

NAPA COUNTY AGREEMENT NO. _____
CITY OF CALISTOGA AGREEMENT NO. _____

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

THIS AGREEMENT is made and entered into as of this 1st day of July, 2015, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY”, and the CITY OF CALISTOGA, a municipal corporation, hereinafter referred to as “CALISTOGA”;

RECITALS

WHEREAS, COUNTY is a general law county with authority to provide for prevention and suppression of fires and emergency medical response within those areas of Napa County not located within the boundaries of municipalities or fire protection districts and to that end contracts with the California State Department of Forestry and Fire hereinafter referred to as “CAL FIRE,” to provide first response emergency medical services, rescue and fire suppression and protection services to such areas of COUNTY; and

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

WHEREAS, in the unincorporated area (hereinafter referred to as “ZONES”) outside the city limits of CALISTOGA, as described and shown on the map entitled “Calistoga City Fire Department – Napa County Contract Zones” attached hereto as Exhibit “A” and made a part hereof, there are a number of inhabitants who live and work in residential, industrial, commercial, and other structures for whom COUNTY desires to enhance the provision of emergency medical service, rescue, and fire suppression and protection services; and

WHEREAS, to provide such enhanced services, COUNTY desires CALISTOGA, pursuant to Government Code Section 55632, to provide emergency medical, rescue, and fire suppression and protection services within the ZONES on the terms and conditions set forth herein, and in exchange CALISTOGA desires COUNTY, pursuant to Government Code Section 55632, to provide partial fire dispatch services to CALISTOGA on the terms and conditions set forth herein;

TERMS

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

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first

above written and shall expire on June 30, 2016, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of each party to the other party shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, unless either party gives the other party written notice of intention not to renew no less than ninety (90) days prior to the expiration of the then current term. Such notice of nonrenewal may be given on behalf of COUNTY by the Napa County Fire Chief or designee thereof. Such notice of nonrenewal may be given on behalf of CALISTOGA by the city of Calistoga City Manager or designee thereof. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

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

3. **Compensation.**

(a) Emergency Medical, Rescue, and Fire Suppression and Protection Services. As partial consideration for CALISTOGA's provision of the services to COUNTY described in Exhibit "B" attached, COUNTY shall pay CALISTOGA a fee based upon the costs for services and numbers of calls for services as described in Exhibit "C" attached and incorporated here by reference.

(b) Fire Dispatch Services. COUNTY's provision to CALISTOGA of the services described in Exhibit "B" shall be provided to CALISTOGA at no cost as the remainder of the consideration for the services provided by CALISTOGA to COUNTY.

(c) Emergency Apparatus Maintenance Services. COUNTY's provision to CALISTOGA of the services described in Exhibit "B" shall be provided to CALISTOGA at the rate of \$125 per hour plus the actual cost of parts.

4. **Method of Payment.**

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

(b) By CALISTOGA to COUNTY. Except as otherwise provided in Exhibit "D" in relation to parts directly billed by and paid to COUNTY selected vendors, COUNTY shall submit invoices no more frequently than monthly to CALISTOGA to reimburse COUNTY for the cost of emergency apparatus maintenance services provided by COUNTY. After review and approval as to form and content, which shall not be unreasonably withheld, CALISTOGA shall use its best efforts to pay the approved invoices within thirty (30) days following receipt.

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

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

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

(a) **Workers' Compensation insurance.** To the extent required by law during the term of this Agreement, CALISTOGA shall provide workers' compensation insurance for the performance of any of CALISTOGA's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

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

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

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

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

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

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

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

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

(4) Upon request by COUNTY's Risk Manager, CALISTOGA shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

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

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

8. Hold Harmless/Defense/Indemnification.

(a) In General. To the full extent permitted by law, each party shall each defend, indemnify and hold harmless the other party as well as their respective officers, agents and employees from any claims, suits, proceedings, loss or liability, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising out of or connected with any acts or omissions of that party or its officers, agents, employees, volunteers, or other contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

