



MAINTENANCE AGREEMENT
Providing Payment of Prevailing Wages

(Town of Yountville / Cappstone Inc.)

1. IDENTIFICATION

This MAINTENANCE AGREEMENT (“Agreement”) is entered into by and between the Town of Yountville, a California municipal corporation (“Town”), and Cappstone Inc., a Corporation (“Contractor”).

2. RECITALS

- 2.1. Town has determined that it requires the following recurring maintenance services from a contractor: Custodial Services for the Town of Yountville
the Yountville Commons, Community Hall, Community Center, Library, Sheriff Substation and Town Hall.
- 2.2. Contractor represents that it is fully qualified to perform such maintenance services by virtue of its experience and the training, education and expertise of its principals and employees. Contractor further represents that it is willing to accept responsibility for performing such maintenance services in accordance with the terms and conditions set forth in this Agreement.
- 2.3. Contractor represents that it has no known relationships with third parties, Town Council members, or employees of Town which would (1) present a conflict of interest with the rendering of services under this Agreement under California Government Code section 1090, the Political Reform Act (Government Code section 81000 *et seq.*), or other applicable law, (2) prevent Contractor from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.
- 2.4. Town has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by Town shall not operate as a waiver or release. Contractor represents and warrants to Town that (a) it has all licenses, permits, qualifications, insurance and approvals of whatever nature which are legally required for Contractor to practice its profession, and (b) it shall, at its sole cost, 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 Contractor to practice its profession. Contractor shall indemnify and hold harmless Town, its officers, agents, employees and volunteers from and against any and all claims or expenses caused or occasioned directly or indirectly by Contractor’s failure to so perform.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, Town and Contractor agree as follows:

3. DEFINITIONS

- 3.1. "Scope of Services": Such maintenance services as are set forth in Contractor's 10/28/24 proposal to Town attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2. "Agreement Administrator": The Agreement Administrator for this project Samantha Holland. The Agreement Administrator shall be the principal point of contact at the Town for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. Town reserves the right to change this designation upon written notice to Contractor.
- 3.3. "Maximum Amount": The highest total compensation and costs payable to Contractor by Town under this Agreement. The Maximum Amount under this Agreement is eight five thousand dollars per fiscal year Dollars (\$ 85,000).
- 3.4. "Commencement Date": 1/1/2025
- 3.5. "Termination Date": 1/1/2028

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Termination Date unless extended by written agreement of the parties or terminated earlier under Section 16 ("Termination") below.

5. CONTRACTOR'S DUTIES

- 5.1. **Services.** Contractor shall perform the services identified in the Scope of Services. Town shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.
- 5.2. **Coordination with Town.** In performing services under this Agreement, Contractor shall coordinate all contact with Town through its Agreement Administrator.
- 5.3. **Budgetary Notification.** Contractor shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Contractor shall concurrently inform the Agreement Administrator, in writing, of Contractor's estimate of total expenditures

Maintenance Services Agreement

required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.

- 5.4. Business License.** Contractor shall obtain and maintain in force a Town business license for the duration of this Agreement.
- 5.5. Professional Standards.** Contractor shall perform all work to the highest standards of Contractor's profession and in a manner reasonably satisfactory to Town. Contractor shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of this Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.6. Appropriate Personnel.** Contractor has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Contractor or under its supervision or by subcontractor(s) of Contractor, and all personnel engaged in the work shall be qualified to perform such services. Adam Meyer shall be Contractor's project administrator and shall have direct responsibility for management of Contractor's performance under this Agreement. No change shall be made in Contractor's project administrator without Town's prior written consent.
- 5.7. Campaign Contributions.** This Agreement is subject to Government Code section 84308, as amended by Senate Bill 1439. Contractor shall disclose any contribution to an elected or appointed Town official's campaign or committee in an amount of more than two hundred fifty dollars (\$250) made within 12 months preceding the Commencement Date, by Contractor, its, her, or his agent, or another party affiliated with Contractor. Contractor shall provide a signed copy of the attached Campaign Contribution Disclosure Form to Town prior to, or concurrent with, Contractor's execution of this Agreement and no later than the Commencement Date.
- 5.8. Prevailing Wages.** This Agreement is subject to the prevailing wage law as more fully set forth in Section 8 (Labor Code), for all work performed under this Agreement for which the payment of prevailing wages is required under the California Labor Code. In particular, Contractor acknowledges that prevailing wage determinations are available for work performed under this Agreement.
- 5.9. Permits and Approvals.** Contractor shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary, if any, for Contractor's performance of this Agreement including, but not limited to, professional licenses and permits.
- 5.10. Notification of Organizational Changes.** Contractor shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Contractor's firm or of any subcontractor. Change of ownership or control of Contractor's firm may require an amendment to this Agreement.

