

**PROFESSIONAL SERVICES AGREEMENT
FOR DESIGN PROFESSIONALS**

[licensed as a(n) (1) architect (2) landscape architect (3) professional land surveyor or (4) registered as a professional engineer]

(Town of Yountville / _____)

1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the Town of Yountville, a California municipal corporation (“Town”), and _____ (“Consultant”) (collectively, “parties”).

2. RECITALS

- 2.1. Town has determined that it requires the following professional services from a Consultant: **On-Call As-Needed Engineering, Design, and Construction Management 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, Town Council members, or employees of Town which would (1) present a conflict of interest with the rendering of services under this Agreement under California Government Code section 1090, the Political Reform Act (Government Code section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.
- 2.4. Town has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant’s work by Town shall not operate as a waiver or release. Consultant represents and warrants to Town that (a) it has all licenses, permits, qualifications, insurance and approvals of whatever nature which are legally required for Consultant to practice its profession, and (b) it shall, at its sole cost, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall indemnify and hold harmless Town, its officers, agents, employees and volunteers from and against any and all claims or expenses caused or occasioned directly or indirectly by Consultant’s failure to so perform.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, Town 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. "Work Order": Such professional services as may be requested by Town in writing from time to time in individual written authorizations issued to Consultant. Such Work Orders shall be valid and binding upon Town and Consultant only if accepted and executed in writing by both. The professional services to be performed and the schedule for performance shall be as described in each Work Order. Consultant agrees to perform the professional services in accordance with the terms and conditions contained in this Agreement and each Work Order. Consultant acknowledges that Town is not obligated to issue any Work Order(s) under this Agreement.
- 3.3. “Scope of Services”: Such professional services as are set forth in a Work Order. A Work Order may include services identified in Consultant’s _____, 2025 proposal to Town attached hereto as Exhibit A and incorporated herein by this reference. Consultant shall not provide any professional services under this Agreement unless identified in a Work Order.
- 3.4. “Agreement Administrator”: The Agreement Administrator for this project is _____. The Agreement Administrator shall be the principal point of contact at Town for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. Town reserves the right to change this designation upon written notice to Consultant.
- 3.5. “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.
- 3.6. “Maximum Amount”: The highest total compensation and costs payable to Consultant by Town under this Agreement and/or any Work Order(s). The Maximum Amount under this Agreement, including any and all Work Order(s) issued under this Agreement, is _____ Dollars (\$_____). The Maximum Amount under any Work Order shall be identified in the Work Order.

3.7. “Commencement Date”:

3.8. “Termination 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 16 (Termination) below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by Town 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. Town shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement and/or any Work Order(s).

5.2. **Coordination with Town.** In performing services under this Agreement, Consultant shall coordinate all contact with Town through its Agreement Administrator. All changes and/or extra work shall be performed and paid for in accordance with the following:

5.2.1. Only the Agreement Administrator may authorize extra and/or changed work. Only the Town Council may increase the Maximum Amount under this Agreement. Consultant expressly recognizes that other Town personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Consultant to secure the Agreement Administrator’s or Town Council’s authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and Consultant thereafter shall be entitled to no compensation whatsoever for performance of such work.

5.2.2. If Consultant is of the opinion that any work s/he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, s/he shall promptly notify Town of the fact. Town shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that Town determines that such work does constitute extra work, it shall provide extra compensation to Consultant on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between Town and Consultant. Such Supplemental Agreement shall be executed by Consultant and be approved by Town Manager, Agreement Administrator, or Town Council as needed or required.

5.2.3. In the event Town determines that such work does not constitute extra work, Consultant shall not be paid extra compensation above that provided herein and if such determination is made by Town staff, said determination may be appealed to the Town Council as long as a written appeal is submitted to the Town Manager within five (5) days after the staff's determination is received by Consultant. Said written appeal shall include a description of each and every ground upon which Consultant challenges the staff's determination. The Town Manager's or Town Engineer's decision shall be final.

- 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 Town 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 Town. 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 California Government Code section 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.6. **Campaign Contributions.** This Agreement is subject to Government Code section 84308, as amended by Senate Bill 1439. Consultant shall disclose any contribution to an elected or appointed Town official's campaign or committee in an amount of more than five hundred dollars (\$500) made within 12 months preceding the Commencement Date, by Consultant, its, her, or his agent, or another party affiliated with Consultant. Consultant shall provide a signed copy of the attached Campaign Contribution Disclosure Form to Town prior to, or concurrent with, Consultant's execution of this Agreement and no later than the Commencement Date.
- 5.7. **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, Town may consent in writing to Consultant's performance of such work.
- 5.8. **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. _____ 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 Town's prior written consent.

