



**Date: June 27, 2024**

**Request for Proposal**

**City**

**Attorney Services**

Submit Responses electronically to:

[City.clerk@colfax-ca.gov](mailto:City.clerk@colfax-ca.gov)

Responses Must Be Received by:

**5pm – July 10, 2024**

**PROPOSALS WILL NOT BE ACCEPTED AFTER THIS DATE AND TIME**

**I. Introduction**

**A. Purpose**

The City of Colfax invites interested legal firms and/or individuals to submit proposals for City Attorney Services as described in the scope of work set forth in this request for proposals (RFP). The City seeks a City Attorney who will provide clear, understandable, and independent legal advice. The firm/individual must be qualified to provide expertise in the areas of general municipal law, land use, personnel and labor relations, open meeting and conflict of interest laws and other legal matters affecting a general law city as such may arise. The City Attorney will serve under the direction and supervision of the City Council and acts as its legal advisor. The City Attorney is not a City employee and is not entitled to the benefits of a City employee; the position is strictly on a contractual basis. The City Council reserves the right to retain or employ other attorneys or special counsel as may be needed, in its sole judgment, to take charge of any litigation or legal matters or to assist the City Attorney.

The City is an Equal Opportunity Employer and meets the requirements of Executive Order 11246, California State law and Title VI of the Civil Rights Act of 1964 as amended. Applicants must not be debarred or suspended or are otherwise excluded from or ineligible for participation in any federally or state assisted programs, and all procurement procedures must comply with all relevant federal grant requirements, state-specific policies, and procedures.

**B. Submittal Closing, Time, and Location, Inquiries**

All proposals delivered in an express courier package shall be sealed in a separate envelope within the courier package. Any proposal found ineligible or incomplete shall not be considered for selection. Proposers assume full responsibility for having their proposal deposited at the proper address and no later than the scheduled closing time. Faxed or emailed proposals or modifications will not be considered. Proposals will not be received after the closing date and time indicated below.

Proposal Labeling: REQUEST FOR PROPOSAL FOR CITY ATTORNEY SERVICES

Submittal Closing: July 10, 2024, 5:00pm, PST

Location: City of Colfax  
Attention: Ron Walker, City Manager  
33 S. Main Street  
P.O. Box 702  
Colfax, CA 95713

Number of Copies: Five (5) Bound copies of the proposal; one (1) unbound reproducible copy; and one (1) electronic version (USB flash drive) must be submitted.

### **C. Protest Process/Dispute Resolution**

If a Proposer desires to protest the selection decision, the Proposer must submit a written protest within five (5) business days after the delivery of the notice about the decision. The written protest must be submitted to the City's City Clerk, as outlined below. Protests received after the deadline will not be accepted. Protests must be in writing, must include the name and address of the Proposer and the RFP title, and must state all the specific ground(s) for the protest. A protest that merely addresses a single aspect of the selected proposal (for example, comparing the cost of the selected proposal in relation to the non-selected proposal) is not sufficient to support a protest. A successful protest will include sufficient evidence and analysis to support a conclusion that the selected proposal, taken as a whole, is an inferior proposal.

The City Clerk will respond to a protest within ten (10) business days of receiving it, and the City may, at its election, set up a meeting with the Proposer to discuss the concerns raised by the protest. The decision of the City will be final. The protest letter must be sent or hand-delivered to:

**City of Colfax Attn:** Amanda Ahre, City Clerk  
33 South main Street/P.O. Box 702  
Colfax, CA 95713

### **D. Inquiries**

Any prospective Proposer desiring an explanation or interpretation of the solicitation, specifications, etc., must request so in writing, no later than five (5) days before proposal due date to allow a reply to reach prospective Proposer before the proposal submission date. The written request must be submitted to the individual identified below. Inquiries regarding this solicitation shall be directed to:

City of Colfax

Attention: Ron Walker, City Manager  
33 S. Main Street  
P.O. Box 702  
Colfax, CA 95713  
[city.manager@colfax-ca.gov](mailto:city.manager@colfax-ca.gov)

Please reference "Request for Proposals for City Attorney Services" when contacting the City regarding this solicitation. The City of Colfax City website, [Colfax-ca.gov](http://Colfax-ca.gov) will contain a copy of this document as well as a summary of any/all applicable addenda, if any. Any firm found to be contacting members of the City Council or other members of City staff or officials to obtain information during this RFP process may be automatically disqualified from any further consideration.

