

## CITY OF CALISTOGA AGREEMENT NO. \_\_\_\_

**AGREEMENT FOR EMERGENCY MEDICAL, FIRE PROTECTION AND  
RELATED SERVICES**

**THIS AGREEMENT** is made and entered into as of this 1<sup>st</sup> day of November 2018, by and between KNIGHTS VALLEY VOLUNTEER FIRE COMPANY, a non-profit corporation organized under the laws of the State of California, hereinafter referred to as "KVVFC", and the CITY OF CALISTOGA, a municipal corporation, hereinafter referred to as "CALISTOGA".

**RECITALS**

**WHEREAS**, KVVFC is a volunteer fire department organized under the laws of the State of California to provide for prevention and suppression of fires and emergency medical response within those areas (hereinafter referred to as the "KV/FV Zone") of Sonoma County not located within the boundaries of municipalities or fire protection districts described and shown on the map entitled "Knights Valley and Franz Valley Contract Zone" attached hereto as Exhibit "A" and made a part hereof; and

**WHEREAS**, CALISTOGA is general law city with authority to provide for prevention and suppression of fires and emergency medical response within the city and to that end maintains a fire department to provide emergency medical, rescue, education, prevention and fire suppression and protection services within the city limits of CALISTOGA; and

**WHEREAS**, in the KV/FV Zone there are a number of inhabitants who live and work in residential, industrial, commercial, and other structures as well as a number of visitors to and through the KV/FV Zone for whom KVVFC desires to enhance the provision of emergency medical service, rescue, and fire suppression and protection services; and

**WHEREAS**, to provide such enhanced services, KVVFC desires CALISTOGA, pursuant to Government Code Section 55632, to provide emergency medical, rescue, and fire suppression and protection services within the KV/FV ZONE on the terms and conditions set forth herein;

**TERMS**

**NOW, THEREFORE**, KVVFC hereby engages the services of CALISTOGA, and CALISTOGA agrees to serve KVVFC in accordance with the terms and conditions set forth herein:

**1. Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2022, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of each party to the other party shall also continue after said expiration date or early termination in relation to

the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for two (2) additional three year periods, under the terms and conditions then in effect, unless either party gives the other party written notice of intention not to renew no less than ninety (90) days prior to the expiration of the then current term. Such notice of nonrenewal shall be given on behalf of KVVFC by its Board of Trustees or designee thereof. Such notice of nonrenewal may be given on behalf of CALISTOGA by the city of Calistoga City Manager or designee thereof. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

**2. Scope of Services.** CALISTOGA shall provide KVVFC with those services set forth in Exhibit "B", attached hereto and incorporated by reference herein.

**3. Compensation.** As consideration for CALISTOGA's provision of the services to KVVFC described in Exhibit "B" attached, KVVFC shall pay CALISTOGA a fee based upon the costs for services and numbers of calls for services as described in Exhibit "C" attached and incorporated here by reference.

**4. Method of Payment.** All payments for compensation by KVVFC to CALISTOGA shall be made only upon presentation by CALISTOGA to KVVFC of a quarterly invoice, payable in arrears. All such invoices shall be submitted to the Treasurer of KVVFC who, after review and approval as to form and content which shall not be unreasonably withheld, shall submit the invoice to the KVVFC accountant no later than fifteen (15) calendar days following receipt. KVVFC shall use its best efforts to pay such approved invoices within forty-five (45) days following receipt.

**5. Independent Contractor.** CALISTOGA shall perform this Agreement as an independent contractor. CALISTOGA and the officers, agents and employees of CALISTOGA are not, and shall not be deemed, KVVFC employees for any purpose, including workers' compensation and employee benefits. CALISTOGA shall, at CALISTOGA's own risk and expense, determine the method and manner by which duties imposed on CALISTOGA by this Agreement shall be performed; provided, however, that KVVFC may monitor the work performed by CALISTOGA. KVVFC shall not deduct or withhold any amounts whatsoever from the compensation paid to CALISTOGA, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CALISTOGA shall be solely responsible for all such payments.

**6. Specific Performance.** It is agreed that CALISTOGA, including the agents or employees of CALISTOGA, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CALISTOGA under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, KVVFC, in addition to any other rights or remedies which KVVFC may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CALISTOGA.

