

**CITY OF COLFAX**



**REQUEST FOR PROPOSALS  
AND PRICE ESTIMATE  
FOR AN UPDATE  
OF THE CITY OF COLFAX'S UTILITY RATES  
FOR WASTEWATER**

**Submission Deadline: October 2, 2017 - 4 p.m.**

**CITY OF COLFAX  
REQUEST FOR PROPOSALS  
FOR AN UPDATE OF THE  
CITY OF COLFAX'S UTILITY RATES FOR  
WASTEWATER**

**I. PURPOSE**

The City of Colfax is seeking professional consulting services to update the City Utility Rates for Wastewater. The Update will determine the appropriate fee structure to fund operations, debt service and capital replacement programs for the utility. The City of Colfax intends to award a contract or combination of contracts to consultant(s) that have a history of successfully performing services on similar rate studies.

**II. BACKGROUND**

Located in Placer County, the City of Colfax is approximately 60 miles east of Sacramento. Interstate Highway 80 runs through Colfax. The existing incorporated area of the City of Colfax is 2 square miles.

Colfax operates as a General Law City with a five-member City Council that serves just over 2,000 residents. With approximately 12 full-time employees and 1 part-time employee the City operates and maintains its own sewer facilities, street systems, and parks.

The current City Utility Rates were studied and approved in 2008. The rate study is available for review on the City's website in the RFP/Bids section at [www.colfax-ca.gov](http://www.colfax-ca.gov).

**III. SCOPE OF SERVICES**

The Scope of Services involves all necessary analyses and documentation to perform the study of the City's utility rates and recommendation of a five-year rate schedule. In general, the scope of work shall involve the following:

**Data Collection and Development.** The consultant(s) shall work with City staff to collect all available data and to develop additional data when required to fully support a comprehensive City utility rate fee program.

**Develop Cost Savings through Creative Solutions.** The consultant shall research and give recommendations to the City for potential cost savings. One such consideration may be negotiation of the terms of the Wastewater Treatment Plant loan. The City would like the consultant to investigate other options which may alleviate the high costs to the rate payers.

**Fee Calculation and Analysis.** The consultant(s) shall determine the City of Colfax's utility rates based on costs to provide ongoing operations, payoff existing loans (Debt Service) and implementation of an adequate capital replacement program. The utility rate study should take into account the mandated programs and industry trends specific to the services being provided. In addition, the consultant(s) will also propose a methodology for annual inflationary adjustments if needed.

**Draft Report.** The consultant(s) shall prepare and provide a report that documents the fee study results, including, but not limited to, a description of the overall methodology, findings, supporting justification, recommended utility rates and the calculations that provide the legal nexus between services provided and the benefits from those services.

**Presentation of Materials.** The consultant(s) shall present information at briefing meetings with City staff at critical points in the preparation process in a manner that a typical member of the community would understand. In addition, upon completion of the Draft Report, the consultant(s) shall be prepared to present the study to the City Council and the residents in a public format. The presentation capabilities and public involvement processes proposed by the consultant(s) is a key factor in determining the successful proposals for the Updates.

**Proposition 218 Process.** The consultant(s) will propose the preparation and completion of the Proposition 218 process as a potential additional service to the City.

**Final City Utility Rate and Presentation.** A final study shall be provided and presented to the City Council in a Public Hearing. The successful consultant(s) must be prepared throughout the analysis to (a) adjust its scope of work to account for possible changes in rate structures acceptable to the City; and (b) adjust its methodology to account for local conditions.

**IV. FORMAT FOR RESPONSE TO REQUEST FOR PROPOSAL (RFP)**

The response to the "Request for Proposals" must be made according to the requirements set forth in this section, both for content and sequence. Failure to adhere to these requirements or to include conditions, limitations or misrepresentations may be cause for rejection of the submittal. Use 8-1/2" X 11" sheets (fold outs are acceptable for charts, etc.) and type size must be large enough to be easily legible (shall not be smaller than 10 point). Please deliver the RFP in a sealed envelope, labeled as shown below in Item A.

- A. Deliver one (1) complete electronic copy and six (4) complete hard copies of the submittal to the contact person listed below.

City of Colfax  
ATTN: City Clerk  
PO Box 702  
33 S Main Street  
Colfax, CA 95713

**Lorraine Cassidy, City Clerk, will serve as the City's contact** for the City utility rate study. The City prefers that any questions, inquiries and matters of coordination regarding this RFP be submitted by e-mail to the contact listed below.

