

RESOLUTION NO. 2018-012

RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KOFF & ASSOCIATES TO CONDUCT A CLASSIFICATION AND COMPENSATION STUDY IN AN AMOUNT NOT TO EXCEED \$22,490

WHEREAS, on September 16, 2014, the City Council adopted Resolution 2014-077 to conduct a comprehensive and classification study through the firm of Koff & Associates recognizing the changes in business, organizational and employment conditions; and

WHEREAS, Koff & Associates updated all class descriptions in order to ensure the format was consistent and the duties and responsibilities are current and properly reflect the required knowledge, skills and abilities; and

WHEREAS, the study included thirty-three (33) classifications and of those, twenty-five (25) classifications were selected in order to collect compensation data within the labor market. Survey classes that had the most consistent and useful survey data were used as "benchmarks" in building the compensation plan; and

WHEREAS, on November 18, 2014 the City Council adopted Resolution 2014-104 approving a list of comparator cities for the classification and compensation study. The cities selected and approved by Council were: Healdsburg, St. Helena, Sebastopol, Yountville, Petaluma, Windsor, Cloverdale, Sonoma, American Canyon, Napa and Rohnert Park; and

WHEREAS, the study determined the median salaries of and total compensation for select classifications using comparator cities; and

WHEREAS, on May 5, 2015 the City Council reviewed the Koff & Associates report at public meeting and considered the content and recommendation as well as the staff report and all public comments on said report.

WHEREAS, current memorandum of understanding for all City bargaining groups will expire on December 31, 2018. Requests for salary increases are likely as labor negotiations take place during the next few months.

WHEREAS, city staff contacted Koff & Associates to provide a proposal for a limited classification study and a total compensation study.

WHEREAS, The report to be provided by Koff & Associates is meant to be a tool for the City to create and implement an equitable compensation plan and is not binding on the City. The collected data gives the City an instrument to make future compensation decisions; and

NOW THEREFORE BE IT RESOLVED THAT, the City Council of the City of Calistoga

- 1) Hereby authorizes the City Manager to enter into a professional services agreement with Koff & Associates in the amount not to exceed \$22,490 to conduct a public-sector classification and compensation study in accordance with the Professional Services Agreement as set forth in Exhibit A to this resolution, with allowance for non-substantive changes as deemed appropriate by the City Manager.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this **20th day of February, 2018** by the following vote:

AYES: Councilmembers Kraus, Lopez-Ortega and Barnes, Vice Mayor Dunsford and Mayor Canning
NOES: None
ABSTAIN: None
ABSENT: None



CHRIS CANNING, Mayor

ATTEST:



KATHY FLAMSON, City Clerk



Submittal date: January 23, 2018

Proposal for a Limited
Classification Study and a
Total Compensation Study

City of Calistoga

Submitted by:

Koff & Associates

Katie Kaneko

President

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Berkeley, CA 94710
www.KoffAssociates.com

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Tel: 510.658.5633

Fax: 510.652.5633

January 23, 2018

Ms. Gloria Leon
Administrative Services Director
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Dear Ms. Leon:

We look forward to working with the City of Calistoga on the [1] a Classification Study for one Administrative position, and [2] a Total Compensation Study for approximately forty (38) benchmarks using eleven (11) comparators.

Attached is the cost proposal and timeline for this scope of work.

Please call me with any questions or if you wish additional information.

Sincerely yours,



Katie Kaneko
President



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METHODOLOGY / SCOPE OF WORK / DELIVERABLES

CLASSIFICATION STUDY FOR ONE ADMINISTRATIVE POSITION

Deliverable A. Employee/Supervisory/Management Interviews

- Interview will be scheduled with employee in the Administrative classification.
- Interview(s) will then be held with supervisory and management staff who will clarify their own responsibilities and/or confirm the information we have received in the interview with their staff.
- The purpose of the interviews is to clarify and supplement the PDQ data and to respond to potential perception differences regarding roles, tasks, scope, and supervisory responsibilities.

