

**PROFESSIONAL SERVICES AGREEMENT
FOR PUBLICATION OF LEGAL NOTICES
AND LEGAL ADVERTISEMENTS**

Authorizing Agreement No.

1 THIS AGREEMENT is entered into as of the 2nd day of June 2009, by and between
2 the CITY OF CALISTOGA herein called the "City", and Napa Valley Publishing Company
3 herein called the "Service Provider".
4

Recitals

5
6
7 WHEREAS, City desires to obtain services for the publication of legal advertisements;
8 and
9

10 WHEREAS, Service Provider hereby warrants to the City that Service Provider is
11 skilled and able to provide such services described in Section 1 of this Agreement; and
12

13 WHEREAS, City desires to retain Service Provider pursuant to this Agreement to
14 provide the services described in Section 1 of this Agreement.
15

Agreement

16
17
18 NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:
19

20 1. Scope of Services. Subject to such policy direction and approvals as the City
21 through its staff may determine from time to time, Service Provider shall perform the services
22 set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by
23 reference.
24

25 2. Time of Performance. The services of Service Provider are to commence no
26 sooner than July 1, 2009 and, subject to City Council approval, be completed not later than
27 June 30, 2010. Any changes to these dates must be approved in writing by the City Manager
28 or his or her designee.
29

30 3. Compensation and Method of Payment.
31

32 A. Compensation. The compensation to be paid to Service Provider,
33 including both payment for professional services and reimbursable expenses, shall be at the
34 rate and schedules attached hereto as Exhibit "B". However, in no event shall the amount
35 exceed Twenty Thousand Dollars (\$20,000). Payment by City under this Agreement shall
36 not be deemed a waiver of defects, even if such defects were known to the City at the time of
37 payment.
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39 B. Timing of Payment. Billing for said services may be made on a monthly
40 basis. City shall review Service Provider's statement and pay Service Provider for services
41 rendered within 30 days of receipt of the Service Provider's statement.

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C. Changes in Compensation. Service Provider will not undertake any work that will incur costs in excess of the amount of Twenty Thousand Dollars (\$20,000).

D. Litigation Support. Service Provider agrees to testify at City's request if litigation is brought against City in connection with Service Provider's report. Unless the action is brought by Service Provider or is based upon Service Provider's negligence, City will compensate Service Provider for the preparation and the testimony at Service Provider's standard hourly rates.

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Service Provider, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Service Provider for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Service Provider or to any other party. Any modifications made by the City to any of the Service Provider's documents or any partial use or reuse of the documents without the express written consent of the Service Provider will be at the City's sole risk and without liability to the Service Provider and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.

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

6. Interest of Service Provider.

A. Service Provider (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Service Provider's services hereunder. Service Provider further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Service Provider is not a designated employee within the meaning of the Political Reform Act because Service Provider:

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

88 (2) possesses no authority with respect to any City decision beyond
89 the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

90
91 7. Interest of Members and Employees of City. No member of the City and no
92 other officer, employee or agent of the City who exercises any functions or responsibilities in
93 connection with the carrying out of any project to which this Agreement pertains, shall have
94 any personal interest, direct or indirect, in this Agreement, nor shall any such person
95 participate in any decision relating to this Agreement which affects his/her personal interests
96 or the interest of any corporation, partnership or association in which he/she is directly or
97 indirectly interested.

98
99 8. Liability of Members and Employees of City. No member of the City and no
100 other officer, employee or agent of the City shall be personally liable to Service Provider or
101 otherwise in the event of any default or breach of the City, or for any amount which may
102 become due to Service Provider or any successor in interest, or for any obligations directly or
103 indirectly incurred under the terms of this Agreement.

104
105 9. Indemnification of City. Service Provider hereby agrees to defend, indemnify
106 and save harmless the City, its officers, agents, employees and servants, from and against
107 any and all claims, liability or obligations based on negligence or willful misconduct brought
108 on account of or arising out of any acts, errors or omissions of Service Provider undertaken
109 pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or
110 damage to any work performed under this Agreement whether prior to its completion and
111 acceptance or otherwise. Service Provider's duty to indemnify and hold harmless, as set
112 forth herein, shall include the duty to defend as set forth in Section 2778 of the California
113 Civil Code.

114
115 10. Service Provider Not an Agent of City. City retains all rights of approval and
116 discretion with respect to the projects and undertakings contemplated by this Agreement.
117 Service Provider, its officers, employees and agents shall not have any power to bind or
118 commit the City to any decision.

119
120 11. Independent Contractor. It is understood that Service Provider, in the
121 performance of the work and services agreed to be performed by Service Provider, shall act
122 as and be an independent contractor and not an agent or employee of City; and as an
123 independent contractor, Service Provider shall obtain no rights to retirement benefits or other
124 benefits which accrue to City's employees, and Service Provider hereby expressly waives
125 any claim it may have to any such rights.

