



GRASS VALLEY
A PLACE TO LIVE AND THRIVE

City of Grass Valley
Planning Division
125 East Main Street
Grass Valley, CA 95945
Tel: 530-274-4711

www.cityofgrassvalley.com

CITY OF GRASS VALLEY

REQUEST FOR PROPOSALS

FOR

**RESIDENTIAL INCENTIVIZATION ORDINANCE IN
TOWN CORE ZONING DESIGNATION AND
ENVIRONMENTAL STUDIES**

Release Date: January 9, 2024

Submittal Deadline: February 22, 2024, 5:00 PM

REQUEST FOR PROPOSALS

I. INTRODUCTION AND BACKGROUND

The City recently completed the pedestrian improvements and renovation of Mill Street which is stimulating a revitalization of downtown. The Town Core (TC) zoning designation encompasses a variety of commercial and residential uses within a 50-acre downtown area that hosts the city's historic core, with many buildings constructed in the late 1800s and early 1900s. Staff have received inquiries from property owners about the possibility of converting upper-level offices to residential use along the Mill Street pedestrian corridor. However, while the TC zone allows 20 dwelling units per acre, most of the buildings in this zone sit on very small lots, prohibiting them from taking advantage of the generous density allowance. Many of the buildings are large in size. With the demise of office space interest in favor of home-office use, much of the non-ground level space is under-utilized. An ordinance and a shift to form-based zoning to incentivize the non-ground floor uses for residential use will provide the following benefits:

- Add to the revitalization effort of downtown
- Encourage housing close to employment opportunities and close to the Tinloy Transit Station
- Encourage investment in older buildings
- Further the goals of the General Plan:
 - **Land Use- 9-LUP:** Provide for higher residential densities on infill sites and in the Downtown area.
 - **Land Use- 23-LUP:** Encourage mixed-use developments incorporating a variety of densities on infill sites and in areas proposed for annexation.
 - **Housing- HE Goal D, POLICY 1:** The City shall encourage private reinvestment in older residential neighborhoods and private rehabilitation of housing. (While the TC zone is not considered a residential neighborhood, the program encourages reinvestment in older buildings for the purpose of housing.)

II. SCOPE OF WORK

Task 1.0: Project Meetings and Coordination

Task 1.1: Project Meetings: The consultant will establish a Project Development Team (PDT) including key consultant staff, relevant subconsultants, and City of Grass Valley staff. The consultant will hold an initial "kick-off" meeting with the PDT to finalize project goals and objectives, project deliverables, and timeline; and identify any critical issues as background to the project. In conjunction with this meeting, the consultant will identify any data needs that will be required. Additional PDT meetings will be held as needed throughout the project.

Task 2.0: Data Collection

Task 2.1: Data Collection: The consultant will research and gather all available mapping and planning information on the proposed project area and shall prepare an analysis of the various land uses within the Town Core zoning designation. Field investigations will be performed to verify current conditions, evaluate alternatives, and identify opportunities.

Task 3.0: Draft Documents

Task 3.1: Feasibility Study: The consultant is expected to conduct a comprehensive feasibility study that evaluates the viability of converting non-ground floor uses, such as office space, to residential use within the Town Core zoning district. This study should take into account the City of Grass Valley's 2020 General Plan to ensure consistency with the overarching municipal development strategy.

Task 3.2: Incentive Program and Draft Ordinance: Successful candidates will be required to propose innovative incentive programs through development of a draft ordinance, which may include a form-based approach, that encourages private property owners to undertake conversion projects. The program should consider variations in residential density based on site capacity while maintaining alignment with the City's General Plan.

Task 3.3: Traffic Study: Contractors are expected to prepare a thorough traffic study, analyzing both the Level of Service (LOS) traffic impacts as required by the City's 2020 General Plan, as well as Vehicle Miles Traveled (VMT), as required by the California Environmental Quality Act (CEQA). Subconsultants may be utilized.

