



**Date: October 3, 2024**

## **REQUEST FOR PROPOSALS**

**For: Financial Services**

Submit Responses via Express courier to:

**City of Colfax  
Attention: Amanda Ahre, City Clerk  
33 S. Main Street  
P.O. Box 702  
Colfax, Ca 95713**

Responses Must Be Received by:

**5 pm – October 28, 2024**

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

# REQUEST FOR PROPOSALS

The City of Colfax seeks a consulting firm to provide financial management services. The Firm will assist the City Manager in preparing and maintaining financial records for the City. The City Manager functions as the City's Budget Officer. The Firm will advise the City Manager and staff on expenditures in accordance with the budget and consistent with Generally Accepted Accounting Principles (GAAP) for payroll, repetitive contractual obligations such as utility bills, and all other expenditures approved in the annual budget, with an average workload of 16 hours per week. *The firm and its staff will be considered independent contractors.*

To comply with State and Federal Grant requirements for reimbursement, the following language has been added: 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.

A sample of the City's Professional Services Agreement is attached to this RFP. 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).

## 1. SCOPE OF WORK

### 1.1 Financial Management – 75%

- Collaborate with the City Manager in the development and implementation of financial strategies that align with the City's mission, values, and long-term goals. This includes guiding the leadership team through the construction of long-term budgetary planning, cost management strategies and forecasting scenarios.
- Oversee annual budgeting process, including managing results of budget-to-actual results throughout the year.
- Effectively communicate and present critical financial matters to the Administrative Services Officer, City Manager, and City Council members; provide strategic recommendations based on financial analysis and projections, cost identification and allocation, and revenue/expense analysis.
- Attend City Council meetings (regular and special) and staff as needed.
- Monitor and communicate analysis of contracts, labor, and other earned revenue projects.
- Communicate information to various stakeholders (board, donors, funders and partners).
- Assist the City Manager to manage the finance team, providing recommendations for planning and oversight for all fiscal functions of the organization including accounting, grants administration and management, periodic reporting, budgeting and cash flow.
- Assist the City Manager to Implement and track Federal Grant funds in accordance with 2 CFR Part 200 et. al.

- Work with the Administrative Services Officer to analyze and present financial reports in an accurate and timely manner; clearly communicate periodic and annual financial statements to the City Council and City Manager.
- Work with Administrative Services Officer to maintain a robust and responsive grants/contracts management system.
- Work with Administrative Services Officer to oversee annual audit preparations and serve as an internal resource, model, and steward of strong internal controls.
- Update and implement all necessary business policies and accounting practices; improve the finance department's overall policy and procedure manual.
- Ensures maintenance of financial records and systems in accordance with GAAP and Budget audit requirements.

## **1.2 Staff Development – 15%**

- Participate in the ongoing financial literacy development of Administrative Services Officer and City Manager.
- Assist the City Manager in providing mentorship to the Administrative Services Officer: work with them to set goals for their growth; periodically evaluate progress and communicate results with City Manager.

## **1.3 General Development – 10%**

- Cultivate a working relationship with the City Manager to ensure that funding targets and objectives are aligned with the City's overall programmatic objectives and financial goals.
- Assist the City Manager in collaboration with the Development team on long-term strategic planning.
- Assist the City Manager to Provide the Development Team with financial data for grant proposals that is current, accurate and reflective of grant objectives.
- Assist the City Manager and the Administrative Services Officer in the preparation of mid-year and annual financial reports to the City Council.
- Assist the City Manager to Develop and monitor periodic reconciliation of financial reports.

## **1.4 As Needed Additional Professional Services**

Additional Professional Services are services that may be needed beyond those provided for Financial 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.

## **1.5 Requirements**

- 5+ years of experience in finance/accounting with a minimum of three (3) years demonstrated successful experience in governmental accounting.

- Ability of the firm to call upon a licensed Certified Public Accountant as needed within the firm.
- Experience with municipal finance.
- Familiarity with data-driven analysis and reporting.
- Experience managing budgets of \$5 - \$15 million.
- Effective writing, editing, and verbal communication skills.
- Demonstrated ability to design and implement best practices in financial and operations management.
- Solid knowledge of government organizations, GAAP standards and fund accounting.
- A track record in municipal grants management, particularly in the areas of financial reporting and compliance. Federal grants experience preferred.
- Solid understanding of contracts management and compliance.
- Demonstrated ability to consistently make accurate and clear assessments/determinations about constantly changing financial and organizational landscapes.