Deliverable B. Classification Concept/Preliminary Allocation Development

- Utilize the “whole position” classification methodology, including education, experience, problem solving/ingenuity, attention/stress, independence of action/responsibility, contacts with others, supervision exercised, consequence of action/decisions.
- Incumbent-specific allocation for the studied position will be prepared, specifying current and proposed classification title and impact of our recommendations (reclassification, title change, or no change).
- Meet with the project team, HR, and management staff to review the proposed recommendations to the classification being studied based on industry best practices and roles and responsibilities.

Deliverable C. Draft Class Description Development/Update

- If necessary, a new and/or updated class description will be developed for the studied classification, updating duties, responsibilities, and minimum qualifications of the class specification, or develop new class specifications if duties, responsibilities, and minimum qualifications have changed significantly.
- Review, analyze, and update knowledge, skills, abilities, education and experience, relevance and hierarchical consistency, position definitions, purpose, distinguishing characteristics, supervision received/exercised, position functions and special requirements, including licensing and certifications.

Deliverable D. Finalize Classification Plan/Draft Interim Report/Final Report

- Develop Draft Interim Report of the Job Description Revision Project for review and comment.
- The Report will contain: recommended classification; documentation regarding study goals and objectives, classification methodology, approach, and process; all findings, analysis, and resulting recommendation.
- Once we have received the City’s comments regarding the Draft Interim Report and have made any necessary changes, a Final Classification Report will be developed.



COMPENSATION STUDY FOR 38 BENCHMARKS USING 11 COMPARATORS

Deliverable A. List of Comparator Agencies, Benchmark Classifications and Benefits to be Collected

- Confirm list of eleven (11) comparator agencies based on a number of evaluation criteria (such as type of organization, size of organization, number of employees, size of budgets, population served, cost of living, etc.).
- Confirm the list of thirty-eight (38) benchmark classifications to be studied based on an internal relationship analysis of all classifications.
- Confirm benefits to be collected.

Deliverable B. Data Collection

- K&A to conduct all of the data collection and analysis to ensure validity of data and quality control; compare job description to job description; ensure matches of at least 70%.
- Review the City's existing job descriptions to ensure understanding of each position to be surveyed.
- Collect job descriptions, organization charts, and other information from comparator agencies via website, in person, or by telephone.
- Make preliminary "matches" and then schedule appointments by telephone, and sometimes in person, with knowledgeable individuals to answer specific questions.
- Ensure a very high validity rate and produce data that is substantiated before management, employee representation as well as governing bodies.

Deliverable C. Analysis and Preliminary Data Review

- Enter data into spreadsheet format designed for ease of interpretation and use.
- Present information in a format that will identify the comparator positions used for each class comparison.
- Calculate information based upon average and median figures, allowing the City to make informed compensation decisions.

Deliverable D. Draft Compensation Findings and Meeting with Project Team

- Distribute draft findings to the City.
- After City's preliminary review, meet with project team and various stakeholders to clarify data, receive requests for reanalysis of certain comparators; answer questions and address concerns.
- Provide an opportunity for the project team and other stakeholders to review and question any of our recommended benchmark comparator matches.
- If questions arise, conduct follow-up analysis to reconfirm original analysis and/or make corrections.

Deliverable E. Internal Job Analysis

- Determine internal equity for both market driven and non-benchmarked positions.
- Develop internal position hierarchy based on the "whole position" classification methodology as outlined above in Classification methodology.



Proposal for:
Administrative Position Classification Study;
Total Compensation Study of 38 Benchmarks
City of Calistoga

- Make recommendations regarding vertical salary differentials across the organization.

Deliverable F. Compensation Structure Development

- Review and make recommendations regarding internal alignment and salary structure within which classifications are allocated, based upon the City's preferred compensation model.
- Discuss draft recommendations with management team prior to developing Interim Report.

Deliverable G. Preparation of Draft Final and Final Report and Deliverables

- Complete Draft Report and submit to the City for review, comment, and recommendations, including detailed compensation findings and recommendations; proposed salary structure, and implementation issues; methodology for continued implementation and maintenance of plan.
- After the City's questions/concerns are addressed and discussed, create Final Compensation Report.

Deliverable H. Final Presentation

- Our proposal includes one initial overview, one interim study session (to discuss the initial findings of the market salary study), and one final presentation to the City Council, as needed.