Task 4.0: Environmental Studies

Task 4.1: Prepare Draft CEQA Documents: The level of environmental review will be determined after reviewing the program parameters and comparing against any Categorical Exemptions pursuant to the California Environmental Quality Act. In the event that a Categorical Exemption is not applicable, the applicant is expected to prepare an Initial Study. After City review, the consultant will circulate the draft document for public review and comment with the appropriate notices as needed.

Task 4.2: Environmental Clearance: The consultant will complete the final documentation and processes necessary for CEQA clearance of the incentive program and ordinance. Responses to public comments will be compiled and the environmental document revised to finalize the CEQA document. The consultant will be expected to provide AB 52 consultation as needed. A Notice of Determination will be prepared, and appropriate distribution and filings completed as needed.

Task 4.3: Additional Studies: Additional studies may be necessary to complete a thorough review process. The need for additional studies may not be known until the parameters of the incentivization program and ordinance are determined and the environmental review process initiated. Potential studies may include a Biological Study, Economic Development Study, Cultural Study, Historic Property Survey Report. The consultant may wish to include a description of work or cost estimates for those studies that are deemed likely to be necessary.

Task 5.0: Public Outreach

Task 5.1: Public Meetings: Multiple public meetings/workshops are expected for the preparation of the draft incentive program and ordinance. The consultant will develop notices, exhibits, and material for at least one public workshop to be held at a City facility. The consultant should expect to identify, create, and distribute outreach materials. The City will provide support for posting on existing City maintained websites, social media platforms, and traditional media distribution. The consultant will be present and typically lead the public meetings in partnership with City staff. The consultant will present the draft incentive program and ordinance at a minimum of one (1) Planning Commission meeting and two (2) City

Council meetings. The consultant shall be available to conduct the public workshop and one public hearing before City Council in-person. Additional public meetings, such as before the planning commission may be necessary and may be attended virtually by the consultant .

III. DELIVERABLES

Proposal shall include a clear description of the Consultant’s understanding of the project, including key milestones and all deliverables (analyses, environmental reports, ordinance amendment, special studies, etc.), and state the approaches and methodologies which the consultant proposes to undertake in order to meet the stated objectives of the City. This section should include preliminary information on the applicant’s proposed Scope of Work to the project, including but not limited to:

- Ability to conduct residential capacity analysis within the Town Core zone, including identifying data sources and appropriate assumptions
- Understanding of General Plan policies that impact ordinance parameters

IV. PROPOSAL FORMAT

The proposal should be limited to specific discussions of the elements outlined in this RFP. The intent of the RFP is to encourage responses which meet the stated requirements, and which propose the best methods to accomplish the work within a reasonable budget. The proposal should follow the general outline in the order shown below:

Cover Page/Introduction: A brief description of the consultant’s firm, including the year the firm was established, type of organization of firm (partnership, corporation, etc.), and a statement of the firm’s qualification for performing the subject services. A brief summary of the firm’s experience in similar projects and any special experience that may be applicable.

Project Team: An organizational chart depicting the principal staff and subconsultants, if any, proposed by the firm and the expected time allocated to each team member. A brief summary of the qualifications and experience of each team member, including their length of service with their firm and a resume.

Technical Approach: The firm’s proposed work plan and task description of how the firm will comply with the proposed scope of work. A discussion of what tasks may be coordinated with subconsultants and the firm’s ability to complete potential future tasks.

Project Schedule: The proposed project schedule shall be included in the proposal.

Project Cost: A detailed schedule of proposed project cost, including the method of compensation, the hourly rate for principals, employees to be assigned to this project, and a summary of any other related costs that are to be billed directly are to be included in the proposal in a separate, sealed envelope, clearly marked “RESIDENTIAL INCENTIVIZATION ORDINANCE IN TOWN CORE ZONING DESIGNATION– Project Cost.”

References: A list of references for similar projects, including contact person, phone numbers, and the professional staff who performed the work.

Exceptions and Additions: Describe any proposed exceptions, alterations or additions to the Scope of Services or other requirements of this RFP, including the standards Professional Service Agreement.