## **E. Background**

Colfax is a general law city that operates under a council-manager form of government and serves a population of 2,000 with approximately 10 full-time staff. Police and fire services are contracted to other agencies. Colfax has an elected five-member Council. The City Manager and City Attorney are appointed by the Council and serve at-will.

The City Council is the legislative body responsible for overall policy development and direction of the City. The City Council appoints the City Manager, who serves as the executive officer and is responsible for the day-to-day operations of the City.

The City Council appoints the City Attorney and contracts with that individual's firm for legal services. The City provides a variety of municipal services including public works, parks and recreation, engineering, planning, fire (by contract), police (by contract), sewer, streets and storm drain maintenance as well as all of the traditional internal financial and administrative support functions. The City has a FY 2024/25 General Fund Operating Budget of about \$2,500,000.

## **II. Terms and Conditions**

### **A. Proposal Preparation Costs**

The City is not, nor shall be deemed, liable for any costs incurred by Proposer in the preparation, submittal, or presentation of their proposals.

### **B. Reservation of Rights**

This RFP does not commit or obligate the City to accept or execute an agreement for any expressed or implied service. The City reserves the right to:

- Reject any and all proposals received and to accept or reject any item(s) herein;
- Take all proposals under advisement for up to one hundred and twenty (120) days after opening;
- Waive any informality on any proposal;
- Be the sole judge of the relative merits of the material mentioned in the respective proposal received;
- Request any firm/individual submitting a proposal to clarify its proposal during the selection phase;
- Negotiate the service schedule and reasonable costs with the selected firm/individual;
- Modify or alter any requirements herein, and issue addenda or amendments to this RFP;
- Terminate this RFP process at anytime.

### **C. Acceptance of Conditions**

It is the Proposer's responsibility to examine the scope and location of the proposed work to fully acquaint themselves with the specifications and the nature of the work to be accomplished. Proposers shall have no claim against the City based upon ignorance of the nature and requirements of the services provided, misapprehension of the work environment, or misunderstanding of the specification or agreement provisions.

By submitting a proposal, each Proposer expressly agrees to and accepts the following conditions:

- Proposal and cost schedules shall be valid and binding for one hundred and twenty (120) days following the proposal due date and will become part of the Agreement that is negotiated with the City.
- The City may require whatever evidence is deemed necessary relative to the Proposer's financial stability and ability to perform these services.
- The City reserves the right to request further information from the Proposer, either in writing or orally, to establish any stated qualifications.
- The City reserves the right to solely judge the Proposer's representations, and to solely determine whether the Proposer is qualified to undertake these services pursuant to the criteria set forth herein. The Proposer, by submitting a proposal, expressly acknowledges and agrees that the judgment of the City as to whether or not the Proposer is qualified to perform these services shall be binding, final and conclusive.

### **D. Proposal Inclusions**

The Request for Proposal documents shall be submitted in their entirety, with all applicable portions fully completed by the Proposer. All Proposers are encouraged to review and confirm that their proposal includes and specifically addresses all of the proposal requirements prior to submitting.

### **E. Withdrawal of Proposal Before Closing**

Any Proposer may request the withdrawal of their submitted proposal by written request at any time prior to the scheduled closing date and time. Upon receiving written request to withdraw any proposal, the City will consider the proposal null and void, and return the proposal to the Proposer. Withdrawal of proposal will not impact Proposer's resubmittal for this or any future proposal(s).

### **F. Professional Licensing**

The Proposer shall possess any necessary professional certification(s) and/or license(s) relative to the work to be performed required by an appropriate licensing authority of the State of California and shall provide evidence of such to the City with their proposal or prior to commencement of the work in such a form as the City shall require.