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

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

Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least ninety (90) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

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

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

(1) To the extent CALISTOGA has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CALISTOGA. In addition, to the extent CALISTOGA maintains COUNTY data on those portions of digital software hosted by CALISTOGA and not controlled by COUNTY (“County data”), CALISTOGA shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CALISTOGA’s systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CALISTOGA.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CALISTOGA may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CALISTOGA under this Agreement shall be deemed a “work made for hire” for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CALISTOGA or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CALISTOGA shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CALISTOGA’s expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating

the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

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

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY
Napa County Fire Department
1125 Third Street
Napa, CA 94559

CALISTOGA
Fire Chief
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** [RESERVED]

15. **Confidentiality.**

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

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

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

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

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

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

16. No Assignments or Subcontracts.

(a) In general. A consideration of this Agreement is the personal reputation of CALISTOGA; therefore, CALISTOGA shall not assign any interest in this Agreement or subcontract any of the services CALISTOGA is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CALISTOGA, or to perform any of the remaining services required under this Agreement within the same time frame required of CALISTOGA shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Fire Chief.

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

17. Amendment/Modification. Except as specifically provided herein regarding administrative amendment by the parties’ respective Fire Chiefs of the Operation Plan attached hereto as Exhibit “D”, this Agreement may only be modified or amended in writing and with the

prior written consent of both parties. In particular, only an amendment of this Agreement, signed by both parties (in the case of COUNTY through its Board of Supervisors), may authorize extra and/or changed work if beyond the scope of services prescribed by Exhibit "B". Failure of a party to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights of that party to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. Interpretation; Venue.

(a) **Interpretation.** The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) **Venue.** This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. Compliance with Laws. Each party shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

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

4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and the party and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

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

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

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

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

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

23. **Conflict of Interest.**

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

(b) **Statements of Economic Interest.** CALISTOGA acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CALISTOGA to file with the Elections Division of the Napa County Assessor-Clerk Recorder “assuming office”, “annual”, and “leaving office” Statements of Economic Interest as a “consultant”, as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CALISTOGA, although holding a “designated” position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

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

25. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

26. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

27. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

28. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises,

representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

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

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

ATTEST:
Clerk of the City of Calistoga

CITY OF CALISTOGA, a municipal corporation

By: _____

By: _____

“CALISTOGA”

NAPA COUNTY, a political subdivision of the State of California

By _____
DIANE DILLON Chair
BOARD OF SUPERVISORS

“COUNTY”

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Laura Anderson (e-signature)</u> Deputy</p> <p>Date: <u>June 1, 2015</u></p>	<p>ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors</p> <p>By: _____</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____ Deputy Clerk of the Board</p>
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EXHIBIT “A”

ZONE MAP

EXHIBIT "B"

SCOPE OF WORK

I. CALISTOGA shall:

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

II. COUNTY shall:

- A. COUNTY will contract directly with Cal-Fire annually for one half of cost of dispatch for the County calls the City responds to.
- B. Respond to any structural and vegetation fire within the city limits of CALISTOGA.
- C. COUNTY shall provide CALISTOGA emergency apparatus maintenance services at the rate of \$125 per hour plus the actual cost of parts.
- D. Retain legal jurisdiction for all incidents that occur within the ZONES.

III. COUNTY and CALISTOGA shall:

- A. Designate their respective Fire Chiefs as authorized to jointly prepare and amend from time to time as they determine necessary a ZONE Operation Plan that shall be deemed, when signed by such Fire Chiefs, to become a part of this Agreement as an amendment to Exhibit "D". The Operation Plan shall detail policy and procedures for implementation of the requirements of this Agreement relating to response, dispatch, vehicle maintenance, and mutual aid resources. In the event the Operation Plan is amended by the Fire Chiefs, such amendment shall become effective only when fully signed and dated duplicate originals of the amended Exhibit "D" have been filed with the Clerk of COUNTY's Board of Supervisors.

