

PROFESSIONAL SERVICES AGREEMENT

Juvenile Diversion Program

Calistoga Authorizing Agreement No. XXX

St. Helena Authorizing Agreement No. XXX

THIS PROFESSIONAL SERVICES AGREEMENT entered on this ____ day of June 2017, by and between the CITY OF CALISTOGA herein called CALISTOGA and the CITY OF ST. HELENA herein called ST. HELENA with the UPVALLEY FAMILY CENTERS of St. Helena and Calistoga herein called UPVALLEY FAMILY CENTERS.

Recitals

WHEREAS, CALISTOGA and ST. HELENA desires to employ/enter into an agreement with the UPVALLEY FAMILY CENTERS to furnish professional services in the coordination and management of a Juvenile Diversion Program and Drug/Alcohol Prevention Education Program services; and

WHEREAS, the UPVALLEY FAMILY CENTERS hereby warrants that they have the necessary expertise, experience, and qualifications to perform the services and duties described in the attached Scope of Work, Program, and Services; and

WHEREAS, CALISTOGA and ST. HELENA desire to retain the UPVALLEY FAMILY CENTERS pursuant to this Agreement to provide services described in Section 1 of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Agreement

SECTION 1 – Scope of Services

Subject to such police direction and approval as CALISTOGA and ST. HELENA through its staff may determine from time to time, the UPVALLEY FAMILY CENTERS shall perform the services set out in the “Scope of Work” attached hereto as Exhibit “A” and incorporated herein by reference.

SECTION 2 – Additional Services

The UPVALLEY FAMILY CENTERS shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or Exhibit A, “Scope of Work” unless such additional services and compensation are authorized in advance and in writing by the City Council or City Managers of CALISTOGA or ST. HELENA.

SECTION 3 – Time of Performance

The term of this agreement shall be for a period of June XX, 2017 through June 30, 2020. Any changes to these dates must be approved in writing by the City Managers of CALISTOGA or ST. HELENA or their designees.

SECTION 4 – Compensation and Method of Payment

- A. Compensation: Subject to any limitations set forth in this Agreement, CALISTOGA and ST. HELENA agrees to pay the UPVALLEY FAMILY CENTERS \$25,000.00 each, per fiscal year, for the Juvenile Diversion Program and Drug/Alcohol Prevention Education Program services. Total annual compensation shall not exceed \$50,000.00 unless additional compensation is approved in accordance with Section 2. This does not include equipment or specific training costs authorized by CALISTOGA or ST. HELENA or outlined in the “Scope of Work”.
- B. Timing of Payment: Billing for services may be made on a bi-annual basis. CALISTOGA and ST. HELENA shall review the UPVALLEY FAMILY CENTERS’ invoice(s) for all work performed and expenses incurred during the invoice period and pay within 30 days of receipt of the invoice.
- C. Changes in Compensation: The UPVALLEY FAMILY CENTERS will not undertake any work that will incur costs in excess of agreed amount of compensation.
- D. Written Consent for Changes in Compensation: In case of changes affecting project scope resulting from new findings, unanticipated conditions, unanticipated regulatory changes, or other conflicts or discrepancies, the UPVALLEY FAMILY CENTERS shall promptly notify CALISTOGA and ST. HELENA of the identified changes and advise CALISTOGA and ST. HELENA of the recommended solution. UPVALLEY FAMILY CENTERS shall not receive compensation for work performed on such changes without prior written authorization from CALISTOGA or ST. HELENA.
- E. Litigation Support: The UPVALLEY FAMILY CENTERS agrees to testify at CALISTOGA’S or ST. HELENA’S request if litigation is brought against CALISTOGA or ST. HELENA in connection with the UPVALLEY FAMILY CENTERS’ written report. Unless the action is brought by the UPVALLEY FAMILY CENTERS or is based upon the UPVALLEY FAMILY CENTERS’ negligence, CALISTOGA and ST. HELENA will compensate the UPVALLEY FAMILY CENTERS for the preparation and the testimony at the UPVALLEY FAMILY CENTERS’ standard hourly rates.

SECTION 5 – Ownership of Documents

CALISTOGA and ST. HELENA agree that all UPVALLEY FAMILY CENTERS materials may be or are protected proprietary documents and cannot be used by CALISTOGA or ST. HELENA during or after the expiration of this contract for the CALISTOGA's or ST. HELENA's use in implementing children's or teen programs of any kind by itself or any other agent without the expressed written permission of the UPVALLEY FAMILY CENTERS. CALISTOGA or ST. HELENA may retain ownership of all written reports compiled for CALISTOGA or ST. HELENA by the UPVALLEY FAMILY CENTERS during the length of this Agreement and may use them at their own discretion.

