

CITY OF GRASS VALLEY



REQUEST FOR PROPOSALS

PROFESSIONAL CONSULTANT SERVICES
TO CONDUCT:

WATER AND SEWER RATE STUDY

Release Date: April 7, 2021

**Submittal Deadline: May 7, 2021
Not later than 5:00 PM (Pacific Standard Time)**

OBJECTIVE

The City of Grass Valley is seeking the services of a consultant to conduct a comprehensive study of Water & Sewer Rates.

The objective of the Water and Sewer Rate Study is to adequately fund water and sewer operations, capital costs, and bonded debt while minimizing rates to the greatest degree possible. Water and sewer rates developed must:

- Comply with Proposition 218 and be fair and objective to ensure that rates cover the City's reasonable costs of providing water and sewer service to customers.
- Rate studies should utilize a proper industry index for inflation adjustments.
- Recommend a prudent reserve policy for operations, capital replacement projects and emergencies.
- Propose a 5-year rate schedule that maintains the budget structure for potable water and wastewater services, maintains the required coverage for Debt Service covenants, and allows for the accumulation of reserves for future capital and infrastructure replacement.
- Prepare a 10-year financial plan model for the potable water and wastewater services that projects each service's revenues, operations and maintenance costs, capital improvement costs, reserve funding and debt service costs.

INTRODUCTION

The City of Grass Valley is in the central/western portion of Nevada County, California, approximately 30 miles east of Marysville and about 20 miles north of Auburn. Grass Valley is a historic gold mining town which incorporated as a Charter City in 1893. As western Nevada County's economic hub, the City provides a full range of services including water and wastewater distribution, collection, and treatment to over 13,000 residents in a five square mile area.

A full cost analysis for water and sewer rates was last completed over ten years ago.

SCOPE OF SERVICES

The Scope of Services includes, but is not limited to, recommending a rate structure for water and sewer, and completing all necessary analyses and documentation to complete rate update recommendation.

1. **Establish a methodology** for the evaluation of water and sewer fee study.
2. **Conduct a kick of meeting with City staff** to discuss project priorities, data needs and project schedule. Meet with City staff, when necessary, to refine the project scope and to ensure that the studies will be accurate and appropriate to the City's needs. Review project schedule and answer any questions pertaining to the successful development of each study.
3. **Conduct a comprehensive review of the City's existing water and sewer fees, rates, and charges:** Meet with staff and conduct interviews as needed to gain an understanding of the City's processes and operations.

4. **Identify the total cost of providing each City service at the lowest reasonable activity level** and in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to Proposition 218 and Proposition 26. Costs should include appropriate General and Administrative overhead allocations to City activities and applicable overhead rates for use in calculating the City's billable hourly rates.
5. **Compare service costs with existing cost recovery levels.** This should include service areas where the City is currently charging for services as well as areas where the City perhaps should charge or will be charging in the future (planned annexation areas). Comparisons should consider the City's practices, or the practices of similar and/or neighboring cities.
6. **Prepare a report that identifies each facility or service, its full cost, current and recommended cost recovery levels.** The report should identify the direct cost, the indirect cost, and the overhead City of Grass Valley cost for each service; and provide a model for adjusting these fees and rates for the City's current and future needs.
7. **Recommend appropriate fees and charges.** Recommended fees are based on the analysis, together with the appropriate subsidy percentage for those fees where full cost recovery may be unrealistic.
8. **Prepare a report that identifies the current fees, and recommended fees.** The report must also identify percentage change, cost recovery percentage, and fee comparison with other Nevada County cities or California cities that are comparable to the City of Grass Valley. A survey comparison of rates and fees with similar cities will be used to help determine the appropriate level of subsidy, if any.
9. **Provide City Finance staff with Excel worksheets** to allow for future fee updates. The Consultant will also review all calculations and fee study methodology with City staff.
10. **Develop a 10 year financial plan model** for potable water and wastewater services. Plan should determine the revenue requirements based on projected revenues, operating and maintenance expenditures including capital improvements, debt service coverage and reserve funding policies as well as any other policy consideration that the City determines are priorities.
11. **Report on all other matters** that come to your attention during your evaluation that in your professional opinion the City should consider.
12. **Present the findings** to the City and make necessary adjustments as requested.
13. **Prepare and deliver presentations to the City Council** to facilitate understanding of the plan and its implications for the City; provide necessary adjustments as requested.