V. PROPOSAL SUBMITTAL

Proposals are to be received at the City of Grass Valley City Hall office no later than **5:00 p.m., Thursday, February 22, 2024**. The transmittal letter should include the name, title, address, phone number, an original signature of an individual with authority to negotiate on behalf of and to contractually bind the consultant or consulting firm, and who may be contacted during the period of proposal evaluation. The letter must also include a statement acknowledging that the consultant or consultant firm has reviewed and accepted the City of Grass Valley sample agreement (Attachment C) with or without modifications. Only one transmittal letter need be prepared to accompany all copies of the technical and cost proposals.

Deliver three (3) bound copies of the proposal and one (1) electronic version on a USB flash drive to City of Grass Valley, Attn: Amy Wolfson, City Planner, 125 E Main St, Grass Valley, CA 95945. Late proposals will not be accepted.

VI. SCHEDULE OF ACTIVITIES

ACTIVITIES	DATE
Distribute RFP	January 9, 2024
Proposals Due	February 22, 2024
Consultant Review and Selection	March 2024
PDT Kickoff Meeting	March/April 2024
Research and Data Collection	April/May/June 2024
Draft Reports	July 2024
Planning Commission Meeting	August 2024
City Council Meeting	September 2024

VII. SELECTION CRITERIA

A Selection Committee will perform an in-depth analysis of all proposals, carefully evaluating each one with the following criteria:

CRITERIA	WEIGHT/POINTS
Understanding of project requirements, issues, and challenges	20
Approach to be followed and tasks to be performed, including detailed steps, resources required, and proposed project schedule	25
Specialized experience and technical competence of personnel to be assigned to project.	25
Relative allocation of resources to key tasks, including the time and skills of personnel assigned to the task and the consultant's approach to managing resources and project output.	20
Qualifications of the project leader and assurance of involvement in the project.	10

TOTAL	100
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Submittals will be reviewed for responsiveness, and responsive submittals will further be screened by a selection committee in accordance with the above criteria. The firm(s) submitting the highest rated proposal may be invited for interviews (optional).

The City reserves the right to make an award without further discussion of the submittal with the offeror. Therefore, the proposal should be submitted initially on the most favorable terms that the firm or individual might propose.

The City reserves the right to award a contract to the firm(s) that presents the best qualifications and whose proposal best accomplishes the desired results.

The City reserves the right to reject any or all proposals, or to waive minor irregularities in said proposals, or to negotiate with the successful firm(s). In the case of differences between written words and figures in a proposal, the amount stated in written words shall govern. In the case of a difference in unit price versus the extended figure, the unit price shall govern.

Award of a contract will not be based on discrimination based on race, religion, color, age, sex or national origin in accordance with the requirements of Title 49 CFR 26.13(b).

VIII. BUDGET AND FINANCIAL CONDITIONS

The contract that results from this RFP will specify a maximum “not to exceed” fee. A budget amount and payment schedule will be agreed upon between the City and the consultant during contract negotiations.

All applicable costs may be charged to the contract within the agreed upon fixed price limit. Appropriate charges may include wages and salaries, overhead, travel, materials, and subcontractor costs. Consultant shall provide all necessary equipment including software, materials, supplies, and safety equipment required for its personnel to perform the services accurately, efficiently, and safely. Compensation for these items shall be considered included in the Consultant’s overhead. Only those items listed in the cost proposal shall be reimbursed by the City.

The City will not provide financial assistance to the consultant beyond negotiated fees but will collaborate with the consultant and give reasonable cooperation in the collection of information and facilitation of meetings with appropriate agencies. The City of Grass Valley shall not be liable for any pre-contractual expenses incurred by the Consultant in the preparation of its proposal. Pre-contractual expenses are defined as expenses incurred by the Consultant in preparing its proposal, submitting the proposal, negotiating with the City of Grass Valley related to this RFP, or any other expenses that may be incurred by the Consultant prior to the date of award of this Contract.