**7. Insurance.** CALISTOGA shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage or equivalent self-insurance acceptable to the other party:

(a) **Workers' Compensation insurance.** To the extent required by law during the term of

this Agreement, CALISTOGA shall provide workers' compensation insurance for the performance of any of CALISTOGA's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide KVVFC with certification of all such coverages upon request by KVVFC's Risk Manager.

**(b) Liability insurance.** CALISTOGA shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

**(i) General Liability.** Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CALISTOGA or any officer, agent, or employee of CALISTOGA under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

**(ii) Professional Liability/Errors and Omissions.** Professional liability [or errors and omissions] insurance for all activities of CALISTOGA arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

**(iii) Comprehensive Automobile Liability Insurance.** Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CALISTOGA's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CALISTOGA owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CALISTOGA or CALISTOGA's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CALISTOGA shall provide evidence of personal auto liability coverage for each such person upon request.

**(c) Certificates of Coverage.** Insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of KVVFC's Risk Manager, demonstrated by other evidence of coverage acceptable to KVVFC's Risk Manager, which shall be filed by CALISTOGA with the Fire Department prior to commencement of performance of any of CALISTOGA's duties.

**(i)** The certificate(s) or other evidence of coverage shall reference this Agreement by its KVVFC number or title and department; shall be kept current during the term of this Agreement; shall provide that KVVFC shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the

inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(ii) **Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CALISTOGA shall also file with the evidence of coverage an endorsement from the insurance provider naming KVVFC, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CALISTOGA shall file with the evidence of coverage an endorsement waiving subrogation.

(iii) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CALISTOGA not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of KVVFC shall pertain only to liability for activities of CALISTOGA under this Agreement, and that the insurance provided is primary coverage to KVVFC with respect to any insurance or self-insurance programs maintained by KVVFC. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(iv) Upon request by KVVFC, CALISTOGA shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) **Deductibles/Retentions.** Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, KVVFC, which approval shall not be denied unless KVVFC determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CALISTOGA by this Agreement. At the option of and upon request by KVVFC if KVVFC determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects KVVFC, its officers, employees, agents and volunteers or CALISTOGA shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) **Inclusion in Subcontracts.** CALISTOGA agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

## **8. Hold Harmless/Defense/Indemnification.**

(a) **In General.** To the full extent permitted by law, each party shall each defend, indemnify and hold harmless the other party as well as their respective officers, agents and employees from any claims, suits, proceedings, loss or liability, including reasonable attorney's fees, 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, employees, volunteers, or other contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. Each party shall



notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

**(b) Employee Character and Fitness.** Each party accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) that will provide the services required of either party under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, each party shall hold the other party and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision.

**9. Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving ten (10) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices).

**10. Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least ninety (90) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination (including any nonrenewal pursuant to Paragraph 1) may be effected by KVVFC unless an opportunity for consultation is provided prior to the effective date of the termination; and provided further, that no such termination or nonrenewal may be effected by any person or entity that may assume this contract for the benefit of the KV/FV Zone without the prior written consent of the KVVFC Board of Trustees, which consent may not unreasonably withhold.

**11. Disposition of, Title to and Payment for Work upon Expiration or Termination.**

**(a)** Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

**(i)** To the extent CALISTOGA has provided services through Software and Applications materials licensed to KVVFC, KVVFC shall promptly return the Software and Application materials to CALISTOGA. In addition, to the extent CALISTOGA maintains KVVFC data on those portions of digital software hosted by CALISTOGA and not controlled by KVVFC ("KVVFC Data"), CALISTOGA shall promptly return KVVFC Data to KVVFC in a format designated by KVVFC and shall subsequently purge KVVFC Data from CALISTOGA's systems upon confirmation from KVVFC that the copy of the data provided to KVVFC is comprehensive of the data previously hosted by CALISTOGA.

**(ii)** All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of KVVFC, the property of and shall be promptly returned to KVVFC, although CALISTOGA may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement.

Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CALISTOGA under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only KVVFC shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CALISTOGA or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that KVVFC shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which KVVFC is a party. If the product involves a source code, CALISTOGA shall either provide a copy of the source code to KVVFC or shall place the source code in an escrow account, at CALISTOGA's expense, from which the source code may be withdrawn and used by KVVFC for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to KVVFC.

