

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City Clerk  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515

(Space Above This Line for Recorder's Use Only)  
[Exempt from recording fee per Gov. Code § 27383]

**WATER LINE AGREEMENT**

THIS WATER LINE AGREEMENT (the "Agreement") is entered into as of the \_\_\_\_ day of August, 2017 by and between the CITY OF CALISTOGA, a municipal corporation, herein called the "City", and RICHARD and DINA DWYER, herein called the "Owner".

**Recitals**

WHEREAS, Owner is the owner of that certain real property located at 1403 Myrtle Street, Calistoga, CA, more particularly described as Assessor's Parcel Number 011-242-015 (the "Property"); and

WHEREAS, a condition of approval for renovation of the "Francis House" was that the Owner would be required to install approximately 440 lineal feet of 8" water line connecting two dead-end six-inch water lines on Berry Street and Spring Street and install appurtenances and switch over at least four water service laterals that are connected to the 2" steel line to be replaced; and

WHEREAS, pursuant to the City of Calistoga Municipal Code Section 13.04.170.F.1, developers are required to construct utilities along their entire frontage and further states the frontage improvements are not subject to reimbursement or credit by the City; and

WHEREAS, the frontage of the subject property is approximately 120 feet; and

WHEREAS, the estimated cost to install the 8" water main, appurtenances and the connections along the entire length of Myrtle Street is approximately \$180,000 or \$409/ft.; and

WHEREAS, the value of the frontage improvements for 1403 Myrtle Street is \$49,080 (120 ft. X \$409/ft) and is the responsibility of the Owner; and

WHEREAS, the Owner was required to pay \$34,772.60 for water connection fees and \$72,950.39 for wastewater connection fees for a total of \$107,722.99; and

WHEREAS, Staff proposed that the Owner be credited \$130,920 (\$180,000 - \$49,080) towards installation of the water line that is not along the project frontage, with initial credits of \$71,438 derived as follows - \$34,772.60 from the water connection fee and \$36,665.40 from the wastewater connection fee; and

WHEREAS, Owner is required to pay the remaining wastewater connection fee in the amount of \$36,294.99 (which fee was paid by Owner on August 8, 2016); and

WHEREAS, at the completion of the water line construction a reconciling audit comparing actual costs incurred will be conducted and the Owner would be reimbursed for expenses incurred less credits to date. The estimated balance to be reimbursed is \$59,482 (\$130,920 - \$71,438); and

WHEREAS, City and Owner desire to enter into an agreement on the terms and conditions set forth below.

### **Terms and Conditions**

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually agree as follows:

1. Installation of Water Line. Owner agrees to install or have installed in a good and workmanlike manner, at its sole cost and expense, an eight-inch water line for water service, along Myrtle Street from Spring Street to Berry Street in accordance with the Water Main Installation Plan, attached hereto as **Exhibit A** and incorporated herein by this reference, (the "Water Line") and the terms and conditions of this Agreement. Any deviations from the Water Main Installation Plan, including corrections or revisions made pursuant to Section 3, must be approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed.

2. Encroachment Permit. A City Encroachment Permit is required.

3. Changes to Plans and Specifications. Any changes to the approved Plan and/or Specifications must be approved by the City Engineer or Deputy Public Works Director. Owner shall be responsible, at its sole cost and expense, for making any and all requested changes to said plans.

4. Hiring of Contractor. Owner shall hire a qualified contractor licensed in the state of California to perform the Work, subject to final approval by the City. City's final approval shall be limited to verifying that the contractor is properly licensed and insured. Owner shall include the terms of this Agreement in its contract with its contractor (the "Construction Contract"), including, but limited to, the requirement to construct the Project in accordance with the terms and conditions of the Encroachment Permit and to accept all responsibility and liability under and comply with all provisions

of the Encroachment Permit. Upon final approval of the contractor by City and final execution of the Construction Contract, Owner's contractor shall be authorized to perform the Work under the Encroachment Permit obtained by Owner. The City shall not be a party to the Construction Contract and Owner shall be solely responsible for any and all obligations to its contractor.

5. Failure to Comply with Encroachment Permit. In the event that Owner or Owner's contractor fails to comply with the terms and conditions of the Encroachment Permit, City shall notify Owner of such non-compliance, and Owner or Owner's contractor shall immediately cease the Work and cease operating under the Encroachment Permit. Owner or Owner's contractor may not resume construction until the City's Public Works Director or his or her representative is satisfied that the Work will resume in accordance with the terms and conditions of the Encroachment Permit.

6. Right of Entry. City may enter upon the Property at any time in order to ensure compliance with the terms of this Agreement. Such entry may include, but is not limited to, inspection of the Work.

7. Final City Inspection. Prior to the final completion of the Work, City shall perform a final inspection to ensure that the work was completed in accordance with the terms of this Agreement.

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

9. Indemnification. To the fullest extent permitted by law, Owner shall defend, indemnify and hold the City, its officers, agents, employees and contractors harmless from and against any and all claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, consultants' fees, expenses, awards, fines, penalties, or judgments of whatsoever kind or nature, whether arising before or after completion of the Work, that are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, or claimed to be caused, occasioned or contributed to in whole or in part, through any act, omission, fault or negligence whether active or passive of Owner, or anyone acting under Owner's direction, control, or on its behalf in connection with or incident to the Work or in connection with or incident to the sewer lines, curb, gutter, landscape strip and certain pedestrian walkways, even though the same may have resulted from the joint, concurring or contributory negligence, whether active or passive, of City, unless the same shall be caused by the sole negligence or willful misconduct of the City. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons and damage to any property, regardless of where located.

10. Compliance with Laws. Owner shall keep itself fully informed of and shall observe and comply with, and shall cause any and all persons, firms or corporations employed by Owner or under contract with Owner to observe and comply with all

federal and state laws, and county and municipal ordinances, regulations, orders and decrees which in any manner affect this Agreement, the Work performed under this Agreement and those employed or engaged in such Work.

Owner shall indemnify and hold harmless City from and against any all claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, consultants' fees, expenses, awards, fines, penalties, or judgments of whatsoever kind or nature arising from Owner's lack of compliance under this section.

11. Insurance.

A. Minimum Scope of Insurance.

(1) Owner agrees to have and maintain at all times during the Work a Commercial General Liability insurance policy insuring Owner to an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Owner agrees to have and maintain at all times during the Work an Automobile Liability insurance policy insuring Owner and Owner's staff to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.

(3) Owner agrees to have and maintain at all times during the Work 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 Owner.

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

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

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

(a) "The City of Calistoga, its officers, agents, employees and contractors are hereby added as additional insured's, 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."

(5) Any endorsements required by the terms and conditions of the Encroachment Permit are required to be made a part of the applicable policies.

(6) Owner 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 the Work. 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, agents, employees or contractors.

(2) Owner'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 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 Manager at all times during the Work.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's 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, Owner shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

F. Contractor's Insurance. Owner shall also require its contractor to provide the insurance set forth in this section, including, but not limited to, naming the City as an additional insured.

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

13. Failure to Comply with Terms of this Agreement. If Owner or Owner's contractor fails to comply with the terms of this Agreement, City may provide Owner



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

CITY:

OWNER:

CITY OF CALISTOGA

RICHARD AND DINA DWYER

By: \_\_\_\_\_  
Dylan Feik, City Manager

By: \_\_\_\_\_  
Richard Dwyer

By: \_\_\_\_\_  
Dina Dwyer

ATTEST:

\_\_\_\_\_  
Kathy Flamson, City Clerk

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2017, before me, \_\_\_\_\_, the undersigned, personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above