- 5.9. **Prevailing Wages.** This Agreement is subject to the Prevailing Wage Laws, as more fully set forth in Section 8 (Prevailing Wages), for all work performed under this Agreement for which the payment of prevailing wages is required under state law. In particular, Consultant acknowledges that prevailing wage determinations are available for work performed under this Agreement.
- 5.10. **Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to Town 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 Town. If Town and Consultant cannot agree as to the substitution of key personnel, Town may terminate this Agreement for cause.
- 5.11. **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.
- 5.12. **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 subconsultant. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 5.13. **Inspection Services.** In the event Consultant will perform inspection services, Town or authorized representatives of Town shall have the right to inspect the work of such services whenever such representatives may deem such inspection to be desirable or necessary. Inspections by Town do not in any way relieve or minimize the responsibility of Consultant to conduct the inspections Consultant has expressly agreed to perform pursuant to this agreement. Consultant shall be solely liable for said inspections performed by Consultant. Consultant shall certify in writing to Town as to the completeness and acceptability of each inspection of improvement or construction which Consultant agrees to inspect hereunder.
- 5.14. **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 Town under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to 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 Town. In addition, pursuant to California

Government Code section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of Town or as part of any audit of Town, for a period of three (3) years after final payment under this Agreement.

6. SUBCONTRACTING

- 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 Town for all services to be performed under this Agreement.
- 6.3. **Identification in Fee Schedule.** All subconsultants 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. All rates and charges for subconsultants shall be at-cost and without mark-up by Consultant.

7. COMPENSATION

- 7.1. **General.** Town agrees to compensate Consultant for the services provided under this Agreement and Consultant agrees to accept payment in accordance with the Approved Fee Schedule, **Exhibit B** 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 Town in advance.
- 7.2. **Invoices.** Consultant shall submit to Town an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. 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.** Town 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 Town through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of Town.
- 7.6. **Town Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until Town 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, Town 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. 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 Town, 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 but not limited to computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) shall be and remain the property of Town, without restriction or limitation upon its use or dissemination by Town except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

10. RELATIONSHIP OF PARTIES

- 10.1. **General.** Consultant is, and shall at all times remain as to Town, a wholly independent contractor.
- 10.2. **No Agent Authority.** Consultant shall have no power to incur any debt, obligation, or liability on behalf of Town or otherwise to act on behalf of Town as an agent. Consultant, its officers, employees and agents shall not have any power to bind or commit Town to any decision or course of action, and Consultant, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of Town or that it or they have the power to bind or commit Town. Neither

Town 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 Town.

- 10.3. **Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to Town as an employer. Consultant shall not be entitled to any benefits. Town 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 subconsultant 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 Town, Consultant shall indemnify, defend, and hold harmless Town for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subconsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Town.

11. INDEMNIFICATION

- 11.1 **Definitions.** For purposes of this Section 11, "Consultant" shall include Consultant, its officers, employees, servants, agents, or subconsultants, or anyone directly or indirectly employed by either Consultant or its subconsultants, in the performance of this Agreement. "Town" shall include Town, its officers, agents, employees and volunteers.
- 11.2 **Consultant to Indemnify Town.** 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, Town, 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 Town, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of Town, then Consultant's indemnification and defense obligations shall be reduced in proportion to the established comparative liability of Town and shall not exceed 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 indemnify, defend and hold harmless Town, 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-consultants of Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of Town, its officers, officials, employees and volunteers. The Town's right to indemnity under this Agreement shall arise immediately upon the occurrence of the event giving rise to the indemnified liability. The Town shall be entitled to a defense under this Agreement immediately upon the institution of a claim or action that is covered by this indemnity, even though liability for said claim or action has not yet been determined at the time the duty to defend the Town hereunder has arisen.

- 11.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person. Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify Town for such loss or damage as is caused by the active negligence, sole negligence, or willful misconduct of Town. 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 Town'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.
- 11.4.1 **Attorneys' Fees in Enforcing Indemnity.** Attorneys' fees and litigation expenses incurred in any action brought to enforce the indemnification provision set forth herein shall be recoverable by the prevailing party.
- 11.5 **Defense Deposit.** Town may request a deposit for defense costs from Consultant with respect to a claim. If Town 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 Town.

