

**RESOLUTION NO. 2016-045**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AWARDING A ONE-YEAR CONTRACT TO THE CALISTOGA TRIBUNE FOR PUBLICATION OF LEGAL ADVERTISEMENTS IN AN AMOUNT NOT TO EXCEED \$15,000 FOR THE PERIOD ENDING JUNE 30, 2017 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT**

**Authorizing Agreement No. 680**

**WHEREAS**, the City of Calistoga (City) publishes legal notices in a newspaper of general circulation pursuant to California Government Code § 6060 et al; and

**WHEREAS**, each year, in accordance with Public Contract Code §20169, cities that have more than one newspaper of general circulation must publish a notice inviting bids for the publication of legal notices; and

**WHEREAS**, the City currently has two adjudicated newspapers within the City: the Weekly Calistogan, published by the Napa Valley Publishing Company, and the Calistoga Tribune; and

**WHEREAS**, on May 13, 2016, the City filed a Notice Inviting Written Bids for Legal Advertising, said bids to be submitted by Friday, June 10, 2016 at 10:00 A.M.; and

**WHEREAS**, the City determined that the Calistoga Tribune's proposal is complete and responsive; and

**WHEREAS**, the City Council independently reviewed the staff report and bid proposal at its June 21, 2016, regular meeting; and

**WHEREAS**, the City desires to enter into an agreement with the Calistoga Tribune for City-wide legal advertising.

**NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of Calistoga hereby authorizes the City Manager to execute an agreement substantially in accordance with the attached Professional Services Agreement for publication of legal notices and legal advertisements with the Calistoga Tribune in an amount not to exceed \$15,000, subject to review and approval by the City Attorney.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City at a regular meeting held this 21<sup>th</sup> day of June, 2016 by the following vote:

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

  
\_\_\_\_\_  
**CHRIS CANNING, Mayor**

**ATTEST:**

  
\_\_\_\_\_  
**KATHY FLAMSON, City Clerk**

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

**Authorizing Agreement No. 680**

THIS AGREEMENT is entered into as of the 1<sup>st</sup> day of July 2016, by and between the CITY OF CALISTOGA herein called the "City", and the Calistoga Tribune herein called the "Service Provider".

Recitals

WHEREAS, City desires to obtain services for the publication of legal advertisements; and

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

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

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

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

2. Time of Performance. The services of Service Provider are to commence no sooner than July 1, 2016 and, subject to City Council approval, be completed not later than June 30, 2017. Any changes to these dates must be approved in writing by the City Manager or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Service Provider, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed Fifteen Thousand Dollars (\$15,000). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

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

C. Changes in Compensation. Service Provider will not undertake any work that will incur costs in excess of the amount of Fifteen Thousand Dollars (\$15,000).

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

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

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

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

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

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

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

12. Compliance with Laws.

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

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

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

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

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

14. Insurance.

A. Minimum Scope of Insurance.

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

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

(3) Service Provider shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Service Provider's operations under this Agreement, whether such

operations be by Service Provider or by its employees, subcontractors, or subService Providers. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.

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

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

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

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

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

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

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

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

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

B. General Liability.

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

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

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

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

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

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

16. Termination of Agreement.

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

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

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

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





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

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

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

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

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

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

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

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

By: \_\_\_\_\_  
Pat Hampton  
Publisher/Owner

APPROVED AS TO FORM:

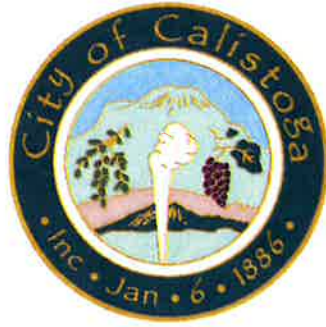
ATTEST

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

\_\_\_\_\_  
Kathy Flamson, City Clerk

## **Exhibit A**

### Scope of Services



**CITY OF CALISTOGA**

**REQUEST FOR PROPOSALS FOR**

**CITY-WIDE ADVERTISING**

**PRINTING/PUBLISHING SPECIFICATIONS**

**July 1, 2016 - June 30, 2017**

**INTRODUCTION**

The City of Calistoga (City) is soliciting proposals for the provision of official advertising services pursuant to Section 6000, et seq. for the City for a 12 month period, beginning July 1, 2016. Upon selection of the most qualified, cost effective and responsive adjudicated newspaper (Contractor), the City will execute a contract for services.