(b) CALISTOGA shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CALISTOGA shall not be relieved of liability to KVVFC for damages sustained by KVVFC by virtue of any breach of the Agreement by CALISTOGA whether or not the Agreement expired or otherwise terminated, and KVVFC may withhold any payments not yet made to CALISTOGA for purpose of set off until such time as the exact amount of damages due to KVVFC from CALISTOGA is determined.

**12. 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.

**13. Notices.** 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.

**KVVFC:** Fire Chief  
Knights Valley Volunteer Fire Co.  
16850 Spencer Lane  
Calistoga, CA 94515

**CALISTOGA:** Fire Chief  
City of Calistoga  
1232 Washington St.  
Calistoga, CA 94515

**14. [RESERVED]**

**15. Confidentiality.**

**(a) Maintenance of Confidential Information.** Confidential information is defined as all information disclosed to CALISTOGA which relates to KVVFC's past, present, and future activities, as well as activities under this Agreement. CALISTOGA shall hold all such information as CALISTOGA may receive, if any, in trust and confidence, except with the prior written approval of KVVFC, expressed through its Fire Chief. Upon cancellation or expiration of this Agreement, CALISTOGA shall return to KVVFC all written and descriptive matter which contains any such confidential information, except that CALISTOGA may retain for its files a copy of CALISTOGA's work product if such product has been made available to the public by KVVFC.

**(b) Protection of Personally Identifiable Information and Protected Health Information.**

**(i)** To the extent CALISTOGA is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CALISTOGA shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CALISTOGA shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of KVVFC Protected Information provided to, or accessed or created by, CALISTOGA.

**(ii)** CALISTOGA shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of KVVFC's Protected Information, including, but not limited to, PHI and PII. Upon request, CALISTOGA shall make available to KVVFC its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

**(iii)** CALISTOGA agrees to notify KVVFC immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of.

**(iv)** CALISTOGA will be responsible for all costs associated with CALISTOGA's breach of the security and privacy of KVVFC's Protected Information, or its unauthorized access to or disclosure of KVVFC's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

**16. Assignments or Subcontracts.**

**(a) In general.** A consideration of this Agreement is the personal reputation of CALISTOGA; therefore, CALISTOGA shall not assign any interest in this Agreement or subcontract any of the services CALISTOGA is to perform hereunder without the prior written consent of KVVFC,

which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CALISTOGA, or to perform any of the remaining services required under this Agreement within the same time frame required of CALISTOGA or the same emergency response time CALISTOGA is able to provide shall be deemed to be reasonable grounds for KVVFC to withhold its consent to assignment. The consent of CALISTOGA to an any assignment of this Agreement to a person or entity that assumes KVVFC's obligations hereunder shall not be required, but KVVFC shall remain a third-party beneficiary of this Agreement with the rights set forth in this paragraph and paragraph 10 and 17.

**(b) Effect of Change in Status.** If CALISTOGA changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CALISTOGA. Failure of CALISTOGA to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

**17. Amendment/Modification.** Except as specifically provided herein regarding administrative amendment by the parties' respective Fire Chiefs of the Operation Plan attached hereto as Exhibit "D", this Agreement may only be modified or amended in writing and with the prior written consent of both parties. In particular, only an amendment of this Agreement, signed by both parties, may authorize extra and/or changed work if beyond the scope of services prescribed by Exhibit "B". Failure of a party to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights of that party to adjustment in the contract price or contract time and no compensation shall be paid for such extra work. Notwithstanding anything to the contrary in this Agreement or any Exhibit hereto, neither this Agreement nor any Exhibit hereto may be amended such that CALISTOGA is no longer obligated to provide first response emergency medical services, rescue and fire suppression services to the KV/FV Zone as set forth in the first paragraph of Exhibit "B" the prior written consent of the KVVFC Board of Trustees, which consent shall not be unreasonably withheld.

