



44           B.     Timing of Payment. Billing for said services may be made on a monthly  
45 basis. City shall review Consultant's statement and pay Consultant for services rendered within  
46 30 days of receipt of the Consultant's statement.  
47

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

54           D.     Litigation Support. Consultant agrees to testify at City's request if  
55 litigation is brought against City in connection with Consultant's report. Unless the action is  
56 brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant  
57 for the preparation and the testimony at Consultant's standard hourly rates.  
58

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

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

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

75           7.     Ownership of Documents. All plans, studies, documents and other writings  
76 prepared by and for Consultant, its officers, employees and agents in the course of implementing  
77 this Agreement, except working notes and internal documents, shall become the sole property of  
78 the City upon payment to Consultant for such work, and the City shall have the sole right to use  
79 such materials in its sole discretion without further compensation to Consultant or to any other  
80 party. Any modifications made by the City to any of the Consultant's documents or any partial  
81 use or reuse of the documents without the express written consent of the Consultant will be at the  
82 City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and

83 hold harmless from all claims, damages, losses and expenses including, but not limited to,  
84 attorney's fees resulting therefrom.

85  
86 8. Employment of Other Consultants, Specialists or Experts. Consultant will not  
87 employ or otherwise incur an obligation to pay other consultants, specialists or experts for  
88 services in connection with this Agreement without the prior written approval of the City.

89  
90 9. Interest of Consultant.

91  
92 A. Consultant (including principals, associates and professional employees)  
93 covenants and represents that it does not now have any investment or interest in real property and  
94 shall not acquire any interest, direct or indirect, in the area covered by this contract or any other  
95 source of income, interest in real property or investment which would be affected in any manner  
96 or degree by the performance of Consultant's services hereunder. Consultant further covenants  
97 and represents that in the performance of its duties hereunder no person having any such interest  
98 shall perform any services under this contract.

99  
100 B. Consultant is not a designated employee within the meaning of the  
101 Political Reform Act because Consultant:

102  
103 (1) will conduct research and arrive at conclusions with respect to  
104 his/her rendition of information, advice, recommendation or counsel independent of the control  
105 and direction of the City or of any City official, other than normal contract monitoring; and

106  
107 (2) possesses no authority with respect to any City decision beyond the  
108 rendition of information, advice, recommendation or counsel. (2 Cal. Code Regs. §  
109 18700(a)(2).)

110  
111 10. Interest of Members and Employees of City. No member of the City and no other  
112 officer, employee or agent of the City who exercises any functions or responsibilities in  
113 connection with the carrying out of any project to which this Agreement pertains, shall have any  
114 personal interest, direct or indirect, in this Agreement, nor shall any such person participate in  
115 any decision relating to this Agreement which affects his/her personal interests or the interest of  
116 any corporation, partnership or association in which he/she is directly or indirectly interested.

117  
118 11. Liability of Members and Employees of City. No member of the City and no  
119 other officer, employee or agent of the City shall be personally liable to Consultant or otherwise  
120 in the event of any default or breach of the City, or for any amount which may become due to  
121 Consultant or any successor in interest, or for any obligations directly or indirectly incurred under  
122 the terms of this Agreement.

123  
124 12. Indemnification of City. Consultant hereby agrees to defend, indemnify and save  
125 harmless the City, its officers, agents, employees and servants, from and against any and all

126 claims, liability or obligations based on negligence or willful misconduct brought on account of  
127 or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this  
128 Agreement. The City has no liability or responsibility for any accident, loss or damage to any  
129 work performed under this Agreement whether prior to its completion and acceptance or  
130 otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include  
131 the duty to defend as set forth in Section 2778 of the California Civil Code.  
132

133 13. Consultant Not an Agent of City. City retains all rights of approval and discretion  
134 with respect to the projects and undertakings contemplated by this Agreement. Consultant, its  
135 officers, employees and agents shall not have any power to bind or commit the City to any  
136 decision.  
137

138 14. Independent Contractor. It is understood that Consultant, in the performance of  
139 the work and services agreed to be performed by Consultant, shall act as and be an independent  
140 contractor and not an agent or employee of City; and as an independent contractor, Consultant  
141 shall obtain no rights to retirement benefits or other benefits which accrue to City's employees,  
142 and Consultant hereby expressly waives any claim it may have to any such rights.  
143