This Request for Proposal (RFP) describes the City's basic needs. You are encouraged to identify other services beyond these minimum required services which you can provide to address the City's needs and describe any progressive approaches that would reduce City costs and/or increase advertising efficiency and effectiveness.

**DESIGNATION**

During the period of this contract, the newspaper shall be known and designated as the "official newspaper of the City of Calistoga" as required by Government Code Section 6000, et seq.

**SCOPE**

The scope of services desired includes at a minimum the advertising by the City of Calistoga in accordance with State and local regulations: e.g. Sections 6000 through 6040 of the Government Code.

**TYPE OF LEGAL ADVERTISING**

Official legal notices for the City of Calistoga will consist of printing and publishing the following:

- 1) Ordinances
- 2) Public Hearing/Meeting notices
- 3) Formal bid notices
- 4) Election notices

### **COPIES OF ADVERTISEMENT**

During the term of the contract two Affidavits of Publication to the City Clerk within one week of the last publication of the item.

### **PUBLISHING**

#### **PUBLISHING SCHEDULE**

Advertisements and notices shall be placed in the body of the newspaper and shall be published for the number of days directed by the officer requiring such publication. Publishing of advertisements and other notices on a supplemental sheet to the newspaper will not be acceptable.

In the event that the newspaper that is awarded the advertising contract for the City of Calistoga is unable to publish on the date required by the City, the City may choose an alternative newspaper in order to meet publication deadline/requirements.

#### **ACCURACY OF PUBLISHING**

The Contractor shall submit a draft to be proofread by the respective City department. If errors are found after the sample proof has been checked, a revised corrected proof shall be submitted immediately to said department for approval prior to the publication of the printed advertisements or notices. All printing done hereunder that does not strictly comply with the copy or copies furnished shall be corrected and republished by and at the expense of the Contractor.

#### **NON-COMPLIANCE**

Contractor shall first proofread all printing done under this contract before submitting the same to the City for checking, and if upon checking by City errors are found, City may request a revised proof for approval before publication of the same by Contractor. In case it is necessary to republish due to the fault of the Contractor, no charge, or charges shall be made for the previous printing or publication, and should the same not be republished, no charge whatsoever shall be made to City thereof.

Contractor shall provide miscellaneous advertising requirements of the City. Contractor shall submit appropriate price list with the bid.

#### **LEGAL NOTICE TYPE REQUIREMENTS**

Unless otherwise directed by the City, all legal advertising shall be set at no larger than eight (8) point type.

**CITY-WIDE ADVERTISING**  
**GENERAL SPECIFICATIONS**

**PROPOSAL**

In the determination of awarding the contract, the City Council shall be the sole judge as to which bid best meets the needs and requirements of the City and its decision shall be accepted as final.

**CONTRACT**

A Professional Services Agreement with appropriate attachments is to be completed, signed, and dated by the Contractor. A current Calistoga Business License is to be in effect during the term of the contract. All insurance certificates as indicated in the attached professional services agreement must be submitted with the proposal.

This entire Request for Proposal, or any item(s) thereof, shall become part of the contract upon its acceptance by the City Council of the City of Calistoga. The complete contract shall consist of the Notice Inviting Request for Proposals, the entire Proposal (including Specifications), or any item(s) thereof, addenda. Additional provisions will be added to the final contract consistent with this notice. Contractor will be provided with a copy of the executed contract.

**TERM OF CONTRACT**

The term of any contract awarded pursuant hereto shall be from July 1, 2016 through June 30, 2017.