City.clerk@colfax-ca.gov  
Phone: (530) 346-2313

- B. Mandatory Content and Sequence of Submittals:

1. Cover Letter.

Section 1 shall be a maximum two-page "Cover Letter" and introduction, and shall include the name and address of the organization submitting the proposal, together with the name, address, telephone and fax numbers, and email address of the contact person who will be authorized to make representation for the organization. This cover letter should also state the Principals' acceptance of the City's Standard Agreement format as provided in Attachment A. If the Consultant proposes any changes to this format, said proposed changes should be outlined in the cover letter.

2. Table of Contents.

Section 2 shall be a detailed "Table of Contents" and shall include an outline of the submittal, identified by sequential page number and by section reference number and section title as described herein.

3. Consultant Qualifications.

Section 3 shall be entitled "Consultant Qualifications" and shall include a description of the consultant firm's resources, experiences and capabilities as they relate to appropriate City utility rate studies, as well as resumes of the staff to be assigned to this project. Submit in the order identified below:

- a. Background and experience. In this section, describe your firm's background and its organizational structure. Describe the roles and background of the team leader and key team members. Describe capabilities specific to the scope of work within this RFP.
- b. Consultants. Describe the background and qualifications for each of the consultants your firm would use in meeting the above capabilities and in preparing this City utility rate study.
- c. Scheduling. Delineate the schedule you propose for the City utility rate study.
- d. Cost Control. Describe how your firm ensures that the project contract amount is not exceeded.

4. Description of Analysis.

Section 4 shall be entitled "Description of Analysis" and will describe the methodology that you will utilize to provide the analysis requested in this Request for Proposals, taking care to account for the possible changes in scope and methodology mentioned in the last paragraph under Scope of Services, above.

5. Workplan & Schedule.  
Section 5 shall be entitled "Workplan" and will outline how the consultant's team intends to prepare and complete the City utility rate studies.
6. Price Estimate.  
Section 6 shall be entitled "Price Estimate" and shall provide a breakdown of costs by hour and by task contained in the Workplan in Section 5. Provide a total "not to exceed" amount inclusive of ancillary costs, such as copying, travel, phone, etc. The only reimbursable cost will be the printing and binding of the final report for each of the City utility rate studies. The City reserves the right to negotiate the scope of work, overall price estimate and hourly rates prior to entering into a contract with the selected firm(s).
7. Experience Summary.  
Section 7 shall be entitled "Experience Summary" and shall briefly describe knowledge and experience in conducting City utility rate studies for other agencies, along with a discussion comparing similarities with this project. Include professional references, including names and telephone numbers for each sample project.
8. Additional Data (this section shall be limited to two pages).  
Section 8 shall be entitled "Additional Data" and shall include any other data the consultant deems essential to the evaluation of the qualifications and proposal statements. Where appropriate, please key data back to information contained in Sections 1 thru 7. If there is no additional data, this section will consist of the statement, "We wish to present no additional data."

## **V. SELECTION PROCESS**

Evaluations of all qualification statements, work plans and price estimates will consist of two steps of selection. The selection committee will be comprised of representatives from the City of Colfax.

The first step will consist of evaluating the proposals for the purpose of ranking the most qualified proposing firms and to recommend either one consultant or a combination of consultants for City Council approval. The City will conduct vendor interviews from October 9 through October 13. Qualifications, assigned personnel, a realistic schedule, experience with the Proposition 218 process, and the ability to involve the residents as stakeholders in the process will be the basis for ranking the most qualified firms. Since the City reserves the right to negotiate the final price with a selected firm, the price estimate will not be the most significant consideration in the first step of the City's selection process.

The second step involves the City negotiating with the proposing firm that it ranks as the most qualified to perform the engagement. The City desires to negotiate the final price for the engagement, details of scope of services, timeline for completion of the engagement, contract terms and conditions. Should the City not be able to negotiate the price and other conditions to its satisfaction, it may choose to negotiate with another qualified proposing firm.

## **VI. CITY NOTICES**

Any questions related to this RFP are to be directed by email to the City's contact person identified herein.

### **All consultant firms responding to this RFP should note the following:**

- A. All work performed for the City of Colfax, including all documents and computer software files associated with the project, will become the exclusive property of the City of Colfax. The proposals must indicate if consultant anticipates using software that is proprietary in nature and therefore cannot be legally released to the City.
- B. The City of Colfax reserves the right to: 1) reject all submittals, 2) request clarification of any submitted information, 3) not enter into any agreement, 4) not select any consultant, 5) cancel this process at any time, 6) amend this process at any time, 7) issue similar RFPs or RFQs in the future, and/or 8) request additional information during the selection process.
- C. The selected consultant is expected to perform and complete the project in its entirety.

