 18.0 ENTIRETY OF CONTRACT**

This Agreement 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.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

ATTEST:  
Clerk of the Board

BY: M. Price, Deputy

COUNTY OF NAPA

BY: Brad Wagenknecht  
BRAD WAGENKNECHT, Chairman of  
the Board Of Supervisors

“COUNTY”

ATTEST: ROBERT HAYES,  
Calistoga City Clerk

BY: Robert Hayes

CITY OF CALISTOGA

BY: Dr. Andrew Alexander  
DR. ANDREW ALEXANDER, Mayor of  
City Of Calistoga

“CITY”

Approved as to form:  
ROBERT WESTMEYER,  
Napa County Counsel

BY: Margaret Woodbury, City Director  
for Clay Jackson, Deputy

Approved as to form:  
MICHELLE MARCHETTA KENYON,  
Calistoga City Attorney

BY: Michelle Kenyon

Approved as to content:  
JANET McCOY, Library Director

BY: Janet McCoy

Approved as to content:  
JAMES C. McCANN, City Manager

BY: James C. McCann



## EXHIBIT A

### CITY Minor Building Maintenance Services to the CALISTOGA LIBRARY

The following services are considered minor maintenance that will be provided to the CALISTOGA LIBRARY by the CITY under this agreement with no reimbursement from the COUNTY.

These minor maintenance services are anticipated not to exceed a cumulative total of 52 hours per year. The service shall be provided only at the request of the LIBRARY to the CITY Department of Public Works.

Types of Minor Maintenance Services:

- Change light bulbs (light bulbs provided by LIBRARY and not to include ballast or fixture replacement)
- Emergency unplugging of toilet by means of closet auger
- Emergency repair of interior or exterior water leak
- Emergency assistance when a condition occurs that endangers person or property and time is of the essence
- Annual installation and removal of holiday lights
- Other minor maintenance services, as determined by the CITY Director of Public Works

For maintenance services that are not included in the list above or significantly exceed the anticipated hours, the CITY reserves the right to submit a cost estimate of the time and materials for the service for COUNTY reimbursement to the CITY.