- 5.11. Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Town under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of Town. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of Town or as part of any audit of Town, for a period of three (3) years after final payment under this Agreement.

6. SUBCONTRACTING AND ASSIGNMENT

- 6.1. General Prohibition On Assignment.** This Agreement covers services of a specific and unique nature. Except as otherwise provided herein, Contractor shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 6.2. Contractor Responsible.** Contractor shall be responsible to Town for all services to be performed under this Agreement.
- 6.3. Subcontracting.** Contractor shall not subcontract any portion of the performance contemplated and provided for herein unless (1) such subcontracting is specifically described in the proposal attached hereto or (2) the Town provides prior written approval. In any event, Contractor shall supervise all work subcontracted by Contractor in performing the services described in the Scope of Services and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work shall not relieve Contractor from any of its obligations under this Agreement with respect to the services described in the Scope of Services. Contractor is obligated to ensure that any and all subcontractors performing any services under this Agreement shall be fully insured in all respects and to the same extent as set forth under Section 13 (Insurance), to Town's satisfaction.
- 6.4. Compensation for Subcontractors.** Contractor shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subcontractors performing services under this Agreement. Town shall not be liable for any payment, compensation, or federal and state taxes for any subcontractors.

7. COMPENSATION

- 7.1. General.** Town agrees to compensate Contractor for the services provided under this Agreement, and Contractor agrees to accept payment, the Maximum Amount in full satisfaction for such services. Compensation shall not exceed the Maximum Amount.

Contractor shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by Town in advance.

- 7.2. **Invoices.** Contractor shall submit to Town an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. Contractor shall include a copy of each subcontractor invoice, if any, for which reimbursement is sought in the invoice.
- 7.3. **Taxes.** Town shall not withhold applicable taxes or other payroll deductions from payments made to Contractor except as otherwise required by law. Contractor shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Contractor.

8. LABOR CODE

- 8.1. **Prevailing Wage Law.** Prevailing Wage Law. This Agreement is subject to the requirements of the prevailing wage laws, including, but not limited to, Labor Code Section 1720 et seq., and Labor Code Section 1770 et seq., as well as Code of Regulations, Title 8, Section 16000 et seq., which require payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. Contractor shall defend, indemnify, and hold harmless Town, and its officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of failure or alleged failure of Contractor to comply with such prevailing wage laws.
- 8.2. **Payment of Prevailing Wages.** Contractor shall pay the prevailing wage rates for all work performed under this Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification.
- 8.3. **Forfeiture.** Contractor shall forfeit as a penalty to Town Two Hundred Dollars (\$200.00), or any greater penalty provided in the Labor Code, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under this Agreement employed in the performance of the Scope of Services by Contractor or by any subcontractor of Contractor in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor.
- 8.4. **Apprentices.** Contractor shall comply with the provisions of Labor Code section 1777.5 concerning the employment of apprentices on public works projects. Contractor

shall be responsible for ensuring compliance by its subcontractors with Labor Code 1777.5.