Proposal for:
**Administrative Position Classification Study;
 Total Compensation Study of 38 Benchmarks**
City of Calistoga

TIMELINE

Our professional experience is that studies of this scope and for this size organization take approximately three to four (3 – 4) months to complete, allowing for adequate position description questionnaire completion, interview time, classification description review and/or development, but particularly for compensation data collection and analysis for 38 benchmarks and 11 comparators, review steps by the City, the development of final reports, any appeals, meetings, and presentations.

Following is a suggested timeline (which can be modified based on the City’s needs):

Deliverables	Classification Study <i>For Administrative Position</i>	Completion by:
A.	Employee/Supervisory/Management Interviews	Week 1
B.	Classification Concept/Preliminary Allocation Development	Week 2
C.	Draft Class Description Development/Update if needed	Week 5
D.	Finalize Classification Plan/Draft Interim Report/Final Report	Week 6
Deliverables	Total Compensation Study <i>For 38 Benchmarks Using 11 Comparators</i>	Completion by:
A.	List of Comparator Agencies, Benchmark Classifications, and Benefits to be Collected	Week 1
B.	Data Collection	Week 8
C.	Analysis and Preliminary Data Review	Week 9
D.	Draft Compensation Findings and Meeting with Project Team	Week 10
E.	Internal Job Analysis	Week 12
F.	Compensation Structure Development	Week 12
G.	Preparation of Draft Final and Final Report and Deliverables	Week 12
H.	Final Presentation	As Scheduled



Proposal for:
**Administrative Position Classification Study;
 Total Compensation Study of 38 Benchmarks**
 City of Calistoga

COST PROPOSAL

Deliverables	Classification Study <i>For Administrative Position</i>	Hours
A.	Employee/Supervisory/Management Interviews	1
B.	Classification Concept/Preliminary Allocation Development	1
C.	Draft Class Description Development/Update if needed	3
D.	Finalize Classification Plan/Draft Interim Report/Final Report	3
	Total Professional Hours – Classification for 1 Position	8
	Combined professional and clerical composite rate: \$130/Hour	\$1,040
Deliverables	Total Compensation Study <i>For 38 Benchmarks Using 11 Comparators</i>	Hours
A.	List of Comparator Agencies, Benchmark Classifications, and Benefits to be Collected	2
B.	Data Collection (38 benchmarks, 11 comparator agencies, total compensation including benefits)	80
C.	Analysis and Preliminary Data Review (38 benchmarks, 11 comparator agencies, total compensation including benefits)	35
D.	Draft Compensation Findings and Meeting with Project Team	16
E.	Internal Job Analysis	5
F.	Compensation Structure Development	5
G.	Preparation of Draft Final and Final Report and Deliverables	12
H.	Final Presentation	6
	<i>Additional anticipated meetings with Human Resources, Management, etc.</i>	4
	Total Professional Hours – Total Compensation	165
	Combined professional and clerical composite rate: \$130/Hour	\$21,450
	Expenses are included in the composite hourly rate:	N/A
	<i>Expenses include but are not limited to duplicating documents, binding reports, phone, supplies, postage, parking, meals, travel time, etc.</i>	
	TOTAL COMBINED PROJECT COST NOT TO EXCEED:	\$22,490
	<i>*Additional consulting will be honored at composite rate (\$130)</i>	



INSURANCE REQUIREMENTS

We will submit support of the required level of coverage and endorse the City of Calistoga with our General Liability Insurance coverage upon award and execution of contract.

Workers' Compensation:	Statutory Limits
General Liability:	\$2 million per occurrence
Errors and Omissions:	\$1 million per occurrence
Automobile Insurance:	\$1 million per occurrence

Our insurance broker is Ms. Eileen Hollander, Sr. Account Manager/Commercial Lines, Integro Insurance Brokers, 2300 Contra Costa Blvd., Suite 375, Pleasant Hill, CA 94523.



Proposal for:
Administrative Position Classification Study;
Total Compensation Study of 38 Benchmarks
City of Calistoga

Proposal Signature Page

Koff & Associates intends to adhere to all of the provisions described above.

This proposal is valid for ninety (90) days.