## **1.6 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.

# **2. PROPOSAL CONTENT**

Each proposal shall include sections addressing the following information in the listed order.

## **2.1 Cover Letter**

The cover letter should identify the proposer's authorized representative and provide that person's contact information.

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

### **2.2.1 Company Background**

Provide a statement of qualifications for your organization, including 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.

### **2.2.2 References**

Provide references, including the name, title, and role of the contact person; the agency or company name, and contact information.

### **2.2.3 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.

### **2.3 Approach to Providing Services (1 page maximum)**

This section describes your proposed approach for meeting the services required by the City. Relevant considerations include:

- A. How you will fulfill the needs of the City described in the scope of work above.
- B. Any items from the scope of work you cannot provide
- C. The measurements/metrics/deliverables and/or assessments you will provide to allow the City to assess the services you will provide.
- D. Your plan to provide adequate staffing (including planning for absences and back- up coverage, training and monitoring, etc.)

### **2.4 Fee Proposal (1 page maximum)**

Provide a fee proposal, including:

- A. The rates of the people who will perform the work (please identify any tasks to be performed by sub- consultants).
- B. All anticipated reimbursable expenses.
- C. Indication of whether travel time is billable, and how it will be calculated.
- D. Description of the key assumptions used to calculate the fees.

Generally, proposals that do not include travel time or reimbursable expenses are preferred.

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

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

## **3. PROPOSAL PROCESS**

Interested consultants or firms should submit a proposal showing they are capable of performing the services requested. For example, the proposal may include demonstrated competency and experience in delivering services of a similar scope and type and local availability of the proposer's personnel.

### 3.1 Timeline

RFP Release Date	October 3, 2024
Proposal Deadline	October 28, 2024
Clarifying questions from City & Interviews if requested by the City	October 29 – November 1, 2024
City Council Authorization	November 13, 2024

### 3.2 Submission Instructions

All proposals must be delivered by email to the City Clerk in Adobe PDF Format. Proposals will not be received after the closing date and time indicated below.

Proposal Labeling: REQUEST FOR PROPOSAL FOR CITY FINANCIAL SERVICES

Submittal Closing: Monday, October 28, 2024, 5:00 p.m. PST

Location: City of Colfax  
Attention: Amanda Ahre, City Clerk  
33 S. Main Street  
P.O. Box 702  
Colfax, Ca 95713  
city.clerk@colfax-ca.gov

Number of Copies: One (1) emailed electronic version must be submitted.

### 3.3 Proposal Evaluation

All proposals received will be evaluated by an RFP Evaluation Committee. During the evaluation process, the Evaluation Committee may require a Proposer’s representative to answer specific questions orally and/or in writing. The Evaluation Committee may require interviews. 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 providing financial management services to other public or private agencies
- 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 Evaluation Committee may consider any other criteria it deems relevant.

### **3.4 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.

### **3.5 Notice to Proposers**

The City will notify all proposers of whether they have been selected.

### **3.6 Questions**

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

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

**Subject Line:** Financial Management Services Proposal

**Attachment: City of Colfax Form Professional Services Agreement**

## **AGREEMENT FOR CONSULTANT SERVICES**

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

### **RECITALS**

A. The City desires to retain Consultant to provide the Services set forth in detail in Exhibit A hereto (the “Services”) subject to the terms and conditions of this Agreement.

B. Consultant is duly licensed and sufficiently experienced to undertake and perform the Services in a skilled and workmanlike manner and desires to do so in accordance with the terms and conditions of this Agreement.

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

### **Section 1. Services.**

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

### **Section 2. Time of Completion.**

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

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

A. Except as may otherwise be provided in Exhibit A or elsewhere in this Agreement or its exhibits, Consultant shall invoice City once each month for the Services performed during the preceding month. Such invoices shall itemize all charges in such detail as may reasonably be required by City in the usual course of City business but shall include at least (i) the date of performance of each of the Services, (ii) identification of the person who performed the Services, (iii) a detailed description of the Services performed on each date, (iv) the hourly rate at which the Services on each date are charged, (v) an itemization of all costs incurred and (vi) the total charges for the Services for the month invoiced. As long as the Consultant performs the Services to the satisfaction of the City, the City shall pay the Consultant an all inclusive compensation that shall not exceed the amount as detailed in Exhibit A except pursuant to an authorized written change order issued pursuant to Section 15 of this Agreement before the Services requiring additional compensation are performed. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City’s staff.