## **G. Insurance Requirement**

The Proposer shall, at its own expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the proposer, its agent, representatives, employees, or subcontractors. Proposer shall also require all of its subcontractors assigned to provide services to procure and maintain the same insurance requirement for the duration of the Agreement. Specific insurance requirements are as follows:

- General Liability Insurance of at least \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate liability.
- Automobile Liability Insurance of at least \$1,000,000.00 per accident Combined Single Limit (CSL);
- Worker's Compensation Insurance at least equal to the State of California required minimums.
- Professional Errors and Omissions Insurance of at least \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate liability.

## **H. Business License**

The professional provider, and any sub-consultant(s), will obtain a business license with the City of Colfax or before their commencement of work.

## **I. Public Record**

Be advised that all information contained in proposals submitted in response to this solicitation shall become a matter of public record upon contract award, and made available upon request, unless otherwise marked. The Proposer must identify, in writing, all copyrighted material, trade secrets or other proprietary information the Proposer claims are exempt from disclosure pursuant to the California Public Records Act. The Proposer who claims such an exemption must also state in the proposal that:

“The Proposer agrees to indemnify and hold harmless the City and its officers, employees and agents from any claims, liability or damages against the City and to defend any actions brought against the City for its refusal to disclose such material, trade secrets or other proprietary information to any party.”

## **J. Equal Opportunity**

The City requires all Proposers to comply with equal opportunity policies.

## **K. Independent Contractor**

The City Attorney will be an independent contractor. All persons employed by a firm in accordance with an Agreement resulting from this RFP will be employees of the firm or law practice and not of the City.

## **L. Conflict of Interest**

No official, officer, or employee of the City or of a local public body during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. Furthermore, the parties hereto covenant and agree that to their knowledge, no board member, officer or employee of the City has any interest, whether contractual, non- contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than the City of Colfax, and that if any such interest comes to the knowledge of either party at any time, a full disclosure of such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 (commencing with Section 1090) or Article 4.6 (commencing with Section 1120) of Division 4 of Title 1 of the Government Code of the State of California.

## **M. Appendix**

The appendix shall include any suggested additions or modifications to the scope that the individual/firm believes will enhance the quality of their proposal. Individual/Firm brochures, exhibits, and any other pertinent documents may be included in the Appendix.

## **N. Contract**

Award of a professional services contract, if any, will be to the proposer whose proposal best complies with all of the requirements of the RFP documents and which provides the best solution for the needs of the City of Colfax.

The successful firm will be required to enter into a Legal Services Agreement with the City of Colfax, which will include the requirements of this RFP, as well as other requirements to be determined. The City reserves the right to negotiate the price, terms, and scope of services with the proposer, prior to entering into an Agreement. The agreement will contain provisions requiring the selected law firm to indemnify the City and provide that the City Attorney and any support staff is an independent contractor(s) serving at the will of the City Council. Provisions will also be included in the contract allowing the City Council to terminate the agreement, at its sole and entire discretion, upon the provision of notice.

The term of the contract is negotiable.

## **III. Scope of Work**

### **A. Understanding the Scope of Work**

The City Attorney is appointed by and reports to the City Council. The City Attorney is the chief legal counsel for the City of Colfax and, as such, is responsible for advising on all legal matters. The primary responsibilities the City will require of its City Attorney shall include, but not be limited to, the following:

- Represent and provide legal advice and consultation on a regular basis to the City Council, City Manager and City Staff as requested or required. Contacts are usually made by email or

telephone and same-day response is typically expected.