IX. GENERAL TERMS & CONDITIONS

Assurance of Designated Project Team: Proposer shall assure that the designated project team, including subconsultants (if any), is used for this project. Departure or reassignment of, or substitution for, any member of the designated project team or subconsultant(s) shall not be made without the prior written approval of the City.

Standard Contract. Upon completion of the evaluation and recommendation for award, the selected firm(s) will be required to execute a professional services agreement, a sample of which is included as **Attachment C**.

Notice of Termination: Upon failure of performance by the other party, or at the City’s convenience, either party may terminate the contract upon ten (10) days written notice to the other party. If the contract is to be terminated, the consultant shall be paid the amount due for work properly completed and approved by the City, up to the date of the notice of termination, based on the actual costs to the consultant attributable to the project, less any compensation to City for damages suffered as a result of Consultant’s failure to comply with the terms of the contract.

Conflict of Interest. The Consultant shall warrant that no official or employee of the City has an interest, has been employed or retained to solicit or aid in the procuring of the resulting contract, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to the City.

Non-Collusion. Firms submitting proposals shall warrant that their offer is made without any previous understanding, agreement or connection with any person, firm or corporation submitting a separate proposal for the same project and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action. This condition shall not apply to proposals which are submitted by firms who have partnered with others to submit a cooperative proposal that clearly identifies a primary contractor and the associated sub-contractors.

Indemnification & Insurance Requirements. The City’s standard indemnification and insurance requirements are provided in the sample contract, **Attachment C**. All costs of complying with the insurance requirements shall be included in your pricing. The selected firm shall provide complete and valid insurance certificates within ten (10) days of the City’s written request. Failure to provide the documents within the time stated may result in the rejection of the firm’s proposal.

X. INQUIRIES AND ADDENDA

Direct all inquiries regarding this RFP in writing to:

Amy Wolfson, City Planner
City of Grass Valley
125 East Main Street
Grass Valley, CA 95945
Phone: (530) 274-4711
Email: awolfson@cityofgrassvalley.com

Questions regarding this RFP must be submitted by January 22, 2024. No response will be given to verbal questions. The City reserves the right to decline a response to any question if, in the City’s assessment, the information cannot be obtained and shared with all potential organizations in a timely manner. A summary of the questions submitted, including responses deemed relevant and appropriate by the City, will be provided on or about February 1, 2024 to all firms that reply by email and indicate they plan to respond to this RFP.

In the event that it becomes necessary to revise any part of this RFP, written addenda will be issued. Any addenda to this RFP is valid only if in writing and issued by the City of Grass Valley Planning Division. All addenda for this RFP will be distributed via City of Grass Valley's website:

<http://www.cityofgrassvalley.com/>

It is the proposer's sole responsibility to monitor this website for possible addenda to this RFP. Failure of proposer to retrieve addenda from this site shall not relieve him/her of the requirements contained therein. Additionally, failure of proposer to return signed addenda, when required, may be cause for rejection of his/her proposal.

Firms that wish to be provided notice of the availability of addenda may contact Amy Wolfson by email and indicate they plan to respond to this RFP, so that they can be added to an email distribution list.