- B. Have their respective Fire Chiefs cooperate to produce and provide to each party such reports as either Fire Chief may from time to time request.

EXHIBIT "C"

COMPENSATION AND EXPENSE REIMBURSEMENT

I. Compensation

COUNTY shall pay CALISTOGA \$1,188 for response to each incident response provided by CALISTOGA into the ZONE. This amount shall be increased annually by 3%.

CALISTOGA shall be compensated for a minimum of 150 incidents per fiscal year and a maximum of 300 incidents per year. Calls above the maximum of 350 per fiscal year will be included at no additional cost to COUNTY.

II. Payments and Credits

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

EXHIBIT “D”

OPERATION PLAN

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

I. By CALISTOGA

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

1. Providing one staffed Type I Engine with two personnel, 24 hours per day, seven days per week, from CALISTOGA’s City Fire Station;
2. Providing additional apparatus and equipment as necessary, staffed by off-duty and/or part time firefighters on a 24-hour basis, available for response into the ZONE from CALISTOGA’s City Fire Station; and
3. Responding Code 3 to all emergency calls within the ZONE A with appropriate equipment, as available, to mitigate the emergencies. CALISTOGA shall respond to traffic collision and fire calls in the ZONE B.
4. When CALISTOGA is first unit on scene and incident can be handled by a single resource, CALISTOGA shall handle and cancel COUNTY unit.

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

C. CALISTOGA shall contract directly with Cal-Fire for one-half of the cost of dispatch.

II. By COUNTY

A. COUNTY shall contract with Cal-Fire for one-half of the cost of CALISTOGA’s dispatch which shall include COUNTY’s calls.

B. COUNTY shall provide emergency vehicle repair at the established hourly rate for CALISTOGA as and record all work performed upon CALISTOGA fire equipment upon a CAL FIRE for ME 107 for each individual performance. This record shall capture all work hours and parts used. A copy of these records shall be provided to CALISTOGA.

C. COUNTY shall provide CALISTOGA with emergency Response/Station Coverage as follows:

1. Provide one Type I engine staffed with two-personnel, 24/7 at the CAL FIRE Station

located on Hwy. 29 at the cross of Big Tree Road and respond to the following types of incidents within the city limits of CALISTOGA:

- Reported structure fires, and
 - Reported vegetation fires
2. Provide station coverage as requested, with available resources, at such times as requested by CALISTOGA or the Incident Commander, due to the commitment of CALISTOGA's resources at any incident within the ZONE or mutual aid.
 3. Provide Chief Officer coverage to CALISTOGA when requested, if available.
 4. Respond to all reported incidents within the ZONE, with minimum of one apparatus staffed with two personnel, if available.
- D. COUNTY shall respond to mutual aid requests with appropriate equipment, as available.

III. Both CALISTOGA and COUNTY:

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

- A. Initial command shall be established by the first arriving unit at an incident regardless of legal jurisdiction. Flexibility for the transfer of command to the agency having legal jurisdiction shall be at the discretion of the agency having legal jurisdiction.
- B. Upon arrival, based upon the conditions present the Incident Commander shall have full authority to commit resources as appropriate from both agencies.
- C. Identify the Incident Commander to the Emergency Command Center (ECC) in St. Helena, who will provide sufficient information to the ECC concerning the status of the incident.
- D. Every effort shall be made to ensure a minimum coverage of one apparatus staffed with two personnel at the CALISTOGA City Fire Station when an extended duration incident occurs either within the city limits of CALISTOGA or within the ZONE.

IV. SIGNATURES AND EFFECTIVE DATE:

The foregoing Operation Plan developed and approved by the undersigned Fire Chiefs shall be effective as of July 1, 2015

Date: _____

Barry Biermann, County Fire Chief

Date: _____

Steve Campbell, Fire Chief, City of Calistoga