144 13. Compliance with Laws.  
145

146 A. General. Consultant shall use the standard of care in its profession to  
147 comply with all applicable federal, state and local laws, codes, ordinances and regulations.  
148 Consultant represents and warrants to City that it has all licenses, permits, qualifications,  
149 insurance and approvals of whatsoever nature, which are legally required for Consultant to  
150 practice its profession. Consultant represents and warrants to City that Consultant shall, at its  
151 sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any  
152 licenses, permits, insurance and approvals which are legally required for Consultant to practice  
153 its profession. Consultant shall maintain a City of Calistoga business license.  
154

155 B. Workers' Compensation. Consultant certifies that it is aware of the  
156 provisions of the California Labor Code, which require every employee to be insured against  
157 liability for workers' compensation or to undertake self-insurance in accordance with the  
158 provisions of that Code, and Consultant certifies that it will comply with such provisions before  
159 commencing performance of this Agreement.  
160

161 C. Injury and Illness Prevention Program. Consultant certifies that it is aware  
162 of and has complied with the provisions of California Labor Code Section 6401.7.  
163

164 D. City Not Responsible. The City is not responsible or liable for  
165 Consultant's failure to comply with any and all of said requirements.  
166

167           14.    Confidential Information. All data, documents, discussions or other information  
168 developed or received by or for Consultant in performance of this Agreement are confidential  
169 and not to be disclosed to any person except as authorized by City, or as required by law.  
170

171  
172           15.    Insurance.

173  
174               A.    Minimum Scope of Insurance.

175  
176                       (1)    Consultant agrees to have and maintain, for the duration of the  
177 contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not  
178 less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the  
179 aggregate for bodily injury, personal injury and property damage.  
180

181                       (2)    Consultant agrees to have and maintain for the duration of the  
182 contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount  
183 not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident  
184 for bodily injury and property damage.  
185

186                       (3)    Consultant shall maintain professional errors and omissions  
187 liability insurance for protection against claims alleging negligent acts, errors or omissions which  
188 may arise from Consultant's operations under this Agreement, whether such operations be by  
189 Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance  
190 shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate  
191 basis.  
192

193                       (4)    A Workers' Compensation and Employers' Liability policy written  
194 in accordance with the laws of the State of California and providing coverage for any and all  
195 employees of Consultant:  
196

197                               (a)    This policy shall provide coverage for Workers'  
198 Compensation (Coverage A).  
199

200                               (b)    This policy shall also provide coverage for One Million  
201 Dollars (\$1,000,000.00) Employers' Liability (Coverage B).  
202

203                               (c)    Contractor shall provide to the City an endorsement that the  
204 insurer waives the right of subrogation against the City, its officials, officers, employees,  
205 volunteers, and agents.  
206 .

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

210  
211 (a) "The City of Calistoga, its employees, officers, agents and  
212 contractors are hereby added as additional insureds, but only as respects work done by, for on  
213 behalf of the named insured."

214  
215 (b) "This policy shall be considered primary insurance as  
216 respects any other valid and collectible insurance the City may possess, including any self-  
217 insured retention the City may have, and any other insurance the City does possess shall be  
218 considered excess insurance only and shall not contribute with it."

219  
220 (c) "This insurance shall act for each insured and additional  
221 insured as though a separate policy had been written for each. This, however, will not act to  
222 increase the limit of liability of the insuring company."

223  
224 (6) Consultant shall provide to the City all certificates of insurance  
225 with original endorsements affecting coverage required by this paragraph. Certificates of such  
226 insurance shall be filed with the City on or before commencement of performance of this  
227 Agreement. The City reserves the right to require complete, certified copies of all required  
228 insurance policies at any time.

229  
230 B. General Liability.

231  
232 (1) Any failure to comply with reporting provisions of the policies  
233 shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

234  
235 (2) Consultant's insurance shall apply separately to each insured  
236 against whom a claim is made or suit is brought, except with respect to the limits of the insurer's  
237 liability.

238  
239 C. All Coverages. Each insurance policy required in this item shall provide  
240 that coverage shall not be canceled, except after 30 days' prior written notice by certified mail,  
241 return receipt requested, has been given to the City. Current certification of such insurance shall  
242 be kept on file with the City Secretary at all times during the term of this Agreement.

243  
244 D. Acceptability of Insurers. Insurance is to be placed with insurers approved  
245 by the California Department of Insurance with a Best's rating of no less than A:VII.