XI. ATTACHMENTS

Attachment A: Location Map of the Twon Core Designation Area

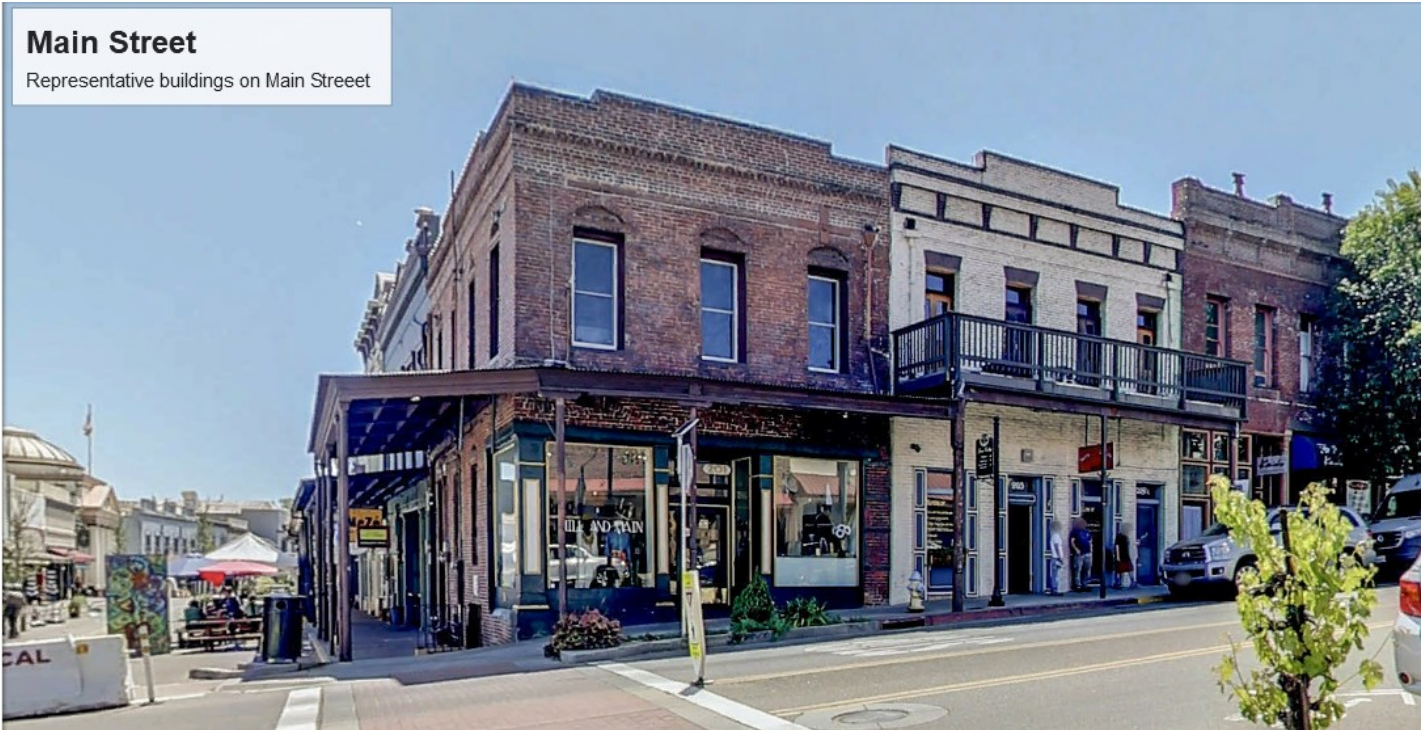
Attachment B: Representative Downtown Building Photos

Attachment C: City of Grass Valley Professional Services Agreement Template

Representative Downtown Buildings

Main Street

Representative buildings on Main Street



Representative Downtown Buildings

Mill Street

Representative buildings on Mill Street



CITY OF GRASS VALLEY

**PROFESSIONAL SERVICES AGREEMENT
FOR CONSULTANT SERVICES
(without federal funding)**

Use the following form agreement for contracts with non-professional consultants that do not include federal funding requirements.

Do not use this form agreement for contracts with Design Professionals. A Design Professional is any individual satisfying one or more of the following: (1) licensed as an architect pursuant to Business and Professions Code 5500 et seq., (2) licensed as a landscape architect pursuant to Business and Professions Code 5615 et seq., (3) licensed as a professional land surveyor pursuant to Business and Professions Code 8700 et seq., or (4) registered as a professional engineer pursuant to Business and Professions Code 6700 et seq.

PSA for Consultant Services (No Federal Funding)

Approved for use 02/13/2023
292553.v4

**PROFESSIONAL SERVICES AGREEMENT
FOR CONSULTANT SERVICES**

(City of Grass Valley / **[Company or Individual]**)

1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Grass Valley, a California municipal corporation (“City”), and _____, a **[state the consultant’s form of business entity and state of formation (i.e., a California limited liability company)]** (“Consultant”).