SECTION 6 – Employment of Other Consultants, Specialists, or Experts

The UPVALLEY FAMILY CENTERS may employ or otherwise incur obligations to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of CALISTOGA or ST. HELENA. If said employment incurs an expense for which the UPVALLEY FAMILY CENTERS want CALISTOGA or ST. HELENA to pay, the UPVALLEY FAMILY CENTERS must first obtain prior written consent of CALISTOGA and ST. HELENA.

SECTION 7 – Interest of Consultant

- A. UPVALLEY FAMILY CENTERS (including principals, associates, and professional employees) covenants and represents that it does not know 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 the UPVALLEY FAMILY CENTERS' services hereunder. The UPVALLEY FAMILY CENTERS 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.

The UPVALLEY FAMILY CENTERS is not a designated employee within the meaning of the Political Reform Act because the UPVALLEY FAMILY CENTERS:

- (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 CALISTOGA, ST. HELENA, or 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))

SECTION 8 – Interest of Members and Employees of CALISTOGA or ST. HELENA

No member of CALISTOGA or ST. HELENA and no other officer, employee or agent of CALISTOGA or ST. HELENA who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal financial 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 financial interests or the financial interest of any corporation, partnership or association in which he/she is directly or indirectly interested. Notwithstanding this provision, members and employees of CALISTOGA or ST. HELENA may enroll their children in the programs offered by the UPVALLEY FAMILY CENTERS.

SECTION 9 – Liability of Members and Employees of CALISTOGA or ST. HELENA

No member of CALISTOGA or ST. HELENA and no other officer, employee or agent of CALISTOGA or ST. HELENA shall be personally liable to UPVALLEY FAMILY CENTERS or otherwise in the event of any default or breach of the City, or for any amount which may become due to the UPVALLEY FAMILY CENTERS or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

SECTION 10 – Mutual Indemnification

CALISTOGA, ST. HELENA and the UPVALLEY FAMILY CENTER hereby agrees to mutually defend, indemnify and save harmless each other's officers, employees, agents, 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 either party undertaken pursuant to this Agreement, when a party has no direct or indirect duty to injured party otherwise. CALISTOGA and ST. HELENA 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. CALISTOGA, ST. HELENA, and the UPVALLEY FAMILY CENTERS' 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.

SECTION 11 – UPVALLEY FAMILY CENTERS not an Agent of CALISTOGA or ST. HELENA

CALISTOGA and ST. HELENA retain all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. UPVALLEY FAMILY CENTERS, its officers, employees, and agents shall not have any power to bind or commit CALISTOGA or ST. HELENA to any decision.

SECTION 12 – Independent Contractor

It is understood that the UPVALLEY FAMILY CENTERS, in the performance of the work and services agreed to be performed by UPVALLEY FAMILY CENTERS; and as an independent contractor, UPVALLEY FAMILY CENTERS shall obtain no rights to retirement benefits or other benefits which accrue to

CALISTOGA and ST. HELENA employees, and the UPVALLEY FAMILY CENTERS hereby expressly waives any claim it may have to any such rights.

SECTION 13 – **Compliance with Laws**

- A. **General:** UPVALLEY FAMILY CENTERS shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances and regulations. UPVALLEY FAMILY CENTERS represents and warrants to CALISTOGA and ST. HELENA that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for the UPVALLEY FAMILY CENTERS to practice its profession. UPVALLEY FAMILY CENTERS represents and warrants to CALISTOGA and ST. HELENA that the UPVALLEY FAMILY CENTERS 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 the UPVALLEY FAMILY CENTERS to practice its profession.

- B. **Special Rules for Employees Working with Children:** UPVALLEY FAMILY CENTERS agree 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 CALISTOGA or ST. HELENA. UPVALLEY FAMILY CENTERS 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 with any of these provisions will be deemed a material breach of this Agreement.

- C. **Workers Compensations:** UPVALLEY FAMILY CENTERS 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 the UPVALLEY FAMILY CENTERS certifies that it will comply with such provisions before commencing performance of this Agreement.

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

- E. **CALISTOGA and ST. HELENA not responsible:** CALISTOGA and ST. HELENA are not responsible or liable for UPVALLEY FAMILY CENTERS’ failure to comply with an and all of said requirements.

SECTION 14 – Confidential Information

- A. All data, documents, discussions or other information developed or received by or for the UPVALLEY FAMILY CENTERS in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by CALISTOGA or ST. HELENA or as required by law.
- B. The UPVALLEY FAMILY CENTERS, its officers, employees, agents or subcontractors, shall not without prior written authorization from the City Manager(s) or unless requested by City Attorney of CALISTOGA or ST. HELENA, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives CALISTOGA or ST. HELENA notice of such court order or subpoena.
- C. If the UPVALLEY FAMILY CENTERS, or any officer, employee, agent or subcontractor of the UPVALLEY FAMILY CENTERS provides any information or work product in violation of this Agreement, then CALISTOGA and/or ST. HELENA shall have the right to reimbursement and indemnity from the UPVALLEY FAMILY CENTERS for an damages, costs and fees, including attorney’s fees, caused by or incurred as a result of the UPVALLEY FAMILY CENTERS’ Conduct.