- Attend City Council meetings (unless excused) and be prepared to advise the Council on matters on the agenda as well as procedural or substantive issues that arise during the meeting. Attendance at Planning Commission or other City meetings is required when requested.
- Coordinate and manage the services and costs of all outside or special legal counsel within budgetary limits as approved by the City Council.
- Recommend policies and procedures that comply with the requirements of the law.
- Keep the City Council and City Manager informed of legislation or judicial opinions that have potential impact on the City.
- Prepare, review and revise staff documents, including, but not limited to, initiation of memorandums concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions on appeal, and staff reports for the legal support of City functions and duties.
- Provide staff assistance, legal research and counseling related to the acquisition or sale of property, preparation of leases, deeds and easements, agreements, utility franchise agreements, operations governed by law, liability situations, grant guidelines, pension law, personnel, employee relations and other matters as necessary requiring legal advice.
- Interpret the City's Municipal Code.
- Provide guidance concerning the requirements of the Brown Act, Conflict of Interest (AB 1234), the Political Reform Act, the Public Records Act, due process, and other legal requirements imposed by statute and common law.
- Assist with responses to Public Records Act requests.
- Represent the City in litigation not covered by the City's self-insured risk pools.
- Provide legal advice and assistance to operating departments.
- Research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the City Council and management staff on legal matters pertaining to City operations.
- Represent the City as requested before other governmental bodies and agencies to promote the interest of the City.
- Oversee coordination with special legal counsel on all City litigation as directed by the City Council and/or City Manager.
- Maintain legal files and provide the City Clerk copies of pertinent pleadings and orders in all litigation the City Attorney is handling for the City.
- Perform other legal duties as may be required by the City Council as may be necessary to complete the performance and functions mentioned above.
- Promptly return all phone calls from the City Council and City Staff.



#### **IV. Evaluation and Selection Process**

##### **A. Areas of Performance Effectiveness**

The City of Colfax recognizes that a successful and effective City Attorney will demonstrate specific qualities. The following areas will serve as part of the basis for evaluation of the City Attorney.

- Competent representation – doing things right (legal knowledge, research, and analysis)
- Ethical leadership – doing the right things(principle-centered)
- Adherence to legal policies and procedures (promoting the public interest)
- Professional conduct (emotional and mental fortitude)
- Inter-governmental governance (networking and coalition building)
- Customer service (City Council, City Manager, City staff, and others as appropriate)

##### **B. Proposal Evaluation**

Selection of Proposer to interview with the City will be based on the contents of their written proposal. Proposals will be rated according to the following criteria (in no particular order):

- Depth and breadth of experience and expertise in the practice of law, most specifically in those areas most often encountered in municipal government operations;
- Understanding of municipal government issues and municipal law;
- Capability to perform legal services promptly and in a manner that permits the City Council and staff to meet established deadlines and operate in an effective and efficient manner;
- Qualifications of the key staff that will be assigned to the City under this proposal;
- Familiarity with State of California Land Use Law;
- Communication skills;
- References of past or current municipal law clients or municipal practice;
- Proposed fee structure, including but not necessarily limited to, a monthly retainer, services included in monthly retainer, hourly rates for services not included in monthly retainer.
- Cost of providing services.
- Results of interviews with City Council.

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposing firms/individuals to allow corrections of errors or omissions. The City reserves the right to verify any information contained in proposals, including references, resumes, etc. The City reserves the right to investigate and research proposals, including facts and opinions that could be helpful in evaluating the capabilities of firms/individuals whether or not they were specifically included in the proposals.

**C. Selection Process**

The top-ranked firms/individuals may be requested to attend a meeting with the City Council to be interviewed, and the City Council will interview up to two individuals proposed as City Attorney from such firms. The interviews will allow the designated firms or individuals an opportunity to answer any questions the City Council may have regarding their proposals. Participation in the interviews will be at no cost to the City. The City Council will make the final determination of the successful firm/individual. Please note that in an effort to maintain the integrity of the interview process all proposing firms are prohibited from contact with the City Council members outside of the formal interview process.

**D. Tentative RFP Timeline**

Release of RFP	June 27, 2024
Proposal Submission Deadline	July 10, 2024
PST RFP Internal Reviews	July 12, 2024
Candidate Firm Interviews	July 15 & 16, 2024
Selected Firm Contract Negotiations	July 17, 2024
Award of Contract	July 24, 2024

**V. Requested Information**

All proposals must provide specific and succinct answers to all questions and requests for information. Please answer the questions in the format and order presented. Submissions of individual resumes alone will not be considered responsive to any specific question.

**A. General Proposal**

1. Letter of Transmittal: Signed by an authorized representative of the firm or the individual committing to provide the legal services described above, including a brief introduction and history of the firm, number of employees, proven work history, and a statement as to qualifications.
2. Table of Contents: Include a clear identification of the material by section and page number included in the proposal.
3. Firm Qualifications: Provide professional experience and qualifications for the Proposer and/or firm and the designated individuals to provide the services specified in the Request for Proposals. Please include responses to the following specific information:
  - a. Describe your firm’s background and history; include number of years in business and number of years providing legal services to public sector agencies.

- b. Location of office(s) that would serve the City of Colfax.
- c. Provide the name(s) and qualifications of attorney(s) who would be assigned to represent the City of Colfax and who will attend City Council meetings regularly, including the following for each: Responding firms may propose either one or two alternatives for proposed appointment to City Attorney.
  - i. Certificates or licenses, including the date of admission to the State Bar of California;
  - ii. Length of employment with the firm;
  - iii. Description of education including name of educational institutions, degrees conferred, and year of each degree;
  - iv. Professional background and professional associations;
  - v. Years of municipal or other local public sector experience;
  - vi. Knowledge of, and experience with California Municipal Law relating to general law cities including, but not limited to, land use and planning, environmental law (CEQA), general plans, code enforcements and other related areas of law, administrative law, labor relations/personnel law, contracts, Public Records Act and other areas of municipal law;
  - vii. Specific expertise and training;
  - viii. Provide complete resumes of the persons designated by the firm to be the City Attorney or substitute City Attorney.
- d. Describe your view of the role of the City Attorney.
- e. Describe how you would develop and maintain an effective partnership between the City Attorney, City Manager and City Council.
- f. Describe how you will keep the City Council and the City Manager informed about the status of litigation and other legal matters on a regular basis, and what basis would that be.
- g. Describe the response time we can expect from the City Attorney to inquiries made by the City Council and City Manager.
- h. Describe how you will track and manage legal costs so that the City's legal costs are held to a minimum.
- i. Describe how you will proactively advise the City Council, City Manager and staff about legal developments or issues of concern, without being asked.
- j. Describe how as the City Attorney you would coordinate your daily work with the City Manager and City Council.
- k. Describe how as the City Attorney you would coordinate your daily work with the City Department Heads.

- l. Clearly describe your range of experience with project negotiation, eminent domain issues, and the drafting and implementation of agreements and contracts (i.e., lease, purchase) and litigation.
  - m. How would you evaluate whether to use an attorney within your law firm or an attorney from another law firm to handle a case, provide expert advice, or provide other needed services?
  - n. Describe the firms' practices regarding professional development training and keeping current with the laws and legal matters affecting its clients.
  - o. Identify the types of in-service training (such as ethics, commission roles and responsibilities, how to conduct performance evaluations, harassment investigations, etc.) your firm is capable of providing to municipalities.
  - p. Describe systems/mechanisms that would be established from monthly reporting of status of routine projects, requests, and litigation.
  - q. Describe the firm's philosophy in addressing complete matters within the context of balancing legal limitations with project goals and objectives.
  - r. Describe your firm's suggested process for transmittal of requests and other material to the City Attorney.
  - s. Describe the firm's experience with contract services provided by a municipality.
  - t. It is anticipated that the City will contractually require monthly-itemized statements for all services and will subject these statements to audit at least annually. Describe how you would provide this reporting.
  - u. Describe how the firm proposes to obtain client satisfaction with provided services, and what tools or resources are available to ensure continued satisfaction.
  - v. If a multi-employee firm, describe the firm's philosophy with regard to personnel changes in City Attorney, whether initiated by the firm or requested by the City.
4. Please complete and submit the Certification of Proposal Form (Attachment A) and Business Information Form (Attachment B) with your Proposal.
  5. References: Provide contact information for three (3) municipal, public agency and/or key clients for which legal services have been provided in the last ten (10) years (preferably performed by the attorney being proposed to represent the City of Colfax). Please include the contact person's name, address, phone number and email address.
  6. Clients/Potential Conflicts of Interest:
    - a. Identify any foreseeable or potential conflicts of interest with public clients you serve and the manner in which you would propose to resolve such conflicts.
    - b. For the person to be designated as City Attorney and any substitute City Attorney(s), list all public clients that person presently represents as City Attorney or general counsel, along with the meeting dates and times for each governing body.

- c. List all private clients that could potentially pose a conflict of interest with your representation of the City of Colfax.
  - d. Identify all situations in the last five (5) years in which you have been adverse to public entities, either in litigation or administrative matters.
  - e. Please list any political contributions of money, in-kind services, or loans made to any member of a City Council within the last three (3) years by the applicant law firm and all of its attorneys, including the attorney being proposed to represent the City of Colfax.
7. Insurance: Please include a description and pertinent information regarding the general liability and malpractice insurance carried by the firm or individual, including the amount of coverage provided by such insurance.

## **B. Cost Proposal**

While the City is open to reviewing various cost structures, it is anticipated that the City will receive cost proposals wherein “general” services are provided under a fixed monthly retainer and any additional “special” services are billed at a pre-negotiated hourly rate.

1. General Services: Please give your definition of “general” legal services. Would all general legal services be included in your monthly retainer?
2. Special Services: Please give your definition of “special” legal services. How are they differentiated from general legal services? Would any special services be included in your retainer? If so, please identify them.
3. How would your firm aid the City to remain within its adopted budget for its legal services?
4. Billing Method: Describe your firm’s preference for method of payment, payment terms, and your procedure for billing retention, hours, and expenses and other accounting requirements.
5. Reimbursable: Define the type and unit rates for reimbursement of expenses. For example, rate for mileage, reproduction of documents or word processing charges, unit costs for telephone costs, etc.
6. In-Service Training: Please provide the costs of any in-service training(s) that your firm can provide to the City.
7. Adjustments: Do you expect to have a cost-of-living adjustment incorporated into the agreement with the City? If so, please explain how you propose it be computed and implemented.
8. Would your firm be willing to operate under a maximum annual expenditure cap with the City? If so, please explain how it might be structured.
9. Monthly Retainer/Billable Hours: Please complete and submit the Cost Proposal Form (Attachment C) with your Proposal. The proposed compensation shall be in one of two (2) formats. The Proposer shall either propose an hourly rate(s) for work, including meeting attendance OR the submittal shall contain a billing system wherein regular attendance at City Council, Planning Commission, or Successor Agency meetings are billed at a fixed, per meeting

fee (i.e. monthly retainer) and services beyond the scope are billed at the proposed hourly rate(s). Billing should correspond to the Scope of Work and hourly involvement by each staff member. Alternatively, the proposer may choose a blended cost structure, in which case the structure should be described in sufficient detail to be understood by staff and Council members.

10. Cost of Proposal Worksheet: Please complete and submit the Cost of Proposal Worksheet (Attachment D) with your proposal.

## **VI. Sample Documents**

- A. Sample Report: Please submit a copy of a typical report your firm provides to municipalities (i.e. staff report, memorandum, legal opinion, etc.).
- B. Sample Billing Invoice: Please submit a copy of a typical invoice your firm provides to municipalities. Please redact any sensitive information.

**Attachment A**  
**Certification of**  
**Proposal**

- The undersigned hereby submits its proposal and, by so doing, agrees to furnish services to the City in accordance with this Request for Proposal and to be bound by the terms and conditions of the RFP.
- This firm has carefully reviewed its proposal and understands and agrees that the City is not responsible for any errors or omissions on the part of the Proposer and that the Proposer is solely responsible for such errors or omissions.
- It is understood and agreed that the City reserves the right to accept or reject any or all proposals and to waive any informal or irregularity in any proposal received by the City.
- The proposal includes all components, figures and dates required by this Request for Proposal.
- This firm has carefully read and fully understands all of the items contained in this Request for Proposals. This firm agrees to all of the requirements of the RFP.
- The City is not responsible for any cost associated with preparing the Proposal.

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

Name of Firm: \_\_\_\_\_

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

Print/Type Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Attachment B  
Business Information Form**

**Business Contact**

**Information: Name of** \_\_\_\_\_

**Firm:**

**Address:** \_\_\_\_\_

**City/State/Zip Code:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Website:** \_\_\_\_\_

**Federal Tax Number:** \_\_\_\_\_

**Number of Years in Business:** \_\_\_\_\_

**Number of Employees:** \_\_\_\_\_

**Does the firm/business maintain amounts of insurance specified by the City? Yes**

**No Are there any claims that are pending against any insurance policies? Yes**



No

If yes, describe: \_\_\_\_\_

**Has the firm/business been in bankruptcy, reorganization, or receivership in the last five years?**

Yes

No

**Has the proposed designated City Attorney practiced municipal law a minimum of five (5) years? Yes**

No

**Is each of the proposed attorneys accredited and in good standing with the State Bar of California? Yes**

No

**Business Classification: Corporation Partnership Individual**

*If a Corporation:*

**Date of Incorporation:** \_\_\_\_\_

**State of Incorporation:** \_\_\_\_\_

**President's Name:** \_\_\_\_\_

*If a Partnership:*

**Date of Organization:** \_\_\_\_\_

**Name of all Partners:** \_\_\_\_\_

=====

**Attachment C**  
**Cost Proposal Form**

Proposer

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Name of Contact: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Hourly Rates (no retainer)

Estimated average hours per month: \_\_\_\_\_ Hourly Rate: \$ \_\_\_\_\_

Total cost for services per month: \$ \_\_\_\_\_

Monthly Retainer

Estimated average hours per month: \_\_\_\_\_ Hourly Rate: \$ \_\_\_\_\_

Total cost for services included in monthly retainer: \$ \_\_\_\_\_

Add-On Hours Outside of Monthly Retainer:

List of Personnel	Hourly Rates
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____

Reimbursable and/or Other Costs:

Please define the types and unit rates for expenses (i.e. mileage, reproduction of documents, faxed documents, processing charges, etc.) if any:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attachment D**  
**Cost of Proposal Worksheet**

Services		Provided by Firm (Yes/No)		Included in Retainer (Yes/No)		Title of Person Performing Service
1.	Attend regular and special Council meetings.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2.	Attend regular Planning Commission meetings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3.	Attend Executive Team Staff and other meetings as needed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4.	Office hours, at least one day per week.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5.	Agenda review and follow-up.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6.	Standard contract review and revision.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7.	Standard ordinance/resolution review and revision.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8.	Public Records Act request review and direction.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9.	Brown Act issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
10.	General legal advice and counsel on matters pertaining to the City, not involving more than three (3) hours of research.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11.	Routine personnel and labor questions, which can be responded to orally, not involving more than one (1) hour of research.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12.	Code enforcement issues – City code interpretation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
13.	Code enforcement issues – consultation with City staff.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
14.	Code enforcement issues – preparation and review of notices, demands and orders.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
15.	Litigation, including eminent domain.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
16.	Personnel services– review of Practices and Procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
17.	Personnel services – disciplinary procedure.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18.	Personnel services – grievances.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19.	Personnel services – arbitration.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

20.	Personnel services – FLSA, FMLA, ADA and HIPPA issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Services		Provided by Firm		Included in Retainer		Title of Person Performing