2. RECITALS

- 2.1. City has determined that it requires the following professional services from a consultant: **[enter description of consultant’s services]**
- 2.2. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.
- 2.3. Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant risk of the disclosure of confidential information.

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

3. DEFINITIONS

- 3.1. “Scope of Services”: Such professional services as are set forth in Consultant’s **[enter consultant’s proposal date]** proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2. “Agreement Administrator”: The Agreement Administrator for this project is **[Name and title]**. The Agreement Administrator shall be the principal point of contact at the City 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. City reserves the right to change this designation upon written notice to Consultant.
- 3.3. “Approved Fee Schedule”: Consultant’s compensation rates are set forth in the fee schedule attached hereto as Exhibit B and incorporated herein by this reference. This fee schedule shall

remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.

3.4. “Maximum Amount”: The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is [redacted] Dollars (\$ [redacted]).

3.5. “Commencement Date”: [date].

3.6. “Termination Date”: [date]

4. CAMPAIGN CONTRIBUTIONS

This Agreement is subject to Government Code Section 84308, as amended by SB 1439. That statute requires Consultant to disclose any campaign contribution by the Consultant or the Consultant’s agent to City Councilmembers or other City officials of more than \$250 in the aggregate in the preceding 12 months. If such contributions have been made, Consultant shall provide a signed copy of the attached Campaign Contribution Disclosure Form with Consultant’s execution of this Agreement. If not, the Campaign Disclosure Form need not be completed and returned to the City.

5. 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 17 (“Termination”) below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

6. CONSULTANT’S DUTIES

6.1. **Services.** Consultant shall perform the services identified in the Scope of Services. City 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.

6.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.

6.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant’s estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.

6.4. **Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.

- 6.5. **Professional Standards.** Consultant shall perform all work to the standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant 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.).
- 6.6. **Avoid Conflicts.** During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if such work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.
- 6.7. **Appropriate Personnel.** Consultant 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 Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. [Name of Project Manager] shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 6.8. **Substitution of Personnel.** Naming any persons in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 6.9. **Permits and Approvals.** Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits, and building and safety permits and inspections.
- 6.10. **Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subcontractor. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 6.11. **Records.** Consultant shall maintain 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 City 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 Consultant 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 City. In addition, pursuant to Government Code § 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

7. SUBCONTRACTING

- 7.1. **General Prohibition.** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed other than by an amendment to this Agreement.
- 7.2. **Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.
- 7.3. **Identification in Fee Schedule.** All subcontractors shall be specifically listed, and their billing rates identified in the Approved Fee Schedule, Exhibit B. Any changes must be approved by the Agreement Administrator in writing.
- 7.4. **Compensation for Subcontractors.** City shall pay Consultant for work performed by its subcontractors, if any, only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule, Exhibit B. Consultant shall be liable and accountable for all payments, compensation, and federal and state taxes to all subcontractors performing services under this Agreement. City shall not be liable for any payment, compensation, or federal and state taxes to or for any subcontractors.

8. COMPENSATION

- 8.1. **General.** City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Fee Schedule in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by the Agreement Administrator in advance.
- 8.2. **Invoices.** Consultant shall submit to City 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. All labor charges shall be itemized by employee name and classification or position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges.
- 8.3. **Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 8.4. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts in an invoice submitted by Consultant.
- 8.5. **Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment to this Agreement. Consultant shall not undertake any such work without prior written approval of the Project Administrator.

- 8.6. **City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 8.7. **Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 12, City shall have the right to withhold payments under this Agreement to offset that amount.

9. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. This Agreement is subject to Prevailing Wage Laws, for all work performed under this Agreement for which the payment of prevailing wage is required by those laws. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

10. 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 City without restriction or limitation upon its use or dissemination by City 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.

11. RELATIONSHIP OF PARTIES

- 11.1. **General.** Consultant shall be a wholly independent contractor to the City under this Agreement.
- 11.2. **No Agent Authority.** Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or to otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not represent in any manner that it is, or that any of its agents or employees are, employees of City.
- 11.3. **Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to the City as an employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant’s previously earned California Public Employees Retirement System (“CalPERS”) retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant 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.