SECTION 15 – Insurance

A. Minimum Scope of Insurance

- (1) UPVALLEY FAMILY CENTERS agrees to have and maintain, for the duration of the contract, a General Liability Insurance police insuring him/her and his/her firm to an amount not less than One Million (\$1,000,000.00) combined single limit per occurrence and is the aggregate for bodily injury, personal injury and property damage.
- (2) UPVALLEY FAMILY CENTERS 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) UPVALLEY FAMILY CENTERS shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from the UPVALLEY FAMILY CENTERS’ operations under this Agreement, whether such operations be by the UPVALLEY FAMILY CENTERS or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than Two Million Dollars (\$2,000,000.00) on a claims-made annual aggregate basis.

(4) A Worker's 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 the UPVALLEY FAMILY CENTERS.

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

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

(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 Worker's Compensation and Employers' Liability policies, as stipulated below:

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

b. "This policy shall be considered primary insurance as respects any other valid and collectible insurance the Cities may possess, including any self-insured retention the Cities may have, and any other insurance the Cities 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) UPVALLEY FAMILY CENTERS shall provide to CALISTOGA and ST. HELENA all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the Cities on or before commencement of performance of this Agreement. CALISTOGA and ST. HELENA 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 CALISTOGA or ST. HELENA, their officers, officials, employees or volunteers.

(2) UPVALLEY FAMILY CENTERS' 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 CALISTOGA and ST. HELENA. Current certification of such insurance shall be kept on file with the Cities' Secretaries at all times during the term of this Agreement.
- D. Acceptability of insurers: Insurance is to be placed with insurers with a A.M. Best 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 CALISTOGA and ST. HELENA. At the Cities' option, the UPVALLEY FAMILY CENTERS shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

SECTION 16 – Assignment Prohibited

Neither CALISTOGA, ST. HELENA or the UPVALLEY FAMILY CENTERS 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.

SECTION 17 – Termination of Agreement

- A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by either of the three parties upon written notice to each of the three parties of this agreement upon 30 days written notice.
- B. If the UPVALLEY FAMILY CENTERS fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, CALISTOGA or ST. HELENA may terminate this Agreement 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 CALISTOGA and ST. HELENA, become its sole property, at the UPVALLEY FAMILY CENTERS expense, be delivered to the respective Cities or to any party they may so designate.
- D. In the event termination is without cause, the UPVALLEY FAMILY CENTERS 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 the UPVALLEY FAMILY CENTERS shall be entitled to compensations for work in progress at the time of termination.

SECTION 22 – **UPVALLEY FAMILY CENTERS’ Books and Records**

- A. UPVALLEY FAMILY CENTERS 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 CALISTOGA or ST. HELENA for a minimum of three (3) years, or for a longer period required by law, from the date of final payment to the UPVALLEY FAMILY CENTERS to this Agreement.
- B. UPVALLEY FAMILY CENTERS 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 CALISTOGA or ST. HELENA’s City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CALISTOGA and ST. HELENA for inspection at their respective City Halls when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the UPVALLEY FAMILY CENTERS address indicated for receipt of notice of Agreement.
- D. Where CALISTOGA or ST. HELENA has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of the UPVALLEY FAMILY CENTERS’ business, the Cities may, by written request by any of the above named officers, require that custody of the records be given to CALISTOGA or ST. HELENA and that such records and documents be maintain at their respective City Halls. Access to such records and documents shall be granted to any party authorized by the UPVALLEY FAMILY CENTERS, their representatives, or UPVALLEY FAMILY CENTERS’ successor in-interest.

SECTION 23 – **Equal Employment Opportunity**

The UPVALLEY FAMILY CENTERS is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. UPVALLEY FAMILY CENTERS will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. UPVALLEY FAMILY CENTERS will take affirmative action to ensure that applications are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin, or any other class protected by law. Such action shall include, but not 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. The UPVALLEY FAMILY CENTERS further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

SECTION 24 – **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 parties may have hereunder.

SECTION 25- **Captions**

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

SECTION 26 – **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 all parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

SECTION 27 – **Right of Entry**

CALISTOGA and ST. HELENA reserves the right to enter its property at the site where the UPVALLEY FAMILY CENTERS is providing services in performance of this agreement at all times by its agents, employees and representatives.

SECTION 28 – **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 THEREOF, CALISTOGA, ST. HELENA, and the UPVALLEY FAMILY CENTERS have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

CITY OF ST. HELENA

By: _____

Dylan Feik
City Manager

Larry Pennell
Interim City Manager

UPVALLEY FAMILY CENTERS

Jenny Ocon
Executive Director

ATTEST:

Kathy Flamson
Calistoga City Clerk

ATTEST:

Cindy Black
St. Helena City Clerk