Respectfully submitted,

By: **KOFF & ASSOCIATES**
State of California

Katie Kaneko
President

January 23, 2018



CONSULTANT SERVICES AGREEMENT

Authorizing Agreement No. 758

THIS AGREEMENT is entered into as of the 21 day of February, 2018, by and between the CITY OF CALISTOGA, herein called the "City," and Koff & Associates herein called the "Consultant."

Recitals

WHEREAS, City desires to undertake a limited classification and total compensation study for all full-time city employees and desires to hire a professional consultant firm that is qualified to undertake such a study; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant Koff & Associates is to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than February 1, 2018 and be completed no later than May 1, 2018. Consultant shall

perform its services in accordance with the schedule and incorporated herein by reference. Any changes to these dates in Section 3 must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit B, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed \$22,490 unless both parties confer and agree to additional compensation. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment. The City shall upon receipt of a written itemized monthly statement pay fees and applicable expenses under this Agreement within thirty (30) days of receiving such invoices from Consultant, unless contested. Payment of any fee or reimbursement shall not constitute a waiver by the City of any breach of any part of this agreement. Late charges will be assessed upon payments not received within thirty (30) days from receipt of invoice at a rate of 1.5% per month.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it is in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum merit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

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

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

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

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

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

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

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

15. Compliance with Laws.

A. General. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant 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 Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policies which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$500,000 (Five Hundred Thousand Dollars) combined single limit per accident for bodily injury and property damage.

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

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

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

(b) This policy shall also provide required coverage for Employers' 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 Workers' Compensation and Employers' Liability policies, as stipulated below:

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

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

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

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

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

(8) Consultant'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.

B. 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 City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. 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, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 15-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant 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.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Arbitration of Professional Liability or Other Claim. If a dispute between the City and Consultant arises over the fees charged for the services, the controversy will be first submitted to mediation. If the parties cannot agree on a mutually acceptable mediator, then each party will choose one mediator, and those two mediators will choose a third for a total of three mediators. If mediation is unsuccessful, the parties agree to submit the dispute to binding arbitration in accordance with the rules of the State Mediation and Conciliation Service (SMCS), as set forth in California Business and Professions Code, Sections 6200 through 6202. The Arbitrator or arbitration panel shall have the authority to award the prevailing party attorney's fees, costs, and interest incurred. Any arbitration hearing notice may be served by mail upon either side and personal service shall not be required.

If a dispute arises between the City and Consultant over any other aspect of the labor relations-client relationship, including, without limitation, a claim for breach of professional duty, that dispute will also be resolved pursuant to the dispute resolution process outlined above.

It is understood that any dispute as to any alleged breach of professional duty (that is, as to whether any professional services rendered under this agreement were allegedly unnecessary, unauthorized, omitted entirely, or were improperly, negligently or incompetently rendered) will be determined by submission to mediation, first; and if necessary by arbitration as provided by California law, and not by a lawsuit or other judicial proceeding except as California law provides for judicial review of the arbitration proceedings.

Both parties to this agreement are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of mediation or arbitration. Each party is to bear its own attorneys' fees and costs in any dispute resolution process; provided, however that the prevailing party may be entitled to such fees and costs (including interest) as described above.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City: City Clerk
City of Calistoga
1232 Washington Street.
Calistoga, CA 94515

If to Consultant: Koff & Associates
Ms. Katie Kaneko
2835 Seventh Street
Berkeley, CA 94710

26. Consultant's Books and Records.

A. Consultant 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 the City and 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.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated

representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

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

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

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

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work
- B. Exhibit B: Compensation

A. Exhibit A: Scope of Work

B. Exhibit B: Compensation

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

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. 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.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

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

CITY OF CALISTOGA

By: 
City Manager

Date: 2/21/18

APPROVED AS TO FORM:

By: 
City Attorney

ATTEST:

By: Kathy Hansen
City Clerk

CONSULTANT

By: 
Title: PRESIDENT

Date: FEBRUARY 1, 2018

EXHIBIT A

Scope of Work

As presented in the attached "Classification and Compensation Study Proposal Dated January 30, 2018" prepared by Koff & Associates.