D. Any and all costs arising from preparation of this RFP and participation in the selection process incurred by any consultant firm shall be borne by the firm without reimbursements by the City of Colfax.

E.

**VII. TIMING AND SCHEDULE**

All responses to this RFP must be submitted to the City's contact person identified herein on or before the specified deadline. The City will then review the responses and schedule interviews with the firm(s) who best meet(s) the criteria outlined above.

The proposed schedule is as follows:

<b>Submission deadline</b>	<b>October 2, 2017 – 4 p.m.</b>
Interviews	October 9 through October 13, 2017
Preliminary selection	By October 13, 2017
Negotiation of contract	October 13 to October 18, 2017
Award of contract	October 25 2017 City Council meeting
Project to commence	November 1, 2017



**ATTACHMENT A**  
**AGREEMENT FOR CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into on this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City\_ of Colfax, a municipal corporation of the State of California ("City") and \_\_\_\_\_ ("Consultant").

**RECITALS**

- A. The City desires to retain Consultant to provide the Services set forth in detail in Exhibit A hereto (the "Services") subject to the terms and conditions of this Agreement.
- B. Consultant is duly licensed and sufficiently experienced to undertake and perform the Services in a skilled and workmanlike manner and desires to do so in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual covenants, promises and conditions set forth in this Agreement, the City and Consultant agree as follows:

**Section 1. Services**

Subject to the terms and conditions set forth in this Agreement, Consultant shall furnish and perform all of the Services described in detail in Exhibit A hereto and incorporated herein by this reference (the "Services") to the satisfaction of the City. Consultant shall not perform any work exceeding the scope of the Services described in Exhibit A without prior written authorization from the City.

**Section 2. Time of Completion.**

Consultant's schedule for performance of the Services is set forth in Exhibit A hereto which is incorporated herein by this reference. Consultant shall commence performance of the Services promptly upon receipt of written notice from the City to proceed. Performance of the Services shall progress and conclude in accordance with the schedule set forth in Exhibit A. During the performance of the Services, Consultant shall provide the City with written progress reports at least once each month and at such additional intervals as City may from time to time request.

### **Section 3. Compensation.**

- A. Except as may otherwise be provided in Exhibit A or elsewhere in this Agreement or its exhibits, Consultant shall invoice City once each month for the Services performed during the preceding month. Such invoices shall itemize all charges in such detail as may reasonably be required by City in the usual course of City business but shall include at least:
- i. the date of performance of each of the Services,
  - ii. identification of the person who performed the Services,
  - iii. a detailed description of the Services performed on each date,
  - iv. the hourly rate at which the Services on each date are charged,
  - v. an itemization of all costs incurred and
  - vi. the total charges for the Services for the month invoiced.
- As long as the Consultant performs the Services to the satisfaction of the City, the City shall pay the Consultant an all-inclusive compensation that shall not exceed the amount as detailed in Exhibit A except pursuant to an authorized written change order issued pursuant to Section 15 of this Agreement before the Services requiring additional compensation are performed. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City's staff.
- B. The Consultant's compensation for the Services shall be full compensation for all indirect and direct personnel, materials, supplies, equipment and services incurred by the Consultant and used in carrying out or completing the Services. Payments shall be in accordance with the payment schedule established in Exhibit A or elsewhere in this Agreement or its exhibits.
- C. The City shall have the right to receive, upon request, documentation substantiating charges billed to the City pursuant to this Agreement. The City shall have the right to perform an audit of the Consultant's relevant records pertaining to the charges.
- D. Any Services performed more than sixty (60) days prior to the date upon which they are invoiced to the City shall not be compensable.