- 11.7 **Indemnification by Subconsultants.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subconsultant or any other person or entity involved in the performance of this Agreement on Consultant's behalf.
- 11.8 **Insurance Not a Substitute.** Town does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. 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 section 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 subconsultants, Consultants, and other agents to do the same. Approval of the insurance by Town 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.** Town will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive Consultant's obligation to provide them. Consultant shall file with Town:
- Certificate of Insurance, indicating companies acceptable to Town, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: On-Call As-Needed Engineering, Design, and Construction Management Services
 - Documentation of Best's rating acceptable to Town.
 - Original endorsements effecting coverage for all policies required by this Agreement.
 - Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

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

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

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to Town as 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

12.4. **General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.

12.5. **Worker's Compensation Insurance.** Consultant is aware of the provisions of section 3700 of the California 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.

12.6. **Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.

12.7. **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. In the event Consultant's policy is

a "claims made" policy only covering those claims made during the policy period, then Consultant agrees to maintain the professional liability insurance required hereunder and with respect to this project in effect for at least three (3) years after acceptance of the work.

- 12.8. **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 the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 12.9. **Additional Insured Endorsements.** Town, its Town Council, Commissions, officers, and employees must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions, for liability arising out of ongoing and completed operations by or on behalf of Consultant. Consultant's insurance policies shall be primary as respects any claims related to or as the result of Consultant's work. Any insurance, pooled coverage or self-insurance maintained by Town, 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. General liability coverage can be provided using an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.
- 12.10. **Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and Consultant does not furnish a new certificate of insurance prior to cancellation, Town has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due Consultant under this Agreement. Failure of 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.
- 12.11. **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 prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: Town of Yountville, Attn: _____, 6550 Yount Street, Yountville CA 94599.

- 12.12. **Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any coverage available to Town. Any insurance or self-insurance maintained by Town and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 12.13. **Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against Town. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 12.14. **Report of Claims to Town.** Consultant shall report to Town, in addition to Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 12.15. **Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to Town. Town may require Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, Town must approve all such amounts prior to execution of this Agreement.

Town has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. 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 Town's approval.

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

13. MUTUAL COOPERATION

- 13.1. **Town Cooperation in Performance.** Town shall provide 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 Town relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that Town may require in the defense of that claim or action.
- 13.3. **Conflict Between Plans.** Consultant shall provide assistance as necessary to resolve any questions on conflicts between plans and specifications prepared by Consultant pursuant to this Agreement that may arise during the period of advertising for bids and shall issue any necessary addenda to the plans and specifications as requested. In the event Consultant is of the opinion that Town's requests for addenda and assistance is outside the scope of normal services, the parties shall proceed in accordance with the provision of Section 5.2 hereof.

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 Town's regular business hours; (ii) 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); or (iii) the day of delivery if emailed to the email address listed below and simultaneously deposited in the U.S. mail, postage prepaid, to the address(es) listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to Town

If to Consultant

With courtesy copy to:

Gary Bell, Town Attorney
Colantuono, Highsmith & Whatley, PC
555 University Avenue, Suite 275
Sacramento, CA 95825
Phone (916) 898-0049
Email: gbell@chwlaw.us

15. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 5.14 (Records), Section 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnity), Section 12.8 (Claims-Made Policies), Section 13.2 (Consultant Cooperation in Defense of Claims), and Section 18.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

16. TERMINATION

- 16.1. **Town Termination.** Town may, in its sole and unfettered discretion and without cause, terminate this Agreement at any time prior to completion by Consultant of the services required. Notice of Termination of this Agreement shall be given in writing to Consultant and shall be sufficient and complete when same is emailed to Consultant and simultaneously deposited in the United States mail postage prepaid and certified, addressed as set forth in Section 14 of this Agreement. The Agreement shall be terminated upon receipt of the Notice of Termination by Consultant. If Town should terminate this Agreement, Consultant shall be compensated for all work satisfactorily performed prior to time of receipt of termination notice, and shall be compensated for materials ordered by Consultant or his/her employees, or services of others ordered by

Consultant or his/her employees prior to receipt of Notice of Termination whether or not such materials or final instruments of services of others have actually been delivered, provided that Consultant or its employees are not able to cancel such orders for materials or services of others. Compensation for Consultant in the event of termination by Town shall be determined by Town Engineer in accordance with the percentage of project completed. In the event that this Agreement is terminated pursuant to this Section 16.1, Consultant shall not be entitled to any additional compensation over that provided herein; nor shall Consultant be entitled to payment for any alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by Town pursuant hereto.