**ELECTRONIC DELIVERY**

Contractor shall have the capability to receive typeset matter and proofs via email. Contractor shall provide City an email address to be used for transmission of typeset matter.

**TERMINATION/PENALTIES**

Whenever, in the opinion of the City, the said service is unsatisfactory, the Contractor shall be advised of the reasons. If the Contractor fails to correct the unsatisfactory conditions within five days, the City may declare this contract terminated and contract with another supplier. It shall be understood and agreed that the contract may be terminated by either party upon thirty days written notice.

Whenever Contractor has confirmed receipt of an ad placement either electronically or by facsimile and/or City has returned to Contractor an approved ad proof and Contractor then fails to publish the advertisement on one or more of the dates already confirmed and approved, the next ad placement of similar nature shall be published at no cost to the City for the same number of run dates that were missed by the Contractor.

Notwithstanding any provision to the contrary, City shall have no obligation to give more than two notices of unsatisfactory performance in any calendar year. In the event two such notices of unsatisfactory performance are given in any calendar year, and in the event that Contractor shall again fail to satisfactorily perform services pursuant to this Contract, City may thereupon terminate this contract immediately.

**RATES**

The rates proposed to be charged the City shall be designated for each column inch for a first publication, each column inch for a second publication, and each column inch for all additional publications. Each bid shall indicate that the rates proposed to be charged the City do not exceed the customary rates charged by the bidder's newspaper for the publication of legal notices of a private character.

**PAYMENT AND INVOICING**

Invoices shall be mailed or delivered to City of Calistoga, Attention: City Clerk, 1232 Washington St, Calistoga, CA 94515. Invoices shall include the name of the City Department and/or City Employee who ordered the advertising; or a coding system sufficient to enable the City Clerk to identify the department responsible for placing the order. City shall pay to the Contractor in due course of payments following the end of calendar month and the receipt from the Contractor of invoices for material delivered by the Contractor and accepted by the City during such calendar month.

NOTE: Payment may be seriously delayed if invoices do not clearly reflect contract number and department number as provided by City at time of submission of advertisement.

**EXPENDITURES**

Total annual expenditures under this contract are estimated (without guarantee) to be: \$15,000.

**PAYMENT TERMS**

Describe timely payment discount offered, if any.

# Calistoga Tribune

1007 Washington St. Suite 3 • Calistoga, CA 94515  
(707) 942-5181 • FAX (707) 942-6508

PAT HAMPTON & RAMONA ASMUS - PUBLISHERS

June 9, 2016

Dear Council Members:

We are an independent, family-owned newspaper that started publishing in 2002 in response to the community's request for a local, hometown newspaper. Our reputation in the community over the past 13 years is one of accuracy, professionalism and dependability.

Cities and other governmental agencies are required in some instances by state law to publish notices in an adjudicated paper. In July 2005 the Calistoga Tribune, following the guidelines of State Code Sec. 6020-6027, petitioned and was granted adjudication by Napa Superior Court Judge Scott Snowden's order No. 26-29449, the first newspaper in over 60 years to do so in Napa County. We are the only adjudicated newspaper in the valley not owned by Napa Valley Publishing. We compete with *The Weekly Calistogan* and its parent company, Lee Enterprises, a national corporation which also owns 53 daily newspapers and 300 specialty publications in 23 states.

The Tribune is the most-read weekly newspaper in town as shown by circulation figures supplied by the U.S. Postal Service's required Statement of Ownership:

	<i>Calistoga Tribune</i>	<i>The Weekly Calistogan</i>
• Total Paid Distribution	1135	509*
• Paid subscriptions in county	733	239
• Paid subscriptions outside county	127	20
• Copies sold from newsracks	275	250

Our commitment to the city includes a newspaper office open four days a week during business hours as well as three part-time employees and local ownership.

Thank you for the consideration,

Pat Hampton  
Publisher/Owner

*\*The numbers for The Weekly Calistogan are as of October 1, 2014. We were unable to verify their numbers for 2015.*