**18. Interpretation; Venue.**

**(a) 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.  
Venue.

**(b)** This Agreement is made in Napa and Sonoma Counties, 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 Sonoma, a unified court, in Santa Rosa. 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 Santa Rosa, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

**19. Compliance with Laws.** Each party shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the



following, except where prohibited by law:

**(a) Non-Discrimination.** During the performance of this Agreement, each party and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. Each party shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, each party shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to a party services or works required of that party by the State of California pursuant to agreement between that party and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (t), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and the party and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

**(b) Documentation of Right to Work.** Each party agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of that party performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. Each party shall make the required documentation available upon request to the other party for inspection.

**(c) Inclusion in Subcontracts.** To the extent any of the services required of a party under this Agreement are subcontracted to a third party, the party shall include all of the provisions of this Paragraph 16 in all such subcontracts as obligations of the subcontractor.

**(d)** Nothing in this Paragraph shall confer a right to subcontract except as permitted under Paragraph 16.

**20. Taxes.** Each party agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. Each party agrees to indemnify and hold either party harmless from any liability it may incur to the United States or the State of California as a consequence of either party's failure to pay or withhold, when due, all such taxes and obligations. In the event that either party is audited for compliance

regarding any withholding or other applicable taxes or amounts, both parties agree to furnish either party with proof of payment of taxes or withholdings on those earnings.

**21. Access to Records/Retention.** KVVFC, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CALISTOGA which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CALISTOGA shall maintain all required records for at least seven (7) years after KVVFC makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

**22. Authority to Contract.** CALISTOGA and KVVFC each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

**23. Conflict of Interest. Covenant of No Undisclosed Conflict.** The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CALISTOGA hereby covenants that it presently has no interest not disclosed to KVVFC and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as KVVFC may consent to in writing prior to the acquisition by CALISTOGA of such conflict. CALISTOGA further warrants that it is unaware of any financial or economic interest of any public officer or employee of CALISTOGA relating to this Agreement. CALISTOGA agrees that if such financial interest does exist at the inception of this Agreement, KVVFC may terminate this Agreement immediately upon giving written notice without further obligation by KVVFC to CALISTOGA under this Agreement.

**24. Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the public generally.

**25. Third Party Beneficiaries.** Except as set forth herein, 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.

**26. 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 shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

**27. 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.

**28. Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, 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.

**29. Special Terms and Conditions. [RESERVED]**

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

**CALISTOGA:**

**City of Calistoga**, a California municipal corporation

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michelle Marchetta Kenyon  
City Attorney

ATTEST:

By: \_\_\_\_\_  
Kathy Flamson  
City Clerk

**KVVFC:**

**Knights Valley Volunteer Fire Company**,  
a California non-profit organization

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**EXHIBIT A**  
**ZONE MAP**



**EXHIBIT B**  
**SCOPE OF WORK**

**I. CALISTOGA shall:**

- A. Furnish within the defined KV/FV ZONE the same level of emergency medical, rescue and fire protection services as are provided within the city limits of CALISTOGA, responding to all such calls within the defined KV/FV ZONE in the same manner and under the same circumstances as those from within the city limits of CALISTOGA, except that equipment and personnel engaged in major responses within the city limits of CALISTOGA shall not be required to respond to calls in the KV/FV ZONE while so engaged. In the event of a conflict between the need for emergency medical service, rescue, or fire protection service within the city limits of CALISTOGA and within the KV/FV ZONE the needs within the city limits of CALISTOGA shall be given first priority.
- B. Retain legal jurisdiction for all incidents that occur within city limits of CALISTOGA.
- C. Handle the KV/FV ZONE call in its entirety if only one engine is needed to mitigate the emergency.
- D. CALISTOGA shall not be responsible for the cost of dispatch to the incidents in the KV/FV Zone CALISTOGA responds to.

**II. Knights Valley Volunteer Fire Company (KVVFC) shall:**

- A. Retain legal jurisdiction for all incidents that occur within the KV/FV ZONE.
- B. Provide compensation to CALISTOGA according to Exhibit C listed herein.