B. The Consultant's compensation for the Services shall be full compensation for all indirect and direct personnel, materials, supplies, equipment and services incurred by the Consultant and used in carrying out or completing the Services. Payments shall be in accordance with the payment schedule established in Exhibit A or elsewhere in this Agreement or its exhibits.



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.

C. Any Services performed more than sixty (60) days prior to the date upon which they are invoiced to the City shall not be compensable.

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

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

#### **Section 5. Indemnification.**

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

#### **Section 6. Insurance.**

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

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

General Liability Coverage. General liability insurance, including personal injury and property damage insurance for all activities of the Consultant and its subcontractors, if such are authorized by the City, arising out of or in connection with the Services. The insurance shall be written on a comprehensive general liability

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

- B. Automobile Liability Coverage. Automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$1 million combined single limit for each occurrence.
- C. 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.
- D. Professional Liability Coverage. If required by the City, Consultant shall also take out and maintain professional liability, errors and omissions insurance in an amount not less than \$1 million. The professional liability insurance policy shall be endorsed with a provision stating that it shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days written notice has been provided to the City.
- E. 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.
- F. Deductible and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City.

Termination of Insurance. If the City receives notification that Consultant's insurance will be suspended, voided, cancelled or reduced in coverage or in limits, and if the Consultant does not provide for either the reinstatement of that insurance or for the furnishing of alternate insurance containing all of the terms and provisions specified above prior to the termination of that insurance, City may either terminate this Agreement for that breach, or City may secure the required insurance to satisfy the conditions of this Agreement and deduct the cost thereof from compensation which would otherwise be due and payable to the Consultant for Services rendered under the terms of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- A. *Before resorting to mediation, arbitration or other legal process, the primary contacts of the parties shall meet and confer and attempt to amicably resolve any dispute arising from or relating to this Agreement subject to the following provisions. Any party desiring to meet and confer shall so advise the other party pursuant to a written notice. Within 15 days after provision of that written notice by the party desiring to meet and confer, the primary contacts for each party shall meet in person and attempt to amicably resolve their dispute. Each primary contact, or the person acting in their absence with full authority to resolve the dispute, shall attend the meeting and shall be prepared to devote an entire day thereto. If any dispute remains unresolved at the end of the meeting, any party to this Agreement shall have the right to invoke the mediation process provided for in the subparagraph B below.*
- B. *Subject to the provisions of subparagraph A, any dispute that remains unresolved after the meet and confer shall immediately be submitted to non-binding neutral mediation, before a mutually acceptable, neutral retired judge or justice at the Sacramento Office of the Judicial Arbitration and Mediation Service ("JAMS"). If within five days after the meet and confer the parties are unable to agree upon the selection of a neutral mediator, then the first available retired judge or justice at the Sacramento office of JAMS shall serve as the neutral mediator. The parties agree to commit to at least one full day to the mediation process. Additionally, to expedite the resolution of any dispute that is not resolved by mediation, the parties agree to each bring to the neutral mediation a list of at least five neutral arbitrators, including their resumes, whose availability for an arbitration hearing within 30 days after the mediation has been confirmed.*
- C. *If mediation is unsuccessful, before the mediation concludes, the parties shall mediate the selection of a neutral arbitrator to assist in the resolution of their dispute. If the parties are unable to agree on an arbitrator, the parties agree to submit selection of an arbitrator to the mediator, whose decision shall be binding on the parties. In that case, the mediator shall select a neutral arbitrator from the then active list of retired judges or justices at the Sacramento Office of the JAMS. The arbitration shall be conducted pursuant to the provisions of the California Arbitration Act, sections 1280-1294.2 of the California Code of Civil Procedure. In such case, the provisions of Code of Civil Procedure Section 1283.05 and 1283.1 shall apply and are hereby incorporated into this Agreement.*
- D. This section 18 shall survive the termination or expiration of this Agreement. If there is no Sacramento office of JAMS, then the office of JAMS closest to the City shall be used instead of a Sacramento office.

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

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

amended or modified by the mutual written consent of the parties.

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

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

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

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

**Section 22. Written Notification.**

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

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

If to Consultant:

**Section 23. Execution.**

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

**Section 24. Successors.** This Agreement shall be binding on and inure to the benefit of the respective parties hereto except to the extent of any contrary provision in this Agreement.

**Section 25. Attorney's Fees.** If any party to this Agreement commences legal proceedings to enforce any of its terms or to recover damages for its breach, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and the expenses of expert witnesses, including any such fees costs and expenses incurred on appeal.

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

CITY

CONSULTANT

Signature \_\_\_\_\_

Signature \_\_\_\_\_

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

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

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

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