14. **Provide the City with an electronic copy of the final comprehensive study**, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs.
15. **Prepare a final fee study report** and provide five bound copies, one unbound copy and a single PDF file of the plan that can be made available to City staff. Any Master fee schedule revisions developed shall also be made available to the City electronically, providing the ability to add or delete and/or update information as needed.
16. **Project Budget for the Comprehensive Fee Study** - a description of the project budget itemized according to individual tasks. Project budget should include:
 - a. A project schedule with activities, milestones, and deliverables.
 - b. Project budget defined, at minimum, as follows:
 - i. By task with a collective total by milestone and deliverable.
 1. Labor rates for all project team members.
 2. General overhead rates.
 3. Costs for expenses such as printing, travel, and attendance at meetings.
 - c. Proposed services to be referred to a sub-contractor anticipated sub-contractors and anticipated costs for these services.
17. **Consult with the City staff** should it become necessary to defend the City's water and sewer fees because of any legal or other challenge.

If the consultant/firm believes that additional tasks are warranted, they must be clearly identified in the proposal.

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 the stated 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 any variation in size over the last five years, along with 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 sub-consultants and the firm's ability to complete potential future tasks.

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.

Cost Proposal: The proposed cost schedule, 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. A detailed schedule of proposed costs shall be provided as part of this proposal, submitted in a separate sealed envelope.

PROPOSAL SUBMITTAL

Proposals are to be received at the City of Grass Valley City Hall office no later than 5:00 p.m., May 7, 2021. 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 A) with or without qualifications. Only one transmittal letter need be prepared to accompany all copies of the technical and cost proposals.

Deliver three bound copies of the proposal, one separately sealed copy of the cost proposal and one electronic version of the proposal on a USB flash drive to City of Grass Valley, Attn: **City Engineer, 125 E Main St, Grass Valley, CA 95945.**

Late proposals will not be accepted.

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 work requirements, issues, and challenges	20
Approach to be followed and tasks to be performed, including detailed steps, resources required, and proposed project schedule	20
Specialized experience and technical competence of personnel to be assigned to project.	30
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.	15
Qualifications of the project leader and assurance of involvement in the project.	15
TOTAL	100

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).

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, 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.

GENERAL TERMS & CONDITIONS

Assurance of Designated Project Team: Proposer shall assure that the designated project team, including sub-Consultants (if any), is used for this project. Departure or reassignment of, or substitution for, any member of the designated project team or sub-Consultant(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 A.

Notice of Termination: Upon failure of performance by the Consultant, or at the City's convenience, The City may terminate the contract upon five (5) 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 A. 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.

Protests and Appeals. Any protest shall be submitted in writing to the Assistant City Engineer within seven (7) calendar days after such aggrieved person or company knows, or should have known, of the facts giving rise thereto.

INQUIRIES AND ADDENDA

Direct all inquiries regarding this RFP in writing to:

City Engineer
City of Grass Valley
125 East Main Street
Grass Valley, CA 95945
Phone: (530) 274-4350
Fax: (530) 274-4399

Email: info@cityofgrassvalley.com

Questions regarding this RFP must be submitted in writing by **April 30, 2021**. 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.

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 Engineering Division. All addenda for this RFP will be distributed via City of Grass Valley's website: <https://www.cityofgrassvalley.com/post/invitation-bid-and-rfprfq>

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 Bjorn Jones by email and indicate they plan to respond to this RFP, so that they can be added to an email distribution list.

ATTACHMENTS

Attachment A: City of Grass Valley Professional Services Agreement Template

ATTACHMENT A

PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN PROFESSIONALS

(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 _____ (“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 opportunity for 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. “Design Professional”: 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.*
- 3.2. “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.
- 3.3. “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

- 3.4. “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.
- 3.5. “Maximum Amount”: The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is _____ Dollars (\$_____).
- 3.6. “Commencement Date”: [date].
- 3.7. “Termination Date”: [date]

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 18 (“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.

5. CONSULTANT’S DUTIES

- 5.1. **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.
- 5.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.
- 5.3. **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.

- 5.4. **Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.5. **Professional Standards.** Consultant shall perform all work to the highest 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.).
- 5.6. **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.
- 5.7. **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.
- 5.8. **Substitution of Personnel.** Any persons named 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.
- 5.9. **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.
- 5.10. **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.
- 5.11. **Records.** Consultant 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 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 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 City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

6. SUBCONTRACTING

- 6.1. **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 without amending this Agreement.
- 6.2. **Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.
- 6.3. **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 as an amendment to this Agreement.

7. COMPENSATION

- 7.1. **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 City in advance.
- 7.2. **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.
- 7.3. **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.
- 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 Consultant.

- 7.5. **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. Consultant shall not undertake any such work without prior written approval of the City.
- 7.6. **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.
- 7.7. **Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 11, City shall have the right to withhold payments under this Agreement to offset that amount.

8. 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 including the design and preconstruction phases of a covered public works project. 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.

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 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.