**III. KVVFC and CALISTOGA shall:**

- A. Designate their respective Fire Chiefs as authorized to jointly prepare and amend from time to time as they determine necessary a KV/FV ZONE Operation Plan that shall be deemed, when signed by such Fire Chiefs, to become a part of this Agreement as an amendment to Exhibit "D". The Operation Plan shall detail policy and procedures for implementation of the requirements of this Agreement relating to response, dispatch, and mutual aid resources. In the event the Operation Plan is amended by the Fire Chiefs, such amendment shall become effective only when fully signed and dated duplicate originals of the amended Exhibit "D" have been filed with the Secretary of KVVFC's Board of Trustees.
- B. Have their respective Fire Chiefs cooperate to produce and provide to each party such reports as either Fire Chief may from time to time request.

**EXHIBIT C**  
**COMPENSATION AND EXPENSE REIMBURSEMENT**

**I. Compensation**

KVVFC shall pay CALISTOGA \$1,223 for response to each incident response provided by CALISTOGA into the KV/FV ZONE. This amount shall be increased annually by 3%.

CALISTOGA shall be compensated for a minimum of 16 incidents per fiscal year and a maximum of 25 incidents per year. Calls above the maximum of 25 per fiscal year will be included at no additional cost to KVVFC.

No more than 25% of the annual maximum payment shall be payable for any fiscal quarter. If, in any of the first three fiscal quarters, more than 8 incident responses are made, the extra incident responses will be carried forward to the next quarter.

**II. Payments and Credits**

KVVFC shall pay CALISTOGA on a quarterly basis, in arrears, upon presentation of invoices to KVVFC by CALISTOGA.

## **EXHIBIT D**

### **OPERATION PLAN**

Pursuant to Section 17 and Exhibit "B(III)(A)" of the Agreement, this Operation Plan provides the operating procedures mutually developed and maintained by the parties' respective Fire Chiefs for proper implementation of the obligations of the parties under the Agreement. This Operation Plan may be amended upon mutual agreement by the parties' respective Fire Chiefs as deemed necessary,

#### **I. By CALISTOGA**

A. CALISTOGA shall provide Emergency Response, which shall include:

1. Providing one staffed Type I Engine with two personnel, 24 hours per day, seven days per week, from CALISTOGA's City Fire Station;
2. Providing additional apparatus and equipment as necessary, staffed by off-duty and/or part time firefighters on a 24-hour basis, available for response into the KV/FV ZONE from CALISTOGA's City Fire Station; and
3. Responding Code 3 to all emergency calls within the KV/FV ZONE with appropriate equipment, as available, to mitigate the emergencies.
4. When CALISTOGA is first unit on scene and incident can be handled by a single resource, CALISTOGA shall handle and may cancel the KVVFC unit.
5. CALISTOGA shall not be responsible for the cost of dispatch for incidents in the KV/FV Zone.

B. CALISTOGA shall respond to mutual aid requests with appropriate equipment, as available.

#### **II. By KVVFC**

- A. May (but shall not be obligated to) respond to all reported incidents within the KV/FV ZONE, with minimum of one apparatus staffed with one personnel, if available.
- B. May (but shall not be obligated to) respond to mutual aid requests with appropriate equipment and personnel, if available.

#### **III. Both CALISTOGA and KVVFC:**

CALISTOGA and KVVFC shall provide emergency response otherwise required by this Agreement in accordance with the following procedures:

- A. Initial command shall be established by the first arriving unit at an incident regardless of legal

jurisdiction. Flexibility for the transfer of command to the agency having legal jurisdiction shall be at the discretion of the agency having legal jurisdiction.

- B. Upon arrival, based upon the conditions present the Incident Commander shall have full authority to commit resources as appropriate from both parties.
- C. Identify the Incident Commander who will provide sufficient information concerning the status of the incident.
- D. Every effort shall be made to ensure minimum coverage of one apparatus staffed with two personnel at the CALISTOGA City Fire Station when an extended duration incident occurs either within the city limits of CALISTOGA or within the KV/FV ZONE.

**IV. SIGNATURES AND EFFECTIVE DATE:**

The foregoing Operation Plan developed and approved by the undersigned Fire Chiefs shall be effective as of November 1, 2018.

Date: \_\_\_\_\_

\_\_\_\_\_  
Augie Grube, KVVFC Fire Chief

Date: \_\_\_\_\_

\_\_\_\_\_  
Steve Campbell, Fire Chief,  
City of Calistoga