



**Date: August 10, 2026**

## **REQUEST FOR PROPOSALS**

**For: On-Call Services for Streets, Roads, Storm Systems  
Maintenance, Repair, & Snow Plowing**

Submit responses electronically to:

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

Responses Must Be Received by:

**4pm – September 1, 2026**

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

## 1 GENERAL INFORMATION

### 1.1 Statement of Intent

The City of Colfax, through this Request for Proposals (“RFP”) seeks a qualified consultant to provide **On-Call Services for Streets, Roads, Storm Systems Maintenance, Repair, & Snow Plowing Services. Please see Section 4, below, for a full description of the services required.** It is the Proposer’s responsibility to review the entire RFP in order to submit a complete and responsive proposal. The highest ranked Proposer, based on the written response to the RFP, as well as any interviews, if scheduled, will be invited to negotiate a contract with the City. The target start date and contract duration for the proposed services is a three-year term with an option to extend it for two years.

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. **The On-Call Service Provider** will be an independent contractor and not an employee of the City. 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.

## 2 RFP PROCEDURE

This section describes the general RFP procedure used by the City of Colfax. This RFP seeks the submission of proposals from interested and qualified Proposers. The City of Colfax seeks to obtain the listed services in a manner that maximizes the quality of services while also maximizing value to the City and, by extension, its residents. Proposers must be able to show that they are capable of performing the services requested. Such evidence includes, but is not limited to, the respondent's demonstrated competency and experience in delivering services of a similar scope and type and local availability of the Proposer's personnel and equipment resources.

### 2.1 Tentative Schedule of Events

The following schedule is tentative, and the City may amend the tentative schedule as necessary by addenda.

**Table 1: Tentative Schedule of Events**

| <b>Event</b>                                                                | <b>Target Date</b>             |
|-----------------------------------------------------------------------------|--------------------------------|
| 1. RFP Release Date                                                         | August 10, 2026                |
| 2. Proposal Deadline – Proposals Must Be RECEIVED by 5:00 p.m. on this Date | September 1, 2026              |
| 3. Clarifying questions from City                                           | August 10 –<br>August 26, 2026 |
| 4. City Council Authorization                                               | September 23, 2026             |

## **2.2 Submission of Proposals**

### **2.2.1 Method of Submission**

Proposals must be submitted electronically by 4 pm on September 1, 2026.

### **2.2.2 No Collusion**

By submitting a proposal, each Proposer certifies that its submission is not the result of collusion or any other activity that would tend to directly or indirectly influence the selection process. The proposal will be used to determine the Proposer's capability of rendering the services to be provided. The failure of a Proposer to comply fully with the instructions in this RFP may eliminate its proposal from further evaluation as determined in the sole discretion of the City. The City reserves the sole right to evaluate the contents of proposals submitted in response to this RFP and to select a contractor, if any.

### **2.2.3 Late Proposals**

Proposals received late will not be opened or given any consideration for the proposed services unless doing so is deemed to be in the best interest of the City, as determined in the sole discretion of the City. All proposals received prior to the deadline for proposals will be kept electronically by the City Clerk and unreviewed until after the deadline.

## **2.3 Proposal Evaluation**

All proposals received will be evaluated by an RFP Evaluation Committee. During the evaluation process, the City may require a Proposer's representative to answer specific questions orally and/or in writing. The City may require interviews.

Responses to this RFP must adhere to the format for proposals detailed in Section 5. The criteria used as guidelines in the evaluation will include, but not be limited to, the following:

- A. Proposer qualifications and experience, including capability and experience of key personnel and experience with other public or private agencies to provide these services
- B. Proposed approach, including clarity of understanding of the scope of services to be provided and appropriateness of the proposed solution/services
- C. Customer service
- D. Ability to meet any required timelines or other requirements
- E. Claims and violations against responding organization or its agents
- F. References
- G. Compliance with City's RFP and contractual requirements

The City may consider any other criteria it deems relevant, and the Evaluation Committee is free to make any recommendations it deems to be in the best interest of the City. Inaccuracy of any information supplied within a proposal or other errors constitute grounds for rejection of the proposal. However, the City may, in its sole discretion, correct errors or contact a Proposer for clarification.

The City reserves the right to evaluate proposals solely based on each proposer's written submission. In relation to written materials, evaluation will be performed only on the material included directly in the proposal itself unless otherwise indicated or requested by the City. The City will not access company web sites or read sales brochures, marketing materials, or white papers in evaluating proposer's experience or proposed methodology unless doing so is in the City's best interest. Proposer may submit additional materials or reference on-line information as part of its proposal, but these will not necessarily be considered during the proposal evaluation process.