		(Yes/No)		(Yes/No)		Service
21.	Personnel services – Revision of drafting at-will personnel contracts.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
22.	Transactions – options.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
23.	Transactions – leases.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
24.	Transactions – statutory development agreements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
25.	Transactions –specialized reimbursement agreements, fee credit or reimbursement agreements.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
26.	Franchising.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
27.	Public Works – contract disputes and interpretation services.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
28.	Public Works – drafting construction and similar contracts and conditions.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
29.	Public Works – prevailing wage issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
30.	Public Works – right of way acquisition.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
31.	Development Services – CEQA issues and document review.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
32.	Development Services – routine Subdivision Map Act issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
33.	Development Services – non routine Subdivision Map Act issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
34.	Development Services – zoning and land use issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
35.	Development Services – housing issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
36.	Ordinance and resolutions – drafting and compilation of non-routine ordinances and resolutions; review and analysis of non-routine ordinances and resolutions drafted by City Staff or other Jurisdictions.	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
37.	Appearance before other public entities or government agencies on behalf of the City.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

38.	Proposer may list additional, pertinent services it can provide to the City of Colfax on the lines below:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
39.	Other services not listed above as described below:					

## **VII. Exhibits**

**Exhibit A: Criteria for Evaluation of Statement of Qualifications, Weighted Evaluation Matrix.**

**Exhibit B: City of Colfax Professional Services Agreement.**

**Exhibit A**  
**Criteria for Evaluation of Statement of Qualifications, Weighted Evaluation Matrix**

Criteria for Evaluation of Statement of Qualifications  
 Weighted Evaluation Matrix (WEM)

**WEIGHTED EVALUATION MATRIX**  
**FOR**  
**CITY FINANCE DIRECTOR SERVICES RFP**

**Firm Name:** \_\_\_\_\_

**Sub-Category I ► Understanding Objectives and City Requirements**

Weighting Factor = 25%

	Maximum Points Available	Points Scored
Completeness & Conformance with Request for Qualification Requirements	40	40
Clarity and Logic of Statement of Qualifications	30	30
Professional Appearance of Statement of Qualifications	30	30
Total	100	100
<i>Weighted Total (Total Points Scored * weighting Factor)</i>	=	25

**Sub-Category II ► Qualifications**

Weighting Factor = 50%

	Maximum Points Available	Points Scored
Qualifications and Experience of Firm	15	15
Qualification and Experience of Individual/Team	15	15
Relevant Experience	20	20
Familiarity with Municipal Issues and Municipal Law	20	20
Familiarity with State of California Land Use Law	30	30
Total =	100	100
<i>Weighted Total (Total Points Scored * Weighting Factor)</i>	=	50

**Weighted Evaluation Matrix Summary**

Sub-Category:	I	II	<b>Total Weighted Points</b>
Weighted Total:	25	50	<b>75</b>

**Exhibit B**  
**AGREEMENT FOR CONSULTANT SERVICES**  
**(ATTACHED)**



## **AGREEMENT FOR CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into on this \_\_\_ day of \_\_\_\_\_ 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 professional 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, officials, employees, and volunteers 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, any sub-consultant, anyone directly or indirectly employed by them, or anyone they control in the performance of the Services. This indemnity does not apply to liability for damages or loss, arising from the sole negligence, active negligence, or 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 passive negligence of the City, its officers, agents, employees or volunteers, unless caused in part by Consultant. City agrees that in no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault unless otherwise allowed by California Civil Code Section 2782.8, as amended.

#### **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 policies of insurance at least as broad as the following, 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. Workers' Compensation insurance as required by the State of California, with statutory limits, and Employer's Liability Insurance with limits of no less than \$1,000,000.00 per accident for bodily injury or disease. 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. Commercial General Liability Coverage (CGL). Commercial general liability insurance covering CGL on an "occurrence" basis, including products and completed operations, bodily injury, personal injury and advertising 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 the most recent Insurance Services Office (ISO) form and include a broad form comprehensive general liability endorsement. The insurance shall be in an amount of not less than \$1,000,000.00 per occurrence. 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 written on the most recent Insurance Services Office (ISO) form 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 \$1,000,000.00 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 \$1,000,000.00. 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 effective date 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:

**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. In accordance with applicable law, the Parties may execute this Agreement by electronic signature and, if they do so, an electronic signature and this Agreement will have same legal validity and enforceability as a manually executed signature and agreement.

**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