126
127 12. Compliance with Laws.

128
129 A. General. Service Provider shall use the standard of care in its
130 profession to comply with all applicable federal, state and local laws, codes, ordinances and
131 regulations. Service Provider represents and warrants to City that it has all licenses, permits,
132 qualifications, insurance and approvals of whatsoever nature, which are legally required for
133 Service Provider to practice its profession. Service Provider represents and warrants to City
134 that Service Provider shall, at its sole cost and expense, keep in effect or obtain at all times

135 during the term of this Agreement any licenses, permits, insurance and approvals which are
136 legally required for Service Provider to practice its profession. Service Provider shall
137 maintain a City of Calistoga business license.
138

139 B. Workers' Compensation. Service Provider certifies that it is aware of the
140 provisions of the California Labor Code, which require every employee to be insured against
141 liability for workers' compensation or to undertake self-insurance in accordance with the
142 provisions of that Code, and Service Provider certifies that it will comply with such provisions
143 before commencing performance of this Agreement.
144

145 C. Injury and Illness Prevention Program. Service Provider certifies that it is
146 aware of and has complied with the provisions of California Labor Code Section 6401.7,
147 which requires every employer to adopt a written injury and illness prevention program.
148

149 D. City Not Responsible. The City is not responsible or liable for Service
150 Provider's failure to comply with any and all of said requirements.
151

152 13. Confidential Information. All data, documents, discussions or other information
153 developed or received by or for Service Provider in performance of this Agreement are
154 confidential and not to be disclosed to any person except as authorized by City, or as
155 required by law.
156

157 14. Insurance.
158

159 A. Minimum Scope of Insurance.
160

161 (1) Service Provider agrees to have and maintain, for the duration of
162 the contract, a General Liability insurance policy insuring him/her and his/her firm to an
163 amount not less than One Million Dollars (\$1,000,000.00) combined single limit per
164 occurrence and in the aggregate for bodily injury, personal injury and property damage.
165

166 (2) Service Provider agrees to have and maintain for the duration of
167 the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an
168 amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit
169 per accident for bodily injury and property damage.
170

171 (3) Service Provider shall maintain professional errors and omissions
172 liability insurance for protection against claims alleging negligent acts, errors or omissions
173 which may arise from Service Provider's operations under this Agreement, whether such
174 operations be by Service Provider or by its employees, subcontractors, or subService
175 Providers. The amount of this insurance shall not be less than One Million Dollars
176 (\$1,000,000.00) on a claims-made annual aggregate basis.
177

178 (4) A Workers' Compensation and Employers' Liability policy written
179 in accordance with the laws of the State of California and providing coverage for any and all
180 employees of Service Provider:
181

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

184
185 (b) This policy shall also provide coverage for One Hundred
186 Thousand Dollars (\$100,000.00) Employers' Liability (Coverage B).

187
188 (c) A waiver of subrogation shall be required for the Worker's
189 Compensation in favor of the City of Calistoga.

190
191 (5) All of the following endorsements are required to be made a part
192 of each of the required policies, except for the Professional Liability and Workers'
193 Compensation and Employers' Liability policies, as stipulated below:

194
195 (a) "The City of Calistoga, its employees, officers, agents and
196 contractors are hereby added as additional insureds, but only as respects work done by, for
197 on behalf of the named insured."

198
199 (b) "This policy shall be considered primary insurance as
200 respects any other valid and collectible insurance the City may possess, including any self-
201 insured retention the City may have, and any other insurance the City does possess shall be
202 considered excess insurance only and shall not contribute with it."

203
204 (c) "This insurance shall act for each insured and additional
205 insured as though a separate policy had been written for each. This, however, will not act to
206 increase the limit of liability of the insuring company."

207
208 (6) Service Provider shall provide to the City all certificates of
209 insurance with original endorsements affecting coverage required by this paragraph.
210 Certificates of such insurance shall be filed with the City on or before commencement of
211 performance of this Agreement. The City reserves the right to require complete, certified
212 copies of all required insurance policies at any time.

213
214 B. General Liability.

215
216 (1) Any failure to comply with reporting provisions of the policies shall
217 not affect coverage provided to the City, its officers, officials, employees or volunteers.

218
219 (2) Service Provider's insurance shall apply separately to each
220 insured against whom a claim is made or suit is brought, except with respect to the limits of
221 the insurer's liability.

222
223 C. All Coverages. Each insurance policy required in this item shall provide
224 that coverage shall not be canceled, except after 30 days' prior written notice by certified
225 mail, return receipt requested, has been given to the City. Current certification of such
226 insurance shall be kept on file with the City Clerk at all times during the term of this
227 Agreement.