### **Section 4. Professional Ability; Standard of Quality.**

City has relied upon the professional training and ability of Consultant to perform the Services described in Exhibit A as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all Services under this Agreement. All Services performed by Consultant under this Agreement shall be in a skillful, workmanlike manner in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

## **Section 5. Indemnification.**

Consultant shall hold harmless and indemnify, including without limitation the cost to defend, the City and its officers, agents and employees from and against any and all claims, demands, damages, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and/or its agents in the performance of the Services. This indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, arising from the sole negligence, willful misconduct or material defects in design by the City or its agents, servants employees or independent contractors other than Consultant who are directly responsible to the City, or arising from the active negligence of the City officers, agents, employees or volunteers

## **Section 6. Insurance.**

Without limiting Consultant's indemnification obligations provided for above, Consultant shall take out before beginning performance of the Services and maintain at all times during the life of this Agreement the following policies of insurance with insurers possessing a Best rating of not less than A. Consultant shall not allow any subcontractor, professional or otherwise, to commence work on any subcontract until all insurance required of the Consultant has also been obtained by the subcontractor.

- A. Workers' Compensation Coverage. Statutory Workers' Compensation insurance and Employer's Liability Insurance to cover its employees. In the alternative, Consultant may rely on a self-insurance program to meet its legal requirements as long as the program of self-insurance complies fully with the provisions of the California Labor Code. Consultant shall also require all subcontractors, if such are authorized by the City, to similarly provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the subcontractor's employees. All Workers' Compensation policies shall be endorsed with the provision that the insurance shall not be suspended, voided, or cancelled until thirty (30) days prior written notice has been provided to City by the insurer. The Workers' Compensation insurance shall also contain a provision whereby the insurance company agrees to waive all rights of subrogation against the City and its elected or appointed officials, officers, agents, and employees for losses paid under the terms of such policy which arise from the Services performed by the insured for the City.
  
- B. General Liability Coverage. General liability insurance, including personal injury and property damage insurance for all activities of the Consultant and its subcontractors, if such are authorized by the City, arising out of or in connection with the Services. The insurance shall be written on a comprehensive general liability form and include a broad form comprehensive general liability endorsement. In the alternative, the City will accept, in satisfaction of these

requirements, commercial general liability coverage which is equivalent to the comprehensive general liability form and a broad form comprehensive general liability endorsement. The insurance shall be in an amount of not less than \$1 million combined single limit personal injury and property damage for each occurrence. The insurance shall be occurrence based insurance. General liability coverage written on a claims made basis shall not be acceptable absent prior written authorization from the City.

- C. Automobile Liability Coverage. Automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$1 million combined single limit for each occurrence.
- D. Policy Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following provisions:
1. The City, and its elected or appointed officials, employees and agents shall be named as insureds or additional insureds with regard to damages and defenses of claims arising from activities performed by or on behalf of the Consultant.
  2. The insurance afforded by each policy shall apply separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limits of liability.
  3. The insurance shall be primary insurance as respects the City and its elected or appointed officers, officials, employees and agents. Any other insurance maintained by the City or its elected or appointed officers, officials, employees, agents or volunteers shall be in excess of this insurance and shall not contribute with it.
  4. The insurance shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been provided to the City.
  5. Any failure to comply with the reporting requirements of any policy shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, or agents.

- E. Professional Liability Coverage. If required by the City, Consultant shall also take out and maintain professional liability, errors and omissions insurance in an amount not less than \$1 million. The professional liability insurance policy shall be endorsed with a provision stating that it shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days written notice has been provided to the City.
- F. Insurance Certificates and Endorsements. Prior to commencing the Services under this Agreement, Consultant shall submit to the City documentation evidencing the required insurance signed by the insurance agent and the companies named. This documentation shall be on forms which are acceptable to the City and shall include all required endorsements and verify that coverage is actually in effect. This Agreement shall not be effective until the required insurance forms and endorsements are submitted to and approved by the City. Failure to provide these forms within the time period specified by City may result in the award of this Agreement to another Consultant should the City, in its sole discretion, decide to do so. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.
- G. Deductible and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City.
- H. Termination of Insurance. If the City receives notification that Consultant's insurance will be suspended, voided, cancelled or reduced in coverage or in limits, and if the Consultant does not provide for either the reinstatement of that insurance or for the furnishing of alternate insurance containing all of the terms and provisions specified above prior to the termination of that insurance, City may either terminate this Agreement for that breach, or City may secure the required insurance to satisfy the conditions of this Agreement and deduct the cost thereof from compensation which would otherwise be due and payable to the Consultant for Services rendered under the terms of this Agreement.

### **Section 7. Subcontracts.**

Consultant may not subcontract any portion of the Services without the written authorization of City. If City consents to a subcontract, Consultant shall be fully responsible to the City and third parties for all acts or omissions of the subcontractor to which the Services or any portion thereof are subcontracted. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor, nor shall it create any obligation on the part of the City to pay or cause the payment of any monies due to any such subcontractor except as otherwise is required by law.