- 8.5. Payroll Records.** Pursuant to Labor Code section 1776, Contractor and any subcontractor(s) shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code section 1811 and Labor Code section 1815 for any work performed by his or her employees on the public works project. The payroll records shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code 1776. Pursuant to Labor Code section 1776, such records must be maintained for at least three years after completion of work.
- 8.6. 8-Hour Work Day.** This Agreement is subject to 8-hour work day and wage and hour penalty laws, including, but not limited to, Labor Code section 1810 and Labor Code section 1813. Contractor and any subcontractor(s) of Contractor shall strictly adhere to the provisions of the Labor Code regarding 8-hour work day and 40-hour work week requirements, and overtime, Saturday, Sunday, and holiday work. Pursuant to the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by Contractor's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to Town \$25.00, or any greater penalty set forth in the Labor Code, for each worker employed in the execution of the work by Contractor or by any subcontractor(s) of Contractor, for each calendar day during which such worker is required or permitted to the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the Labor Code.
- 8.7. Registration with DIR.** Contractor and any subcontractor(s) of Contractor shall comply with the provisions of Labor Code section 1771 and Labor Code section 1725.5 requiring registration with the Department of Industrial Relations (DIR). Contractors shall be registered through the Department of Industrial Relation's (DIR) Public Works Program for state and local public works contracts, for maintenance work valued at more than \$15,000.

9. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as "written products") shall be and remain the property of Town without restriction or

limitation upon its use or dissemination by Town except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

10. RELATIONSHIP OF PARTIES

- 10.1. General.** Contractor is, and shall at all times remain as to Town, a wholly independent contractor.
- 10.2. No Agent Authority.** Contractor shall have no power to incur any debt, obligation, or liability on behalf of Town or otherwise to act on behalf of Town as an agent. Neither Town nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not represent that it is, or that any of its agents or employees are, in any manner employees of Town.
- 10.3. Independent Contractor Status.** Under no circumstances shall Contractor or its employees look to the Town as an employer. Contractor shall not be entitled to any benefits. Town makes no representation as to the effect of this independent contractor relationship on Contractor's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Contractor specifically assumes the responsibility for making such a determination. Contractor shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation, and other applicable federal and state taxes.
- 10.4. Indemnification of CalPERS Determination.** In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the Town, Contractor shall indemnify, defend, and hold harmless Town for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Town.

11. INDEMNIFICATION

- 11.1. Definitions.** For purposes of this Section 11, "Contractor" shall include Contractor, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Contractor or its subcontractors, in the performance of this Agreement. "Town" shall include Town, its officers, agents, employees and volunteers.
- 11.2. Contractor to Indemnify Town.** To the fullest extent permitted by law, Contractor shall indemnify, hold harmless, and defend Town from and against any and all claims, losses, costs or expenses for any personal injury or property damage arising out of or in connection with Contractor's alleged negligence, recklessness or willful misconduct

- or other wrongful acts, errors or omissions of Contractor or failure to comply with any provision in this Agreement.
- 11.3. Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Contractor shall not be required to indemnify Town for such loss or damage as is caused by the sole active negligence or willful misconduct of the Town.
- 11.4. Attorneys' Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of Town's choice, expert fees and all other costs and fees of litigation. Contractor shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 11.5. Defense Deposit.** The Town may request a deposit for defense costs from Contractor with respect to a claim. If the Town requests a defense deposit, Contractor shall provide it within 15 days of the request.
- 11.6. Waiver of Statutory Immunity.** The obligations of Contractor under this Section 11 are not limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to Town.
- 11.7. Indemnification by Subcontractors.** Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor or any other person or entity involved in the performance of this Agreement on Contractor's behalf.
- 11.8. Insurance Not a Substitute.** Town does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Contractor's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

12. INSURANCE

- 12.1. Insurance Required.** Contractor shall maintain insurance as described in this section and shall require all of its subcontractors, Contractors, and other agents to do the same. Approval of the insurance by the Town shall not relieve or decrease any liability of Contractor. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.
- 12.2. Documentation of Insurance.** Town will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. Contractor shall file with Town:

- Certificate of Insurance, indicating companies acceptable to Town, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: Custodial Services for the Town of Yountville
- Documentation of Best's rating acceptable to the Town.
- Original endorsements effecting coverage for all policies required by this Agreement.
- Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

12.3. Coverage Amounts. Insurance coverage shall be at least in the following minimum amounts:

- Professional Liability Insurance: \$2,000,000 per occurrence,
\$2,000,000 aggregate
- General Liability:
 - General Aggregate: \$4,000,000
 - Products Comp/Op Aggregate \$1,000,000
 - Personal & Advertising Injury \$1,000,000
 - Each Occurrence \$1,000,000
 - Fire Damage (any one fire) \$ 50,000
 - Medical Expense (any 1 person) \$ 5,000
- Workers' Compensation:
 - Workers' Compensation Statutory Limits
 - EL Each Accident \$1,000,000
 - EL Disease - Policy Limit \$1,000,000
 - EL Disease - Each Employee \$1,000,000
- Automobile Liability
 - Any vehicle, combined single limit \$1,000,000

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

An employee of the Town signing this Agreement may, in his or her sole discretion, waive the requirement for Professional Liability Insurance by initialing here:

Initials: SHW _____

Name: Samantha Holland _____

- 12.4. General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable. The policy shall cover inter-insured suits and include a “Separation of Insureds” or “severability” clause which treats each insured separately.
- 12.5. Worker’s Compensation Insurance.** Contractor is aware of the provisions of Section 3700 of the Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Contractor will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.
- 12.6. Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks using ISO Business Auto Coverage form CA 00 01 (or equivalent).
- 12.7. Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
- 12.8. Additional Insured Endorsements.** The Town, its Town Council, Commissions, officers, and employees of Yountville must be endorsed as an additional insured for each policy required herein, for liability arising out of ongoing and completed operations by or on behalf of the Contractor. Contractor’s insurance policies shall be primary as respects any claims related to or as the result of the Contractor’s work. Any insurance, pooled coverage or self-insurance maintained by the Town, its elected or appointed officials, directors, officers, agents, employees, volunteers, or Contractors shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Contractor’s insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.
- 12.9. Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Contractor does not furnish a new certificate of insurance prior to cancellation, Town has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Contractor under this Agreement. Failure of the Contractor to maintain the insurance required by

this Agreement, or to comply with any of the requirements of this section, shall constitute a material breach of this Agreement.

- 12.10. Insurance Notices.** Contractor shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the Town, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium. Contractor shall provide proof that cancelled or expired policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: Town of Yountville, Attn: Town Clerk, 6550 Yount Street, Yountville, CA 94599.
- 12.11. Contractor's Insurance Primary.** The insurance provided by Contractor, including all endorsements, shall be primary to any coverage available to Town and be endorsed using Insurance Services office form CG 20 10 (or equivalent) to provide that Town and its officers, employees, and agents shall be additional insureds under such policies.. Any insurance or self-insurance maintained by Town and/or its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.
- 12.12. Waiver of Subrogation.** Contractor hereby waives all rights of subrogation against the Town. Contractor shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 12.13. Report of Claims to Town.** Contractor shall report to the Town, in addition to the Contractor's insurer, any and all insurance claims submitted to Contractor's insurer in connection with the services under this Agreement.
- 12.14. Premium Payments and Deductibles.** Contractor must disclose all deductibles and self-insured retention amounts to the Town. The Town may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, Town must approve all such amounts prior to execution of this Agreement.

Town has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Contractor shall be responsible for all premiums and deductibles in all of Contractor's insurance policies. The amount of deductibles for insurance coverage required herein are subject to Town's approval.

12.15. Duty to Defend and Indemnify. Contractor's duties to defend and indemnify Town under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

13. MUTUAL COOPERATION

13.1. Town Cooperation in Performance. Town shall provide Contractor with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Contractor's services under this Agreement.

13.2. Contractor Cooperation in Defense of Claims. If any claim or action is brought against Town relating to Contractor's performance in connection with this Agreement, Contractor shall render any reasonable assistance that Town may require in the defense of that claim or action.

14. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Contractor's and Town's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to Town:

Samantha Holland

Town of Yountville

Parks and Recreation Dept.

6550 Yount Street

Yountville, CA 94599

Telephone: (707) 944-8851

Email: sholland@yville.com

If to Contractor:

Cappstone Inc.

Name: Adam Meyer

Address: 1501 Mariposa St. Suite 426

Address: San Francisco, CA 94107

Telephone: 415-622-5025

Facsimile:

Email: adam@cappstone.com

With courtesy copy to:

Gary B. Bell

Yountville Town Attorney

Colantuono, Highsmith & Whatley, PC

420 Sierra College Dr., Ste. 140

Grass Valley, CA 95945-5091

Telephone: (530) 432-7357

15. SURVIVING COVENANTS

The parties agree that the covenants contained in paragraph 5.10 (Records), paragraph 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnification), paragraph 12.7 (Claims-Made Policies), paragraph 13.2 (Contractor Cooperation in Defense of Claims), and paragraph 18.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

16. TERMINATION

- 16.1. Town Termination.** Town may terminate this Agreement for any reason on five calendar days' written notice to Contractor. Contractor agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All Town data, documents, objects, materials or other tangible things shall be returned to Town upon the termination or expiration of this Agreement.
- 16.2. Contractor Termination.** Contractor may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.
- 16.3. Compensation Following Termination.** Upon termination, Contractor shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the services required by this Agreement. The Town shall have the benefit of such work as may have been completed up to the time of such termination.
- 16.4. Remedies.** Town retains any and all available legal and equitable remedies for Contractor's breach of this Agreement.

17. INTERPRETATION OF AGREEMENT

- 17.1. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 17.2. Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between Town and Contractor with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by Town and Contractor.

- 17.3. Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the language of the section or paragraph shall control and govern in the construction of this Agreement.
- 17.4. Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 17.5. Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 17.6. No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

18. GENERAL PROVISIONS

- 18.1. Confidentiality.** All data, documents, discussion, or other information developed or received by Contractor for performance of this Agreement are deemed confidential and Contractor shall not disclose it without prior written consent by Town. Town shall grant such consent if disclosure is legally required. All Town data shall be returned to Town upon the termination or expiration of this Agreement.
- 18.2. Conflicts of Interest.** Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the Town's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

- 18.3. Multiple Phase Projects.** Pursuant to Government Code section 1097.6, Contractor's duties and services under this Agreement shall not include preparing or assisting the Town with any portion of the Town's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the Town. The Town shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor's participation in the planning, discussions, or drawing of project plans or specifications, if any, shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor shall cooperate with the Town to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Contractor, if any, pursuant to this Agreement.
- 18.4. Non-assignment.** Contractor shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without Town's prior written consent, and any attempt to do so shall be void and of no effect. Town shall not be obligated or liable under this Agreement to any party other than Contractor.
- 18.5. Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 18.6. No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 18.7. Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 18.8. Non-Discrimination.** Contractor shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.
- 18.9. Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by Town or Contractor unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by Town or Contractor of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.

- 18.10. Excused Failure to Perform.** Contractor shall not be liable for any failure to perform if Contractor presents acceptable evidence, in Town’s sole judgment that such failure was due to causes beyond the control and without the fault or negligence of Contractor.
- 18.11. Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.
- 18.12. Attorneys’ Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, each party shall pay its own costs, including any accountants’ and attorneys’ fees expended in the action.
- 18.13. Venue.** The venue for any litigation shall be the Superior Court of California for the County of Napa. Consultant hereby consents to jurisdiction therein for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.14. Counterparts; Electronic Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, “electronic signature” shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“Town” Town of Yountville	“Contractor” Cappstone Inc.
By: _____ <i>Signature</i>	By: _____ <i>Signature</i>
Printed: _____	Printed: _____
Title: _____	Title: _____
Date: _____	Date: _____

Delete this Attest signature if less than \$45,000 and not requiring Council approval.