## **2.4 Proposal Recommendation**

The Evaluation Committee will recommend a provider or providers to the City Manager or may recommend that all proposals be rejected. The most qualified proposer(s) will be recommended to the City Manager based on the overall strength of each proposal, and the evaluation is not restricted to considerations of any single factor such as cost. Ultimate acceptance or rejection of the recommended proposal(s) and execution of a contractual agreement(s) is the independent prerogative of the City, notwithstanding any recommendations made by the Evaluation Committee.

## **2.5 Notice to Proposers**

The City is not required to give notice to Proposers in any specific format or on any

particular timeline. At some point prior to execution of a final agreement for the requested services, the City will notify those who submitted proposals of their non-selection. Proposers may be notified at different times depending on the needs of the City.

## **2.6 Protest Process**

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 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 Manager or 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:** Gabrielle Christakes, City Clerk  
33 South Main Street/P.O. Box 702  
Colfax, CA 95713

## **3 GENERAL TERMS AND CONDITIONS**

### **3.1 Read All Instructions**

Please read the entire RFP and all exhibits before preparing your proposal.

### **3.2 Proposal Includes the RFP**

This RFP constitutes part of each proposal and includes the explanation of the City's needs, which must be met.

### **3.3 Proposal Costs**

Costs for developing proposals are entirely the responsibility of the Proposer and may not be charged to the City of Colfax.

### **3.4 Proposal Becomes City Property**

The RFP and all materials submitted in response to this RFP will become the property of the City. Proposer must sign Exhibit B, Intellectual Property Rights.

### **3.5 Questions and Response Process**

Submit all questions relating to this RFP to Gabrielle Christakes, City Clerk, at the following email address:

**E-mail to:** [city.clerk@colfax-ca.gov](mailto:city.clerk@colfax-ca.gov)

**Subject Line:** On-Call Services for Streets, Roads, Storm Systems Maintenance, Repair, and Snow Plowing.

If changes to the RFP are warranted, they will be made in writing, clearly marked as addenda to the RFP, per Section 3.6 below.

### **3.6 Alteration of Terms and Clarifications**

No alteration or variation of the terms of this RFP is valid unless made or confirmed in writing by the City. Likewise, oral understandings or agreements not incorporated into the final contract are not binding on the City.

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the Proposer must immediately notify the City of such error in writing and request modification or clarification of the document. If a Proposer fails to notify the City of an error in the RFP prior to the date fixed for submission, the Proposer shall submit a response at his/her own risk, and if the Proposer enters into a contract, the Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

Modifications or clarifications to the RFP will be posted on the City's website as outlined in Section 3.5, above, without divulging the source of the request for same. The City may, at its discretion, also give electronic notice by email to all parties on the proposers list, pre-proposal meeting list and/or who have notified the City of their electronic contact information in response to this RFP, but no party that fails to receive email notice has any basis for protest given that all clarifications will be available online. It is the obligation of all proposing parties to check the City website for updates regarding the RFP if they wish to be kept advised of clarifications prior to submitting a proposal. Failure to do so will not provide grounds for protest.

### **3.7 Selection of Provider(s)**

The selection of a provider will be memorialized in the form of a "City of Colfax Standard Professional Services Agreement" authorized by the City Manager and signed by both parties. Submission of a proposal constitutes the

Proposer's approval and agreement to execute an Agreement.

The City reserves the right to reject any or all proposals without penalty. The City's waiver of an immaterial deviation in the proposal shall in no way modify the RFP documents or excuse the Proposer from full compliance with the specifications if the Proposer enters into a contract.

Selection of a proposal and eventual submission to the City's authorized representative by way of an Agreement does not constitute an offer, and Proposers acknowledge by submission of a proposal that no agreement is final unless and until an agreement with the City is fully executed.

### **3.8 Amendments to the RFP**

The City may modify this RFP by written Addendum emailed to all Proposers. Any Addenda will be also posted on the City's website. It is the responsibility of all interested Proposers to check the City's website for Addenda. The City will not be responsible for failed receipt of Addenda by any interested Proposer in any case. All Addenda will be furnished no less than 5 days prior to the submittal deadline and must be referred to by number and date on the proposal.

### **3.9 Examination of Site and RFP Documents**

Attention is directed to proposer's obligation to examine the work site and RFP documents to determine any site variation that may affect the proposal, and investigate the conditions of existing clearances, restrictions, or limitations that may affect access to the work (see Section 4 for a list of reference documents). The Proposer's failure to do any and all of the above shall not become a basis for claim of additional monies or extension of time.

### **3.10 Insurance**

The City has certain insurance requirements that must be met. Insurance requirements are described in the attached "Standard Professional Services Agreement".

### **3.11 Incomplete Proposals May be Rejected**

Failure to satisfy any of the requirements identified in this RFP may result in the rejection of the proposal.

### **3.12 Contact with City/Department Employees**

As of the issuance date of this RFP and continuing until the final date for submission of proposals, all Proposers are specifically directed not to hold meetings, conferences, or technical discussions with any City employee for purposes of responding to this RFP except as otherwise permitted by this RFP. Any Proposer found to be acting in any way contrary to

this directive may be disqualified from entering into any contract that may result from this RFP.

Proposers shall submit questions or concerns about the process as outlined in Section 3.5, above. The Proposer shall not otherwise ask any City/Department employees questions about the RFP or related issues, either orally or by written communication, unless invited to do so.

### **3.13 Miscellaneous**

The City reserves the right to reject any and all proposals and/or terminate the RFP process if deemed in the best interest of the City. Further, while every effort has been made to ensure the information presented in this RFP is accurate and thorough, the City assumes no liability for any unintentional errors or omissions in this document. The City reserves the right to waive or modify any requirements of this RFP when it determines that doing so is in the best interest of the City. The selected contractor will be required to have or obtain a Colfax Business License issued by the City's Finance Department.

## **4 SCOPE OF WORK**

### **4.1 Background**

The City of Colfax is seeking a contract for On-Call Services to provide maintenance services for any work that is outside the capabilities of the City of Colfax's Department of Public Works. Work types may include, but are not limited to the following:

- Storm and sanitary manhole repair/replacement
- Storm inlet repair/replacement
- Storm and sanitary pipe repair/replacement
- Sanitary sewer force main repair
- General roadway repair
- Curb, sidewalk, other concrete flatwork
- Sinkhole investigation/repair
- Other incidental infrastructure repair/replacement
- Provide snow removal during heavy snow events

#### **General**

- Contractor shall verify all existing conditions in the field.
- Any areas and structures disturbed during construction shall be restored to the condition at least equal to that which existed prior to the start of construction. Any debris will be removed from the project at the contractor's expense.

- The contractor shall be responsible for the location and preservation of all underground and surface utilities and structures at or adjacent to the site of construction, and it shall be at his own expense to repair or replace anything they damage. The contractor is responsible for verifying the location of all utilities and for scheduling all work involved with utilities directly. All costs related to coordination shall be included in the various items of the proposal.
- All materials, methods of construction and requirements of workmanship shall conform to the following specifications, with the latest revisions to apply:
  - California Department of Transportation (CalDOT) - Standard Specifications for Road and Bridge Construction Standard Roadway Construction/Traffic Control/Bridge Construction.
  - Manual on Uniform Traffic Control Devices for Streets and Highways.
- All related incidental work, including earthwork, traffic control, dust control, soil erosion and sediment control, cleaning and restoration shall have no specific payment; costs to be included in the other items within the proposal.
- The Contractor shall ensure residents/businesses have access to their homes/businesses during construction. This work shall be included in the various items within the proposal.
- The above Scope of Work outlines the general items and shall not be construed as being all-inclusive.

## **4.2 As Needed Additional Professional Services**

The need for additional professional services may be driven by peak workload periods and/or special expertise needed. The need for these services will be determined by the City Manager.

## **4.3 Length of Agreement**

The target start date and contract duration for the proposed services is a three-year term with an optional two-year extension.

# **5 PROPOSAL SUBMISSION REQUIREMENTS**

## **5.1 Specified Content and Detailed Sequence of Information in the RFP**

Each proposal shall include sections addressing the following information in the listed order. The Proposer shall be sure to include all information that it feels will

enable the Evaluation Committee and, ultimately, the City to make a decision. Failure of the Proposer to provide specific, detailed information may result in its proposal being rejected in favor of a sufficiently detailed proposal.

Any necessary exhibits or other information, including information not specifically requested by this RFP but deemed as helpful, shall be attached to the end of the proposal. The party submitting the materials should keep in mind the limitations on confidential information described in the “Note Regarding the Public Records Act” section, above.

### **5.1.1 Cover Letter (1 page maximum)**

Provide a one-page cover letter on your letterhead which includes the address, voice and fax numbers, and email address of the contact person or persons and an indication of who is authorized to represent the Proposer in negotiations.

Unless the Proposer is an individual, all proposals must be signed with a firm/company/ partnership/entity name and by a responsible officer or employee indicating that officer or employee’s authorization to commit the Proposer to the terms of the proposal. Obligations assumed by such signature must be fulfilled.

### **5.1.2 Qualifications and Experience (1 page maximum)**

#### **5.1.2.1 Company Background**

Provide a statement of qualifications for your organization, including a statement of the size of firm (if the Proposer is not an individual), a description of the types of services provided by your organization, a statement of the extent of experience/history providing the services requested by this RFP, and number of years in business.

#### **5.1.2.2 Staffing**

Provide the total number of employees employed. Indicate the number of full-time employees (FTEs) that will be assigned to this project. Indicate the number of part-time

employees (and their FTE bases: e.g., .5 FTE) that will be assigned to this project. State if subcontractors will be used and provide the number of subcontractor FTEs that will be assigned to the project.

#### **5.1.2.3 References**

Provide references for each of the project examples provided above, including the name, title, and role of the contact person; the agency or company name, and contact Information including a telephone number and

email address for the contact person.

#### **5.1.2.4 Required Licensing**

A copy of required licenses and other pertinent licenses should be attached to the back of the submittal. The provision of licenses does not count towards page restrictions.

### **5.1.3 Team Structure (2 pages, including any staff resumes)**

#### **5.1.3.1 Project Team**

Provide a description of the probable team including any subconsultants.

#### **5.1.3.2 Project Manager**

Designate a project manager who will be the primary contact with the City. The proposal must contain the qualifications and experience of the project manager, who should have the authority to make decisions for his/her organization. The project manager must have the ability to commit the necessary periods of time to conduct the work as described in the RFP.

#### **5.1.3.3 Organizational Chart**

Include all key project team members and explain their role and responsibility throughout the project. Identify the project team members who are the daily contacts.

#### **5.1.3.4 Staff Qualifications**

Provide a biography describing the key project team members' individual qualifications and the history and role of key staff that will be committed to these services.

### **5.1.4 Proposed Approach (4 pages maximum)**

This section describes your proposed approach for meeting the services required by the City, as described in Section 4, above. Relevant considerations include the quality and feasibility of your approach to meeting these needs, the manner in which you plan to provide adequate staffing (including planning for absences and back-up coverage, training and monitoring, etc.), and equipment, sub-consultant(s) or other resources provided by you (if applicable). The

proposed approach description should also:

- A. Describe how you will fulfill the needs of the City included in this RFP. Please provide a plan providing specific tasks and associated schedule.
- B. Identify how you will meet all other aspects of the scope of work and related requirements listed in Section 4, above, and

list any items you cannot provide.

- C. Describe the measurements/metrics/deliverables and/or assessments you will provide to allow the City to assess the services you will provide.
- D. Provide information on any other pertinent services, if any, you can offer that will reduce costs or enhance your service.

**5.1.5 Customer Service (1 page maximum)**

- A. How will your services meet the needs of the City's customers and/or the public?
- B. In the event of a routine problem, who is to be contacted within your organization?

**5.1.6 Fee Proposal (1 page maximum)**

Provide a fee proposal, as follows:

- A. Using the tasks outlined in the proposer's project plan, as provided per Section 5.1.4, A., above, provide a detailed cost sheet.
- B. All anticipated reimbursable expenses as a separate line item, the charge rates of the people who will perform the work (please identify tasks to be performed by sub- consultants), and a standard hourly rate schedule.
- C. Indication of whether travel time is billable, and how it will be calculated. Generally, proposals that do not include travel time or expenses are preferred.
- D. Description of the key assumptions used to calculate the fees.
- E. Description of the firm's method of, and experience in, controlling project costs.

**5.1.7 Claims and Violations against Your Organization (1 page maximum):**

List any current violations or claims against you/your organization and those having occurred in the past five years, especially those resulting in claims or legal action against you.

**5.1.8 Statement of Compliance with the City's Contractual Requirements: (1 page maximum)**

A sample of the City's Professional Services Agreement is attached to this RFP as Exhibit B. Proposals must advise the City of any objections to any terms in the City's contract template and provide an explanation for the inability to comply with the required term(s). Submission of a proposal without objections constitutes the proposer's approval and agreement to execute an Agreement in the form of Exhibit B.

## 6 EXHIBITS AND ATTACHMENTS

**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%  
Points

Maximum  
Points

Available

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         |
| <b>Total</b>                                                           | <b>100</b> | <b>100</b> |
| Weighted Total ( <i>Total Points Scored * weighting Factor</i> )       |            | = 25       |

**Sub-Category II ► Qualifications**  
Weighting Factor = 50%  
Points

Maximum  
Points

Available

Scored

|                                                                    |            |            |
|--------------------------------------------------------------------|------------|------------|
| Qualifications and Experience of Firm                              | 15         | 15         |
| Qualification and Experience of Project Team                       | 15         | 15         |
| Relevant Experience                                                | 20         | 20         |
| Familiarity with State and Federal Accounting Procedures           | 20         | 20         |
| Familiarity with Federal and State Grant Procedures and Compliance | 30         | 30         |
| <b>Total =</b>                                                     | <b>100</b> | <b>100</b> |
| Weighted Total ( <i>Total Points Scored * Weighting Factor</i> )   |            | = 50       |

Weighted Evaluation Matrix Summary

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

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

**AGREEMENT FOR CONSULTANT SERVICES**  
**PROFESSIONAL SERVICES AGREEMENT**  
**FOR CONSULTANT SERVICES**

**(City of Colfax / *[Company or Individual]*)**

**1. IDENTIFICATION**

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Colfax, a California municipal corporation (“City”), and **[enter Company or natural person]**, a **[enter as appropriate a California Limited Liability Company, a CA Corporation, a CA Partnership, A CA Limited Partnership, etc.]** (“Consultant”) (collectively, “parties”).

**2. RECITALS**

- 2.1. City has determined that it requires the following professional services from a consultant: **[enter description of consultant’s services]**
- 2.2. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.
- 2.3. Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under California Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.
- 2.4. CITY has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant’s work by City shall not operate as a waiver or release. Consultant represents and warrants to City that (a) it has all licenses, permits, qualifications, insurance and approvals of whatever nature which are legally required for Consultant to practice its profession, and (b) it shall, at its sole cost, keep in effect

or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall indemnify and hold harmless the City from and against any and all claims or expenses caused or occasioned directly or indirectly by Consultant's failure to so perform.

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

### 3. DEFINITIONS

- 3.1. "Scope of Services": Such professional services as are set forth in Consultant's **[enter consultant's proposal date]** proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2. "Agreement Administrator": The Agreement Administrator for this project is **[Name and title]**. The Agreement Administrator shall be the principal point of contact at the City for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Consultant.
- 3.3. "Approved Fee Schedule": Consultant's compensation rates are set forth in the fee schedule attached hereto as Exhibit B [Change this reference to Exhibit A if Exhibit A includes the fee schedule in addition to the scope of work] and incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.4. "Maximum Amount": The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
- 3.5. "Commencement Date": [date].
- 3.6. "Termination Date": [date]

### 4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Termination Date unless extended by written agreement of the parties or terminated earlier under Section 16 ("Termination") below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

### 5. CONSULTANT'S DUTIES

- 5.1. **Services.** Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.
- 5.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator. All changes and/or extra work shall be performed and paid for in accordance with the following:
- 5.2.1. Only the City **[enter department head]** or City Council may authorize extra and/or changed work. Consultant expressly recognizes that other City personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Consultant to secure the Council's or City **[enter department head]**'s authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and Consultant thereafter shall be entitled to no compensation whatsoever for performance of such work.
- 5.2.2. If the Consultant is of the opinion that any work s/he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, s/he shall promptly notify the City of the fact. The City shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the City determines that such work does constitute extra work, it shall provide extra compensation to the Consultant on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the City and the Consultant. Such Supplemental Agreement shall be executed by the Consultant and be approved by the City Manager or City **[enter department head]**.
- 5.2.3. In the event City determines that such work does not constitute extra work, Consultant shall not be paid extra compensation above that provided herein and if such determination is made by City staff, said determination may be appealed to the City Council as long as a written appeal is submitted to the City Manager within five (5) days after the staff's determination is received by the Consultant. Said written appeal shall include a description of each and every ground upon which Consultant challenges the staff's determination. The City Council's decision shall be final.
- 5.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the maximum amount. Consultant shall concurrently inform the

Agreement Administrator, in writing, of Consultant's estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.

- 5.4. **Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.5. **Professional Standards.** Consultant shall perform all work to the highest standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of this Agreement, including all Cal/OSHA requirements, the conflict-of-interest provisions of California Government Code Section 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.6. **Campaign Contributions.** This Agreement is subject to Government Code section 84308, as amended by Senate Bill 1439 (2022), Senate Bill 1181 (2024), and Senate Bill 1243 (2024). Consultant shall disclose any contribution to an elected or appointed City official's campaign or committee in an amount of more than five hundred dollars (\$500) made within 12 months preceding the Commencement Date, by Consultant, its, her, or his agent, or another party affiliated with Consultant. Consultant shall provide a signed copy of the attached Campaign Contribution Disclosure Form to City prior to, or concurrent with, Consultant's execution of this Agreement and no later than the Commencement Date.
- 5.7. **Avoid Conflicts.** During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if such work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.
- 5.8. **Appropriate Personnel.** Consultant has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **[Name of Project Manager]** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 5.9. **Prevailing Wages.** This Agreement is subject to the Prevailing Wage Laws, as more fully set forth in Section 8 (Labor Code), for all work performed under this Agreement for which the payment of prevailing wages is required under state law. In particular, Consultant acknowledges that prevailing wage determinations are available for work performed under this Agreement.

- 5.10. **Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 5.11. **Permits and Approvals.** Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary, if any, for Consultant's performance of this Agreement including, but not limited to, professional licenses and permits.
- 5.12. **Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subconsultant. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 5.13. **Inspection Services.** In the event Consultant will perform inspection services, City or authorized representatives of the City shall have the right to inspect the work of such services whenever such representatives may deem such inspection to be desirable or necessary. Inspections by the City do not in any way relieve or minimize the responsibility of Consultant to conduct the inspections Consultant has expressly agreed to perform pursuant to this agreement. Consultant shall be solely liable for said inspections performed by Consultant. Consultant shall certify in writing to the City as to the completeness and acceptability of each inspection of improvement or construction which Consultant agrees to inspect hereunder.
- 5.14. **Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

## 6. SUBCONTRACTING

- 6.1. **General Prohibition.** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.

- 6.2. **Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.
- 6.3. **Identification in Fee Schedule.** All subconsultant shall be specifically listed and their billing rates identified in the Approved Fee Schedule, Exhibit B [Change this reference to Exhibit A if Exhibit A includes the fee schedule in addition to the scope of work]. Any changes must be approved by the Agreement Administrator in writing as an amendment to this Agreement.
- 6.4. **Compensation for Subconsultants.** City shall pay Consultant for work performed by its subconsultants, if any, only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule, Exhibit B [Change this reference to Exhibit A if Exhibit A includes the fee schedule in addition to the scope of work]. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subconsultants performing services under this Agreement. City shall not be liable for any payment, compensation, or federal and state taxes for any subconsultants.

## 7. COMPENSATION

- 7.1. **General.** City agrees to compensate Consultant for the services provided under this Agreement and Consultant agrees to accept payment in accordance with the Approved Fee Schedule, Exhibit B [Change this reference to Exhibit A if Exhibit A includes the fee schedule in addition to the scope of work] in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.
- 7.2. **Invoices.** Consultant shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. The City will seek to pay the invoice within 30 days of receipt and processing.
- 7.3. **Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 7.5. **Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of the City.

- 7.6. **City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 7.7. **Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 11, City shall have the right to withhold payments under this Agreement to offset that amount.

## 8. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects including, but not limited to, the design and preconstruction phases of a covered public works project. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

## 9. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, including without limitation copies thereof, digital originals, and digital copies (“written products” herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

## 10. RELATIONSHIP OF PARTIES

- 10.1. **General.** Consultant is, and shall at all times remain as to City, a wholly independent contractor.
- 10.2. **No Agent Authority.** Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision or course of action, and Consultant, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of the City or that it or they have the power to bind or commit the City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

- 10.3. **Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to the City as an employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation, and other applicable federal and state taxes.
- 10.4. **Indemnification of CalPERS Determination.** In the event that Consultant or any employee, agent, or subconsultant of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subconsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## 11. INDEMNIFICATION

- 11.1 **Definitions.** For purposes of this Section 11, "Consultant" shall include Consultant, its officers, employees, servants, agents, or subconsultants, or anyone directly or indirectly employed by either Consultant or its subconsultants, in the performance of this Agreement. "City" shall include City, its officers, agents, employees and volunteers.
- 11.2 **Consultant to Indemnify City.** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and defend City from and against any and all claims, losses, costs or expenses for any personal injury or property damage arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or failure to comply with any provision in this Agreement.
- 11.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person. Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify City for such loss or damage as is caused by the negligence or willful misconduct of the City. Subconsultant's obligation to defend any indemnified parties from claims covered by professional liability shall mean subconsultant's legal obligation is to reimburse the indemnified parties for their reasonable defense costs to the extent caused by subconsultant's negligence.
- 11.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of City's choice, expert fees and all other costs and fees of litigation.

Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.

- 11.5 **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 11.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section 11 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City.
- 11.7 **Indemnification by Subconsultants.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subconsultant or any other person or entity involved in the performance of this Agreement on Consultant's behalf.
- 11.8 **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

## 12. INSURANCE

- 12.1. **Insurance Required.** Consultant shall maintain insurance as described in this Section and shall require all of its subconsultants, consultants, and other agents to do the same. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.
- 12.2. **Documentation of Insurance.** City will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Consultant shall file with City:
- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: [insert project name]
  - Documentation of Best's rating acceptable to the City.
  - Original endorsements effecting coverage for all policies required by this Agreement.
  - Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

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

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

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured

- 12.1. **General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than Insurance Services Office (ISO) Form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.
- 12.2. **Worker's Compensation Insurance.** Consultant is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.
- 12.3. **Automobile Liability Insurance.** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9).
- 12.4. **Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$50,000. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.

Coverage shall be continued for two years after the completion of the work by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement. In the event Consultant's policy is a "claims made" policy only covering those claims made during the policy period, then Consultant agrees to maintain the professional liability insurance required hereunder and with respect to this project in effect for at least three (3) years after acceptance of the work.

- 12.5. **Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 12.6. **Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of the City of Colfax must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions and Worker's Compensation, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant's insurance policies shall be primary as respects any claims related to or as the result of the Consultant's work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Consultant's insurance at least as broad as ISO Form CG 20 10.
- 12.7. **Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this Section, shall constitute a material breach of this Agreement.
- 12.8. **Notices.** Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the

expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Colfax, Attn: [insert department or individual], 33 S. Main Street, Colfax, CA 95713.

- 12.9. **Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 12.10. **Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 12.11. **Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 12.12. **Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement.
- City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Consultant shall be responsible for all premiums and deductibles in all of Consultant's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.
- 12.13. **Duty to Defend and Indemnify.** Consultant's duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

### 13. MUTUAL COOPERATION

- 13.1. **City Cooperation in Performance.** City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 13.2. **Consultant Cooperation in Defense of Claims.** If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

## 14. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing); or (iii) the day of delivery if emailed to the email address listed below and simultaneously deposited in the U.S. mail, postage prepaid, to the address(es) listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

[Name]  
City of Colfax  
[Department/Division]  
33 S. Main Street  
Colfax, CA 95713  
Telephone: (530) 346-2313  
Facsimile: [Insert]  
Email: [Insert]

If to Consultant:

[Name]  
[Address]  
[Address]  
Telephone: [Insert]  
Facsimile: [Insert]  
Email: [Insert]

With courtesy copy to:

Conor W. Harkins, City Attorney  
Colantuono, Highsmith & Whatley, PC  
420 Sierra College Drive, Suite 140  
Grass Valley, CA 95945-5091  
Phone (530) 432-7357  
Email: CHarkins@chwlaw.us

## 15. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 5.11 (Records), Section 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnification), Section 12.8 (Claims-Made Policies), Section 13.2 (Consultant Cooperation in Defense of Claims), and Section 18.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

## 16. TERMINATION

- 16.1. **City Termination.** The City may, in its sole and unfettered discretion and without cause, terminate this Agreement at any time prior to completion by Consultant of the services required. Notice of Termination of this Agreement shall be given in writing to Consultant and shall be sufficient and complete when same is emailed to

Consultant and simultaneously deposited in the United States mail postage prepaid and certified, addressed as set forth in Section 14 of this Agreement. The Agreement shall be terminated upon receipt of the Notice of Termination by Consultant. If City should terminate this Agreement, the Consultant shall be compensated for all work satisfactorily performed prior to time of receipt of termination notice, and shall be compensated for materials ordered by the Consultant or his/her employees, or services of others ordered by the Consultant or his/her employees prior to receipt of Notice of Termination whether or not such materials or final instruments of services of others have actually been delivered, provided that the Consultant or its employees are not able to cancel such orders for materials or services of others. Compensation for the Consultant in the event of termination by the City shall be determined by the [City Manager or Department Head] in accordance with the percentage of project completed. In the event that this Agreement is terminated pursuant to this Section 16.1, Consultant shall not be entitled to any additional compensation over that provided herein; nor shall Consultant be entitled to payment for any alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the City pursuant hereto.

- 16.2. **Consultant Termination.** Consultant may terminate this Agreement upon thirty (30) days written notice to the City only for good cause. Consultant's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. In the event of termination, all notes, sketches, computations, drawings and specifications, or other data, whether complete or not, produced through the time of the City's last payment shall be relinquished to the City. The City may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.
- 16.3. **Consultant Failure to Perform.** Should the Consultant fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the City may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. Consultant shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage if any, sustained by City by virtue of the Consultant's breach of this Agreement.
- 16.4. **Compensation Following Termination.** Upon termination, Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. The City shall have the benefit of such work as may have been completed up to the time of such termination.
- 16.5. **Remedies.** City retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

## 17. INTERPRETATION OF AGREEMENT

- 17.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 17.2. **Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by City and Consultant.
- 17.3. **Headings.** The headings and captions appearing at the commencement of the Sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the Section or Subsection thereof at the head of which it appears, the language of the Section or Subsection shall control and govern in the construction of this Agreement.
- 17.4. **Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 17.5. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 17.6. **No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting.

## 18. GENERAL PROVISIONS

- 18.1. **Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement except as noted in Sections 5 and 9, above.

- 18.2. **Conflicts of Interest.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultant to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 18.3. **Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.4. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 18.5. **No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 18.6. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 18.7. **Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.
- 18.8. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.

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

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

“City”

City of Colfax

“Consultant”

**[Name of Company or Individual]**

By:

\_\_\_\_\_  
*Signature*

By:

\_\_\_\_\_  
*Signature*

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

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

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

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

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

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

**Attest:**

By: \_\_\_\_\_

City Clerk

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

**Approved as to form:**

By: \_\_\_\_\_

Conor W. Harkins,  
City Attorney

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

### WORKER'S COMPENSATION INSURANCE ACKNOWLEDGEMENT

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. If any class of employees engaged in work under this contract at the site of the Project is not protected under any Worker's Compensation law, Contractor shall provide and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Contractor shall indemnify and hold harmless City for any damage resulting from failure of either Contractor or any subcontractor to take out or maintain such insurance.

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

**EXHIBIT A**  
**(Scope of Services)**

**EXHIBIT B**  
**(Approved Fee Schedule)**

## CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS

Cities are subject to the campaign disclosure provisions detailed in Government Code Section 84308.

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

1. No City councilmember or commissioner shall accept, solicit, or direct a contribution of more than \$500 from any party,<sup>1</sup> financially interested participant,<sup>2</sup> or agent<sup>3</sup> while a proceeding is pending or for 12 months subsequent to the date a final decision is rendered by the City. This prohibition commences when your application has been filed, or the proceeding is otherwise initiated.

2. A party to a City proceeding shall disclose on the record of the proceeding any contribution of more than \$500 made to any councilmember or commissioner by the party, or agent, during the preceding 12 months. No party to or participant in a City proceeding shall make a contribution of more than \$500 to a councilmember or commissioner during the proceeding and for 12 months following the date a final decision is rendered by the City. No agent to a party or participant shall make a contribution in any amount to a councilmember or commissioner during the proceeding and for 12 months following the date a final decision is rendered by the City.

3. Prior to rendering a decision on a City proceeding, any councilmember or commissioner who received contribution of more than \$500 within the preceding 12 months from any party, or agent, to a proceeding shall disclose that fact on the record of the proceeding, and shall be disqualified from participating in the proceeding. However, if any councilmember or commissioner receives a contribution that otherwise would require disqualification, and returns the contribution within 30 days of making the decision, or knowing about the contribution and the relevant proceeding, whichever comes last, that councilmember or commissioner shall be permitted to participate in the proceeding.

<sup>1</sup> "Party" is defined as any person who files an application for, or is the subject of, a proceeding.<sup>2</sup>

"Participant" is defined as any person who actively supports or opposes a particular decision in a proceeding.

<sup>3</sup> "Agent" is defined as a person who represents a party

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

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

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

### (a) Document:

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

Name and address of any party, participant, or agent who has contributed more than \$500 to any councilmember or commissioner within the preceding 12 months:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

### (b) Date and amount of contribution:

Date \_\_\_\_\_ Amount \$ \_\_\_\_\_

Date \_\_\_\_\_ Amount \$ \_\_\_\_\_

Date \_\_\_\_\_ Amount \$ \_\_\_\_\_

### (c) Name of councilmember or commissioner to whom contribution was made:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Date \_\_\_\_\_ Phone \_\_\_\_\_

To be completed by City:

Document No: \_\_\_\_\_

in connection with a proceeding for compensation who appears before or otherwise communicates with the City for the purpose of influencing the proceeding. If an individual acting as an agent also is acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar entity or corporation, both the individual and the entity or corporation are agents. When a closed corporation is a party to a proceeding, the majority shareholder is subject to these provisions.

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