- 11.4. **Indemnification of CalPERS Determination.** If Consultant or any employee, agent, or subcontractor of Consultant 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 City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant 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 City.

12. INDEMNIFICATION

- 12.1. **Definitions.** For purposes of this Section, “Consultant” shall include Consultant, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement. “City” shall include City, its officers, agents, employees and volunteers.
- 12.2. **Consultant to Indemnify City.** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and defend City from and against all claims, losses, costs or expenses for any personal injury or property damage arising out of or in connection with Consultant’s alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or failure to comply with any provision in this Agreement.
- 12.3. **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. Consultant shall not be required to indemnify City for such loss or damage as is caused by the sole active negligence or willful misconduct of the City.
- 12.4. **Attorney Fees.** Such costs and expenses shall include reasonable attorney’ fees for counsel of City’s choice, expert fees, and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorney’ fees, defense costs, or expenses if it is adjudicated to have been non-negligent.
- 12.5. **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 12.6. **Waiver of Statutory Immunity.** The obligations of Consultant under this Section are not limited by the provisions of any workers’ compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City.
- 12.7. **Indemnification by Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from every subcontractor or any other person or entity involved in the performance of this Agreement on Consultant’s behalf.

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.

- 13.4. **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.
- 13.5. **Worker’s Compensation Insurance.** Consultant 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 Consultant 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. If Consultant is an individual and has no employees, the Project Administrator may accept an affirmation of that fact in lieu of proof of workers compensation insurance.
- 13.6. **Automobile Liability Insurance.** Covered vehicles shall include owned, if any, non-owned, and hired automobiles and trucks.
- 13.7. **Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$50,000. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage shall be continued for two years after the completion of the work by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

The Project Administrator may, in his or her sole discretion, waive the requirement for Professional Liability Insurance by initialing here:

Initials: _____

Name: _____

- 13.8. **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 this Agreement or the beginning of work under this Agreement. Claims-Made Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of work under this Agreement. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the effective date of this Agreement, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work under this Agreement.
- 13.9. **Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees must be endorsed as additional insureds for each policy required herein, other than

Professional Errors and Omissions and Worker's Compensation, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant's insurance policies shall be primary as respects any claims related to or as the result of the Consultant's work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, officers, agents, employees, volunteers, or consultants 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 Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.

- 13.10. **Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of work under this Agreement and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant under this Agreement. Failure of the Consultant 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.
- 13.11. **Notices.** Consultant 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. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant 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 before expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Grass Valley, Attn: [insert department or individual], 125 East Main Street, Grass Valley, CA 95945.
- 13.12. **Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 13.13. **Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 13.14. **Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 13.15. **Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts before execution of this Agreement.

City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Consultant shall be responsible for all premiums and deductibles in all of Consultant's insurance policies.

13.16. **Duty to Defend and Indemnify.** Consultant's duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement or its early termination.

14. MUTUAL COOPERATION

14.1. **City Cooperation in Performance.** City shall provide Consultant with all pertinent data, documents and other requested information as are reasonably available for the proper performance of Consultant's services under this Agreement.

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

15. 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 Consultant's and City'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 City:

[Name]
City of Grass Valley
[Department/Division]
125 E Main Street
Grass Valley, CA 95945
Telephone: (530) 274-[XXXX]
Facsimile: (530) 274-4399

If to Consultant:

[Name]
[Address]
[Address]
Telephone:
Facsimile:

With courtesy copy to:

Michael G. Colantuono, Esq.
Grass Valley City Attorney
Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945
Telephone: (530) 432-7357
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 6.11 (Records), Section 11.4 (Indemnification of CalPERS Determination), Section 12 (Indemnification), Section 13.8 (Claims-Made Policies), Section 14.2 (Consultant Cooperation in Defense of Claims), and Section 19.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

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

18. INTERPRETATION OF AGREEMENT

- 18.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.2. **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 provisions of this Agreement and its exhibits, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations from this Agreement shall be effective and binding only if made in writing and executed by City and Consultant.
- 18.3. **Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience of 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 govern in the construction of this Agreement.
- 18.4. **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).