### **Section 8. Assignment.**

Consultant shall not assign any right or obligation under this Agreement without the City's prior written consent. Any attempted assignment of any right or obligation under this Agreement without the City's prior written consent shall be void.

### **Section 9. Entire Agreement.**

This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties.

### **Section 10. Jurisdiction.**

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction over any litigation arising from this Agreement shall be in the Superior Court of the State of California with venue in Placer County, California.

### **Section 11. Suspension of Services.**

Upon written request by Consultant, City may suspend, in writing, all or any portion of the Services if unforeseen circumstances beyond the control of the City and Consultant make normal progress of the Services impossible, impractical or infeasible. Upon written City approval to suspend performance of the Services, the time for completion of the Services shall be extended by the number of days performance of the Services is suspended.

### **Section 12. Termination of Services.**

City may at any time, at its sole discretion, terminate all or any portion of the Services and this Agreement upon seven (7) days written notice to Consultant. Upon receipt of notice of termination, Consultant shall stop performance of the Services at the stage directed by City. Consultant shall be entitled to payment within thirty (30) days for Services performed up to the date of receipt of the written notice of termination. Consultant shall not be entitled to payment for any Services performed after the receipt of the notice of termination unless such payment is authorized in advance in writing by the City.

Should Consultant fail to perform any of the obligations required of Consultant within the time and in the manner provided for under the terms of this Agreement, or should Consultant violate any of the terms and conditions of this Agreement, City may terminate this Agreement by providing Consultant with seven (7) days written notice of such termination. The Consultant shall be compensated for all Services performed prior to the date of receipt of the notice of termination. However, the City may deduct from the

compensation which may be owed to Consultant the amount of damage sustained or estimated by City resulting from Consultant's breach of this Agreement.

Consultant's obligations pursuant to Sections 5 and 6 of this Agreement shall survive termination, and continue in effect for as long as necessary to fulfill the purposes of Sections 5 and 6.

### **Section 13. Independent Contractor.**

Consultant shall in all respects be an independent contractor and not an agent or employee of City. Consultant has and shall retain the right to exercise full control and supervision of the means and methods of performing the Services. Consultant shall receive no premium or enhanced pay for Services normally understood as overtime; nor shall Consultant receive holiday pay, sick leave, administrative leave or pay for any other time not actually expended in the performance of the Services. It is intended by the parties that Consultant shall not be eligible for benefits and shall receive no compensation from the City, except as expressly set forth in this Agreement. Consultant shall submit completed W -9 and Report of Independent Contractor forms upon execution of this Agreement and prior to the payment of any compensation hereunder.

### **Section 14. Ownership of Documents.**

Within thirty (30) days after the Consultant substantially completes performance of the Services, or within thirty (30) days after the termination of this Agreement, the Consultant shall deliver to the City all files, records, materials and documents drafted or prepared by Consultant's in the performance of the Services. It is expressly understood and agreed that all such files, records, materials and documents are the property of the City and not the property of the Consultant. All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of performing the Services shall become the sole property of the City upon payment to Consultant for the Services, and the City shall have the exclusive right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and writings to City or any party the City may designate, upon written request. Consultant may keep file copies of all documents prepared for City. Use of any such documents by the City for projects that are not the subject of this Agreement or for purposes beyond the scope of the Services shall be at the City's sole risk without legal liability or expense to Consultant.

### **Section 15. Changes and/or Extra Work.**

Only the City Council may authorize extra and/or changed Services, modification of the time of completion of the Services, or additional compensation for the tasks to be



performed by Consultant. Consultant expressly recognizes that other City personnel are without authorization to order extra and/or changed Services or to obligate the City to the payment of additional compensation. The failure of Consultant to secure the prior written authorization for such extra and/or changed Services shall constitute a waiver of any and all right to adjustment in the contract price due to such unauthorized Services, and Consultant thereafter shall not be entitled to any compensation whatsoever for the performance of such extra or changed Services. In the event Consultant and City agree that extra and/or changed Services are required, or that additional compensation shall be awarded to Consultant for performance of the Services under this Agreement, a supplemental agreement providing for such compensation shall be prepared and shall be executed by the Consultant and the necessary City officials before the extra and/or changed Services are provided.