228

229 D. Acceptability of Insurers. Insurance is to be placed with insurers
230 approved by the California Department of Insurance with a Best/Es rating of no less than
231 A:VII.

232
233 E. Deductibles and Self-Insured Retentions. Any deductibles or self-
234 insured retentions must be declared to and approved by the City. At the City's option,
235 Service Provider shall demonstrate financial capability for payment of such deductibles or
236 self-insured retentions.

237
238 15. Assignment Prohibited. Neither the City nor Service Provider may assign any
239 right or obligation pursuant to this Agreement. Any attempted or purported assignment of
240 any right or obligation hereunder shall be void and of no effect.

241
242 16. Termination of Agreement.

243
244 A. This Agreement and all obligations hereunder may be terminated at any
245 time, with or without cause, by the City upon written notice to the Service Provider upon 5
246 days' written notice. Service Provider may terminate this Agreement upon 30 days' written
247 notice.

248
249 B. If Service Provider fails to perform any of its material obligations under
250 this Agreement, in addition to all other remedies provided by law, City may terminate this
251 Agreement immediately upon written notice.

252
253 C. Upon termination with or without cause, all finished and unfinished
254 documents, project data and reports shall, at the option of the City, become its sole property
255 and shall, at Service Provider's expense, be delivered to the City or to any party it may so
256 designate.

257
258 D. In the event termination is without cause, Service Provider shall be
259 entitled to any compensation owing to it hereunder up to the time of such termination, it being
260 understood that any payments are full compensation for services rendered prior to the time
261 of payment; provided, however, that Service Provider shall be entitled to compensation for
262 work in progress at the time of termination.

263
264 17. Amendment. This Agreement constitutes the complete and exclusive
265 statement of the Agreement to City and Service Provider. It may be amended or extended
266 from time to time by written agreement of the parties hereto.

267
268 18. Litigation Costs. If either party becomes involved in litigation arising out of this
269 Agreement or the performance thereof, the court in such litigation shall award reasonable
270 costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys'
271 fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of
272 justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or
273 incurred in good faith.

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275 19. Time of the Essence. Time is of the essence of this Agreement, however, the
276 Service Provider shall not be held responsible for delays caused by acts outside of Service
277 Provider's control.
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279 20. Written Notification. Any notice, demand, request, consent, approval or
280 communications that either party desires or is required to give to the other party shall be in
281 writing and either served personally or sent by prepaid, first class mail. Any such notice,
282 demand, etc. shall be addressed to the other party at the address set forth hereinbelow.
283 Either party may change its address by notifying the other party of the change of address.
284 Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as
285 provided in this section.
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289 If to City: City Of Calistoga
290 City Manager
291 1232 Washington Street
292 Calistoga, CA 94515
293

294 If to Service Provider: Napa Valley Publishing Company
295 Weekly Calistogan
296 Doug Ernst, Publisher/Editor
297 PO Box 346
298 St. Helena, CA 94574
299

300 21. Service Provider's Books and Records.
301

302 A. Service Provider shall maintain any and all ledgers, books of account,
303 invoices, vouchers, canceled checks, and other records or documents evidencing or relating
304 to charges for services, or expenditures and disbursements charged to City for a minimum
305 period of three (3) years, or for any longer period required by law, from the date of final
306 payment to Service Provider to this Agreement.
307

308 B. Service Provider shall maintain all documents and records, which
309 demonstrate performance under this Agreement for a minimum period of three (3) years, or
310 for any longer period required by law, from the date of termination or completion of this
311 Agreement.
312

313 C. Any records or documents required to be maintained pursuant to this
314 Agreement shall be made available for inspection or audit, at any time during regular
315 business hours, upon written request by the City Attorney, City Auditor, City Manager, or a
316 designated representative of any of these officers. Copies of such documents shall be
317 provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an
318 alternative is mutually agreed upon, the records shall be available at Service Provider's
319 address indicated for receipt of notices in this Agreement.
320

321 D. Where City has reason to believe that such records or documents may
322 be lost or discarded due to dissolution, disbandment or termination of Service Provider's
323 business, City may, by written request by any of the above-named officers, require that
324 custody of the records be given to City and that the records and documents be maintained in
325 City Hall. Access to such records and documents shall be granted to any party authorized by
326 Service Provider, Service Provider's representatives, or Service Provider's successor-in-
327 interest.

328
329 22. Equal Employment Opportunity. Service Provider is an equal opportunity
330 employer and agrees to comply with all applicable state and federal regulations governing
331 equal employment opportunity. Service Provider will not discriminate against any employee
332 or applicant for employment because of race, age, sex, creed, color, sexual orientation,
333 marital status or national origin. Service Provider will take affirmative action to ensure that
334 applicants are treated during such employment without regard to race, age, sex, creed, color,
335 sexual orientation, marital status or national origin. Such action shall include, but shall not be
336 limited to, the following: employment, upgrading, demotion or transfer; recruitment or
337 recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation;
338 and selection for training, including apprenticeship. Service Provider further agrees to post in
339 conspicuous places, available to employees and applicants for employment, notices setting
340 forth the provisions of this nondiscrimination clause.

341
342 23. Waiver. No failure on the part of either party to exercise any right or remedy
343 hereunder shall operate as a waiver of any other right or remedy that party may have
344 hereunder.

345
346 24. Execution. This Agreement may be executed in several counterparts, each of
347 which shall constitute one and the same instrument and shall become binding upon the
348 parties when at least one copy hereof shall have been signed by both parties hereto. In
349 approving this Agreement, it shall not be necessary to produce or account for more than one
350 such counterpart.

351
352 25. News Releases/Interviews: All Service Provider and Sub-Service
353 Provider news releases, media interviews, testimony at hearings and public comment shall
354 be prohibited unless expressly authorized by the City.

355
356 26. Venue. In the event that suit shall be brought by either party hereunder, the
357 parties agree that trial of such action shall be held exclusively in a state court in the County of
358 Napa, California.

321 D. Where City has reason to believe that such records or documents may
322 be lost or discarded due to dissolution, disbandment or termination of Service Provider's
323 business, City may, by written request by any of the above-named officers, require that
324 custody of the records be given to City and that the records and documents be maintained in
325 City Hall. Access to such records and documents shall be granted to any party authorized by
326 Service Provider, Service Provider's representatives, or Service Provider's successor-in-
327 interest.

328
329 22. Equal Employment Opportunity. Service Provider is an equal opportunity
330 employer and agrees to comply with all applicable state and federal regulations governing
331 equal employment opportunity. Service Provider will not discriminate against any employee
332 or applicant for employment because of race, age, sex, creed, color, sexual orientation,
333 marital status or national origin. Service Provider will take affirmative action to ensure that
334 applicants are treated during such employment without regard to race, age, sex, creed, color,
335 sexual orientation, marital status or national origin. Such action shall include, but shall not be
336 limited to, the following: employment, upgrading, demotion or transfer; recruitment or
337 recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation;
338 and selection for training, including apprenticeship. Service Provider further agrees to post in
339 conspicuous places, available to employees and applicants for employment, notices setting
340 forth the provisions of this nondiscrimination clause.

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

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347 which shall constitute one and the same instrument and shall become binding upon the
348 parties when at least one copy hereof shall have been signed by both parties hereto. In
349 approving this Agreement, it shall not be necessary to produce or account for more than one
350 such counterpart.

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353 Provider news releases, media interviews, testimony at hearings and public comment shall
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355
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357 parties agree that trial of such action shall be held exclusively in a state court in the County of
358 Napa, California.

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

CITY OF CALISTOGA

SERVICE PROVIDER

By: _____
James C. McCann
City Manager

By: _____
Doug Ernst, Publisher/Editor

APPROVED AS TO FORM:

ATTEST

Michelle Marchetta Kenyon
City Attorney

Susan Sneddon, City Clerk

Exhibit A

Scope of Services

1. Newspaper shall publish legal notices and legal advertisements for and on request of City and shall provide City with written proof of publication of each item within one week of the last publication of the item. Written proof of publication shall be in a form acceptable to the City Clerk.
2. The term "legal notices" refers to legal notices that the law requires to be published and that are identified as legal notices on the form sent by City to Contractor, requesting publication. Legal notices will be published in the legal notice section of the newspaper. Unless otherwise directed by the City, the Contractor shall publish all legal advertising using a standard seven (7) point type with seven (7) leading at eight (8) pica width (column). City may require modification of the type size or style. Contractor may also change the type size and/or style with permission of the City employee requesting the publication. Contractor shall use the least amount of space possible to present a readable notice.
3. The term "general advertisements" refers to legal notices that the law requires to be published and that are identified as legal notices on the form sent by City to Newspaper, requesting publication. Legal advertisements are legal notices published with a border and City logo in the legal notice section of the newspaper. Newspaper may print in other sections of the newspaper with the permission of the City employee requesting the publication. Contractor shall publish legal advertisements using a standard 8-point type for the body and 12-point for the heading. City may require modification of the type size or style. Contractor may also change the type size and/or style with permission of the City employee requesting the publication. Newspaper shall use the least amount of space possible to present a readable advertisement.

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Exhibit B
(Include rate and schedules)