Attest:

By: _____
Hilary Gaede, Town Clerk

Date: _____

Approved as to form:

By: _____
Gary B. Bell, Town Attorney

Date: _____

WORKER’S COMPENSATION INSURANCE ACKNOWLEDGEMENT

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. If any class of employees engaged in work under this contract at the site of the Project is not protected under any Worker’s Compensation law, Contractor shall provide and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Contractor shall indemnify and hold harmless Town for any damage resulting from failure of either Contractor or any subcontractor to take out or maintain such insurance.

Date: _____

Signature

Printed Name

Title

CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS

Towns are subject to the campaign disclosure provisions detailed in Government Code section 84308.

Please carefully read the following information to determine if the provisions apply to you. If you determine that the provisions are applicable, this Campaign Disclosure Form must be completed and returned to the Town with your application.

1. No Town Councilmember or Commissioner shall accept, solicit, or direct a contribution of more than \$250 from any party¹ or party's agent² during the pendency of your application and for 12 months after the date a final decision is rendered by the Town. This prohibition commences when your application has been filed or the proceeding is otherwise initiated.
2. A party to a Town proceeding shall disclose on the record of the proceeding any contribution of more than \$250 made to any Councilmember or Commissioner by the party or party's agent during the 12 months preceding the proceeding. No party or party's agent to a Town proceeding shall make a contribution to a Councilmember or Commissioner while the application is pending, during the proceeding, and for 12 months following the date a final decision is rendered by the Town.
3. Prior to considering your application, any Councilmember or Commissioner who received a contribution of more than \$250 within the 12 months preceding the commencement of the proceedings on your application from any party or party's agent, shall disclose that fact on the record of the proceeding and shall be disqualified from participating in the proceeding. However, if any Councilmember or Commissioner receives a contribution that otherwise would require disqualification and returns the contribution within 30 days of knowing about the contribution and the relevant proceeding, that Councilmember or Commissioner shall be permitted to participate in the proceeding.

To determine whether a campaign contribution of more than \$250 has been made by you or your agent to a Councilmember or Commissioner within the preceding 12 months, all contributions made by you or your agent during that period must be aggregated.

Names of current Town Councilmembers and Commissioners are available on the Town's website. If you have questions about Government Code section 84308, FPPC regulations, or the Campaign Disclosure Form, please contact the Town Clerk.

¹ "Party" is defined as any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

² "Agent" is defined as a person who represents a party in connection with a proceeding. If an individual acting as an agent also is acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar entity or corporation, both the individual and the entity or corporation are agents. When a closed corporation is a party to a proceeding, the majority shareholder is subject to these provisions.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(a) Application for:

- ☐ License
- ☐ Permit
- ☐ Franchise
- ☐ Mills Act or Development Agreement
- ☒ Contract (Professional Services, Construction Services, Maintenance, Public Works, etc.)
- ☐ Lease
- ☐ Other Entitlement³

Name and address of any party or party's agent who has contributed more than \$250 to any Councilmember or Commissioner within the preceding 12 months. If none, write in "none:"

1. _____
2. _____
3. _____

(b) Date and amount of Contribution:

Date: _____ Amount: \$ _____

Date: _____ Amount: \$ _____

Date: _____ Amount: \$ _____

(c) Name of Councilmember or Commissioner to whom contribution was made:

1. _____
2. _____
3. _____

(d) I certify that the above information is true and correct to the best of my knowledge.

Name: _____

Signature: _____

Date: _____ Phone: _____

To be completed by Town:

Application No.: _____

³ "License, permit or other entitlement for use" means all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts) and all franchises.