10. RELATIONSHIP OF PARTIES

- 10.1. **General.** Consultant is, and shall at all times remain as to City, a wholly independent contractor.
- 10.2. **No Agent Authority.** Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to 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 that it is, or that any of its agents or employees are, in any manner employees of City.

- 10.3. **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.
- 10.4. **Indemnification of CalPERS Determination.** In the event that 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.

11. INDEMNIFICATION

- 11.1 **Definitions.** For purposes of this Section 11, "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 officials, officers, agents, employees and volunteers.
- 11.2 **Consultant to Indemnify City.** Where the services to be provided by Consultant under this Agreement are design professional services, as that term is defined under Civil Code Section 2782.8, Consultant agrees to indemnify, defend and hold harmless, the City, its officers, officials, employees and volunteers from any and all claims, demands, costs or liability that actually or allegedly arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and its agents in the performance of services under this contract, but this indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the sole negligence, active negligence or willful misconduct by the City, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of the City, then Consultant's indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant's proportionate percentage of fault.

As respects all acts or omissions which do not arise directly out of the performance of design professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, and to the full extent permitted by law, Consultant agrees to

- indemnity, defend and hold harmless the City, its officers, officials, agents, employees, and volunteers from and against any claims, demands, losses, liability of any kind or nature (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are in connection with, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the City, its officers, officials, employees and volunteers.
- 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. 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. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.
- 11.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' 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 attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 11.5 **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.
- 11.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section 11 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.
- 11.7 **Indemnification by Subcontractors.** Consultant 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 Consultant's behalf.
- 11.8 **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant'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.

11.9 **Civil Code.** The parties are aware of the provisions of Civil Code 2782.8 relating to the indemnification and the duty and the cost to defend a public agency by a Design Professional and agree that this Section 11 complies therewith.

12. INSURANCE

12.1. **Insurance Required.** Consultant shall maintain insurance as described in this section and shall require all of its subcontractors, consultants, and other agents to do the same. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

12.2. **Documentation of Insurance.** City 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 Consultant's obligation to provide them. Consultant shall file with City:

- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: [insert project name]
- Documentation of Best's rating acceptable to the City.
- 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:

- 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 \$350,000

12.4. **Worker's Compensation Insurance.** Consultant warrants that he or she has no employees and is therefore not subject to the obligation to provide workers compensation insurance. Consultant will comply with the workers compensation statutes as to himself or herself should he or she employ any person in the performance of this Agreement and shall impose a comparable provision in any subcontract entered into with respect to this Agreement.

- 12.5. **Automobile Liability Insurance.** Covered vehicles shall include owned, if any, non-owned and hired automobiles, and trucks.
- 12.6. **Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of Grass Valley 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 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, directors, 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.
- 12.7. **Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project 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.
- 12.8. **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. 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 prior to the 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 E. Main Street, Grass Valley, California 95945.
- 12.9. **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.
- 12.10. **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.

12.11. Report of Claims to City. Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.

12.12. 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 prior to 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. The amount of deductibles for insurance coverage required herein are subject to City's approval.

13. MUTUAL COOPERATION

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

13.2. 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.

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 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

If to Consultant

[Name]
City of Grass Valley
[Department/Division]
125 E. Main Street
Grass Valley, CA 95945
Telephone: (530) 274-4310
Facsimile: (530) 274-4399

[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

15. SURVIVING COVENANTS

The parties agree that the covenants contained in paragraph 5.11 (Records), paragraph 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnity), paragraph 12.8 (Claims-Made Policies), paragraph 13.2 (Consultant 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. **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.
- 16.2. **Consultant Termination.** Consultant may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.
- 16.3. **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.

- 16.4. **Remedies.** City retains any and all available legal and equitable remedies for Consultant'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 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 herefrom shall be effective and binding only if made in writing and executed on by City and Consultant.

- 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 Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement.
- 18.2. **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 subcontractor to file, a Statement of Economic Interest 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. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 18.3. **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.
- 18.4. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 18.5. **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.
- 18.6. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 18.7. **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. 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 agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

- 18.8. **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.
- 18.9. **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.
- 18.10. **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 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.
- 18.11. **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.
- 18.12. **Venue.** The venue for any litigation shall be Nevada County, California and Consultant hereby consents to jurisdiction in Nevada County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

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

“City”
City of Grass Valley

“Consultant”
[Name of Company or Individual]

By: _____
Signature

By: _____
Signature

Printed: _____
—

Printed: _____
—

Title: _____
—

Title: _____
—

Date: _____

Date: _____

Attest:

By: _____
Taylor Day, Deputy City Clerk

Date: _____

Approved as to form:

By: _____
Michael G. Colantuono, City Attorney

Date: _____