246  
247 E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured  
248 retentions must be declared to and approved by the City. At the City's option, Consultant shall  
249 demonstrate financial capability for payment of such deductibles or self-insured retentions.

250

251           16.    Assignment Prohibited. Neither the City nor Consultant may assign any right or  
252 obligation pursuant to this Agreement. Any attempted or purported assignment of any right or  
253 obligation hereunder shall be void and of no effect.

254  
255           17.    Termination of Agreement.

256  
257           A.       This Agreement and all obligations hereunder may be terminated at any  
258 time, with or without cause, by the City upon written notice to the Consultant upon 5 days'  
259 written notice. Consultant may terminate this Agreement upon 30 days' written notice.

260  
261           B.       If Consultant fails to perform any of its material obligations under this  
262 Agreement, in addition to all other remedies provided by law, City may terminate this Agreement  
263 immediately upon written notice.

264  
265           C.       Upon termination with or without cause, all finished and unfinished  
266 documents, project data and reports shall, at the option of the City, become its sole property and  
267 shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

268  
269           D.       In the event termination is without cause, Consultant shall be entitled to  
270 any compensation owing to it hereunder up to the time of such termination, it being understood  
271 that any payments are full compensation for services rendered prior to the time of payment;  
272 provided, however, that Consultant shall be entitled to compensation for work in progress at the  
273 time of termination.

274  
275           18.    Amendment. This Agreement constitutes the complete and exclusive statement of  
276 the Agreement to City and Consultant. It may be amended or extended from time to time by  
277 written agreement of the parties hereto.

278  
279           19.    Litigation Costs. If either party becomes involved in litigation arising out of this  
280 Agreement or the performance thereof, the court in such litigation shall award reasonable costs  
281 and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the  
282 court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do  
283 so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

284  
285           20.    Time of the Essence. Time is of the essence of this Agreement, however, the  
286 Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.

287  
288           21.    Written Notification. Any notice, demand, request, consent, approval or  
289 communications that either party desires or is required to give to the other party shall be in  
290 writing and either served personally or sent by prepaid, first class mail. Any such notice,  
291 demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either  
292 party may change its address by notifying the other party of the change of address. Notice shall

293 be deemed communicated within 48 hours from the time of mailing if mailed as provided in this  
294 section.

295  
296 If to City: City Of Calistoga  
297 City Manager  
298 1232 Washington Street  
299 Calistoga, CA 94515

300  
301 If to Consultant: Michael Brandman Associates  
302 2000 "O" Street, Suite 200  
303 Sacramento, CA 95811

304  
305 22. Consultant's Books and Records.

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

312  
313 B. Consultant shall maintain all documents and records, which demonstrate  
314 performance under this Agreement for a minimum period of three (3) years, or for any longer  
315 period required by law, from the date of termination or completion of this Agreement.

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

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

331  
332 23. Equal Employment Opportunity. Consultant is an equal opportunity employer  
333 and agrees to comply with all applicable state and federal regulations governing equal  
334 employment opportunity. Consultant will not discriminate against any employee or applicant for  
335 employment because of race, age, sex, creed, color, sexual orientation, marital status or national



336 origin. Consultant will take affirmative action to ensure that applicants are treated during such  
337 employment without regard to race, age, sex, creed, color, sexual orientation, marital status or  
338 national origin. Such action shall include, but shall not be limited to, the following:  
339 employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or  
340 termination; rates of pay or other forms of compensation; and selection for training, including  
341 apprenticeship. Consultant further agrees to post in conspicuous places, available to employees  
342 and applicants for employment, notices setting forth the provisions of this nondiscrimination  
343 clause.

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

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

352  
353 26. News Releases/Interviews: All Consultant and subconsultant news releases,  
354 media interviews, testimony at hearings and public comment shall be prohibited unless expressly  
355 authorized by the City.

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

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

CITY OF CALISTOGA

CONSULTANT

By: \_\_\_\_\_  
William C. Norton  
Title: Interim City Manager

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

ATTEST

\_\_\_\_\_  
Michelle Marchetta Kenyon  
City Attorney

\_\_\_\_\_  
Susan Sneddon, City Clerk

379  
380  
381  
382  
383

**Exhibit A**  
(Scope of Work)

384  
385  
386

**Exhibit B**

(Include rate and schedules)