- 16.2. **Consultant Termination.** Consultant may terminate this Agreement upon thirty (30) days written notice to Town only for good cause. Consultant's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. In the event of termination, all notes, sketches, computations, drawings and specifications, or other data, whether complete or not, produced through the time of Town's last payment shall be relinquished to Town. Town may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.
- 16.3. **Consultant Failure to Perform.** Should Consultant fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the Town may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. Consultant shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage if any, sustained by Town by virtue of Consultant's breach of this Agreement.
- 16.4. **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. Town shall have the benefit of such work as may have been completed up to the time of such termination.
- 16.5. **Remedies.** Town 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 Town 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 here from shall be effective and binding only if made in writing and executed on by Town 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 Subsection thereof at the head of which it appears, the language of the Section or Subsection 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.

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 Town. Town shall grant such consent if disclosure is legally required. All Town data shall be returned to Town upon the termination or expiration of this Agreement.
- 18.2. **Conflicts of Interest.** 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 subconsultant to file, a Statement of Economic Interest with Town's Filing Officer if required under state law in the performance of the services. For breach or violation of

this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

- 18.3. **Multiple Phase Projects.** Pursuant to Government Code section 1097.6, Consultant's duties and services under this Agreement shall not include preparing or assisting the Town with any portion of the Town's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the Town. The Town shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications, if any, shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the Town to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant, if any, pursuant to this Agreement.
- 18.4. **Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without Town's prior written consent, and any attempt to do so shall be void and of no effect. Town shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.5. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 18.6. **No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 18.7. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 18.8. **Non-Discrimination.** 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.
- 18.9. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by Town or Consultant unless in writing signed by one authorized

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

[Signatures on following page]

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

“Town”
Town of Yountville

“Consultant”

By: _____
Signature

By: _____
Signature

Printed: _____
Title: _____
Date: _____

Printed: _____
Title: _____
Date: _____

Attest:

By: _____
Hilary Gaede, Town Clerk

Date: _____

Approved as to form:

By: _____
Gary Bell, Town Attorney

Date: _____

CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS

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

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

1. No Town Councilmember or Commissioner shall accept, solicit, or direct a contribution of more than \$500 from any party¹ or party's agent² during the pendency of your application and for 12 months after the date a final decision is rendered by the Town. This prohibition commences when your application has been filed or the proceeding is otherwise initiated.
2. A party to a Town proceeding shall disclose on the record of the proceeding any contribution of more than \$500 made to any Councilmember or Commissioner by the party or party's agent during the 12 months preceding the proceeding. No party or party's agent to a Town proceeding shall make a contribution to a Councilmember or Commissioner while the application is pending, during the proceeding, and for 12 months following the date a final decision is rendered by the Town.
3. Prior to considering your application, any Councilmember or Commissioner who received a contribution of more than \$500 within the 12 months preceding the commencement of the proceedings on your application from any party or party's agent, shall disclose that fact on the record of the proceeding and shall be disqualified from participating in the proceeding. However, if any Councilmember or Commissioner receives a contribution that otherwise would require disqualification and returns the contribution within 30 days of knowing about the contribution and the relevant proceeding, that Councilmember or Commissioner shall be permitted to participate in the proceeding.

To determine whether a campaign contribution of more than \$500 has been made by you or your agent to a Councilmember or Commissioner within the preceding 12 months, all contributions made by you or your agent during that period must be aggregated.

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

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

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

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(a) Application for:

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

Name and address of any party or party’s agent who has contributed more than \$500 to any Councilmember or Commissioner within the preceding 12 months. If none, write in “none:”

- 1. _____
- 2. _____
- 3. _____

(b) Date and amount of Contribution:

Date: _____ Amount: \$ _____

Date: _____ Amount: \$ _____

Date: _____ Amount: \$ _____

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

- 1. _____
- 2. _____
- 3. _____

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

Name: _____

Signature: _____

Date: _____ Phone: _____

To be completed by Town:

Application No.: _____

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

EXHIBIT A
(Scope of Services)

EXHIBIT B
(Approved Fee Schedule)