- 18.5. **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.
- 18.6. **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.

19. GENERAL PROVISIONS

- 19.1. **Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose them without prior written consent by the Project Administrator. City shall grant such consent if disclosure is legally required. Consultant shall return all City data to City upon the termination or expiration of this Agreement.
- 19.2. **Conflicts of Interest.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant 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 Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest under the Political Reform Act with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. No City Councilmember, officer, or employee of City, during the term of his or her service to City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising from it.
- 19.3. **Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 19.4. **Binding on Successors.** This Agreement shall be binding on the successors and permitted assigns of the parties.
- 19.5. **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 under this Agreement.
- 19.6. **Time of the Essence.** Time is of the essence for every provision of this Agreement.

- 19.7. **Non-Discrimination.** Consultant 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 or any other unlawful basis. 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. Consultant shall post this nondiscrimination clause in conspicuous places, available to employees and applicants for employment.
- 19.8. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Consultant 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.
- 19.9. **Excused Failure to Perform.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City’s sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 19.10. **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 either 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 such other rights, powers or remedies.
- 19.11. **Attorneys’ Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the prevailing party shall be entitled to an award of reasonable and actual attorneys’ fees and costs expended in the action.
- 19.12. **Venue.** The venue for any litigation shall be Nevada County, California and Consultant hereby consents to jurisdiction there for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 19.13. **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. 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.

[Signature Page Follows]

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

[Two signatures are required to bind a corporation]

“City”
City of Grass Valley

“Consultant”
[Name of Company or Individual]

By: _____
Signature

By: _____
Signature

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____
Signature

Printed: _____

Title: _____

Date: _____

Attest:

By: _____
Taylor Day, City Clerk

Date: _____

Approved as to form:

By: _____
Michael G. Colantuono, City Attorney

Date: _____

EXHIBIT A
SCOPE OF SERVICES

Professional Services Agreement – Consultant Services (No Federal Funding)

Approved for use 02/13/2023
292553.v4

EXHIBIT B
FEE SCHEDULE

Professional Services Agreement – Consultant Services (No Federal Funding)

Approved for use 02/13/2023
292553.v4

CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS

Cities 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, the Campaign Disclosure Form must be completed and returned to the City with your application.

No City Councilmember or other City official shall accept, solicit, or direct a campaign contribution of more than \$250 from any party¹ or agent² for 12 months after the City approves a contract. This prohibition commences when an application is filed, or a proceeding is otherwise initiated.

A party to a City proceeding shall disclose on the record of the proceeding any campaign contribution of more than \$250 by a party or agent to any City Councilmember or other City official during the preceding 12 months. No party to a City proceeding, or agent, shall make a campaign contribution to a City Councilmember or other City official during a proceeding and for 12 months after the City approves a contract.

A City Councilmember or other City official who received a campaign contribution of more than \$250 within the preceding 12 months from any party, or agent, to a proceeding shall disclose that fact on the record of the proceeding, and shall abstain from participating in the proceeding. However, if he or she returns the portion of a campaign contribution in excess of \$250 within 30 days of knowing about the contribution and the relevant proceeding, he or she may participate in the proceeding.

¹ "Party" is defined as any person who files an application for, or is the subject of, a proceeding.

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.

To determine whether you or your agent made a campaign contribution of more than \$250 to a City Councilmember or other City official within the preceding 12 months, you must aggregate all such contributions.

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

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(a) Document:

- License
- Lease
- Permit
- Franchise
- Other Contract
- Other Entitlement

Name and address of any party, or agent, who has contributed more than \$250 to any City Councilmember or other City official within the preceding 12 months:

1. _____
2. _____
3. _____

(b) Date and amount of contribution:

Date _____ Amount \$ _____

Date _____ Amount \$ _____

(c) Name of City Councilmember or other City official to whom contribution was made:

1. _____
2. _____
3. _____

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

Printed Name _____

Signature _____

Date _____ Phone _____