### **Section 16. Compliance with Federal, State and Local Laws.**

Consultant shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations affecting the Services, including without limitation laws requiring licensing and prohibiting discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases. City shall not be responsible or liable for Consultant's failure to comply with applicable laws, statutes, ordinances, rules or regulations.

### **Section 17. Retention of Records.**

Consultant and any subconsultants authorized by the terms of this Agreement shall keep and maintain full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to the Services, and Consultant shall make such documents available for review and/or audit by City and City's representatives at all reasonable times during performance of the Services and for at least four (4) years after completion of the Services and/or termination of this Agreement.

### **Section 18. Alternative Dispute Resolution**

- A. Before resorting to mediation, arbitration or other legal process, the primary contacts of the parties shall meet and confer and attempt to amicably resolve any dispute arising from or relating to this Agreement subject to the following provisions. Any party desiring to meet and confer shall so advise the other party pursuant to a written notice. Within 15 days after provision of that written notice by the party desiring to meet and confer, the primary contacts for each party shall meet in person and attempt to amicably resolve their dispute. Each primary contact, or the person acting in their absence with full authority to resolve the dispute, shall



attend the meeting and shall be prepared to devote an entire day thereto. If any dispute remains unresolved at the end of the meeting, any party to this Agreement shall have the right to invoke the mediation process provided for in the subparagraph B below.

- B. Subject to the provisions of subparagraph A, any dispute that remains unresolved after the meet and confer shall immediately be submitted to non-binding neutral mediation, before a mutually acceptable, neutral retired judge or justice at the Sacramento Office of the Judicial Arbitration and Mediation Service ("JAMS"). If within five days after the meet and confer the parties are unable to agree upon the selection of a neutral mediator, then the first available retired judge or justice at the Sacramento office of JAMS shall serve as the neutral mediator. The parties agree to commit to at least one full day to the mediation process. Additionally, to expedite the resolution of any dispute that is not resolved by mediation, the parties agree to each bring to the neutral mediation a list of at least five neutral arbitrators, including their resumes, whose availability for an arbitration hearing within 30 days after the mediation has been confirmed.
- C. If mediation is unsuccessful, before the mediation concludes, the parties shall mediate the selection of a neutral arbitrator to assist in the resolution of their dispute. If the parties are unable to agree on an arbitrator, the parties agree to submit selection of an arbitrator to the mediator, whose decision shall be binding on the parties. In that case, the mediator shall select a neutral arbitrator from the then active list of retired judges or justices at the Sacramento Office of the JAMS. The arbitration shall be conducted pursuant to the provisions of the California Arbitration Act, sections 1280-1294.2 of the California Code of Civil Procedure. In such case, the provisions of Code of Civil Procedure Section 1283.05 and 1283.1 shall apply and are hereby incorporated into this Agreement.
- D. This section 18 shall survive the termination or expiration of this Agreement. If there is no Sacramento office of JAMS, then the office of JAMS closest to the City shall be used instead of a Sacramento office.

### **Section 19. Severability.**

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by an arbitrator or by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual written consent of the parties.

**Section 20. Entire Agreement; Amendment.**

This Agreement, including all exhibits hereto, constitutes the complete and exclusive expression of the understanding and agreement between the parties with respect to the subject matter hereof. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement. This Agreement may be amended or extended from time to time only by written agreement of the parties hereto.

**Section 21. Time of the Essence.**

Time is of the essence in the performance of the Services. The Consultant will perform its Services with due and reasonable diligence consistent with sound professional practices and shall devote such time to the performance of the Services as may be necessary for their timely completion.

**Section 22. Written Notification.**

Except as otherwise specified in this Agreement, any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by first class mail, postage prepaid and addressed as follows. Either party may change its address by notifying the other party in writing of the change of address. Notice shall be deemed communicated within two business days from the time of mailing if mailed within the State of California as provided in this Section.

If to City:                   City of Colfax  
                                      33 S. Main Street  
                                      Colfax, CA 95713

If to Consultant:        Bennett Engineering Services Inc  
                                      1082 Sunrise Avenue, Suite 100  
                                      Roseville, CA 95661

**Section 23. Execution.**

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

**Section 24. Successors.**

This Agreement shall be binding on and inure to the benefit of the respective parties hereto except to the extent of any contrary provision in this Agreement.

**Section 25. Attorney's Fees.**

If any party to this Agreement commences legal proceedings to enforce any of its terms or to recover damages for its breach, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and the expenses of expert witnesses, including any such fees costs and expenses incurred on appeal.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written:

CITY

CONSULTANT

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney