



**Date: June 18, 2024**

## **REQUEST FOR PROPOSALS**

**For: Finance Director**

Submit Responses electronically to:

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

Responses Must Be Received by:

**5pm – July 15, 2024**

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

## **1 GENERAL INFORMATION**

### **1.1 Statement of Intent**

The City of Colfax issues this request for proposal (RFP) for a Finance Director. The City desires to hire a consulting firm to serve as the Finance Director for up to 16 hours per week as the workload requires. The finance Director will be an independent contractor and not an employee of the City. The Finance Director shall be the custodian of the funds of the City and shall prepare and maintain financial records for the City. The Finance Director, under the direction of the City Manager, shall function as the Budget Officer. The Finance Director is authorized to make expenditures in accordance with the budget and consistent with Generally Accepted Accounting Principles (GAAP) for: payroll, repetitive contractual obligations such as utility bills, and/or all items approved by the City Council in the annual budget or by specific Council action, and other duties assigned.

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

## **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**

Event	Target Date
1. RFP Release Date	June 18, 2024
2. Proposal Deadline – Proposals Must Be RECEIVED by 5:00 p.m. on this Date	July 15, 2024
3. Clarifying questions from City & Interviews if requested by the City	July 16 – July 18, 2024
4. City Council Authorization	July 24, 2024

## 2.2 Submission of Proposals

### 2.2.1 Method of Submission

Proposals must be submitted electronically by 5 pm on July 15, 2024.

### 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/Dispute Resolution**

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

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

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

## **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.

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

Submit all questions relating to this RFP to Ron Walker, City Manager, at the following email address:

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

**Subject Line:** Finance Director

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" (see the sample template in Exhibit B), 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 in the form of Exhibit B.

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 "Exhibit B: 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 Financial Management – 75%**

- Collaborate with Administrative Services Officer and City Manager in the development and implementation of financial strategies that align with 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.
- Collaborate with Administrative Services Officer and City Manager to communicate financial and compliance information to City Council.
- Communicate information to various stakeholders (board, donors, funders and partners).
- Manage the finance team, providing planning and oversight for all fiscal functions of the organization including accounting, grants administration and management, periodic reporting, budgeting and cash flow.
- 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.

#### **4.2 Staff Development – 15%**

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

#### **4.3 General Development – 10%**

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

#### **4.4 As Needed Additional Professional Services**

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

## **4.5 Requirements**

- 7+ years of experience in finance/accounting with a minimum of three (3) years demonstrated successful experience in governmental accounting.
- licensed as a Certified Public Accountant to work in California
- Experience with municipal finance.
- Familiarity with data-driven analysis and reporting.
- At least three (3) years' relevant experience managing/supervising direct reports.
- Experience managing budgets of \$10 - \$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 contract management and compliance.
- Demonstrated ability to consistently make accurate and clear assessments/determinations about constantly changing financial and organizational landscapes.
- Enthusiastic attention to detail and solid ability to connect the details to the big picture for others.

## **4.6 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.

# **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 (2 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 (3 pages, not including 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. You may attach a one (1) page resume at the end of the submittal. Resumes do not count towards page limitation.

### **5.1.4 Proposed Approach (3 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 for up to 16 hours per week as the workload requires.
- 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%

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

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

	Maximum Points Available	Points 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>
<i>Weighted Total (Total Points Scored * Weighting Factor)</i>	=	<b>50</b>

Weighted Evaluation Matrix Summary

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

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



## **AGREEMENT FOR CONSULTANT SERVICES**

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

### **RECITALS**

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

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

### **Section 1. Services**

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

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

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

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

- A. Except as may otherwise be provided in Exhibit A or elsewhere in this Agreement or its exhibits, Consultant shall invoice City once each month for the Services performed during the preceding month. Such invoices shall itemize all charges in such detail as may reasonably be required by City in the usual course of City business but shall include at least:
  - i. the date of performance of each of the Services,
  - ii. identification of the person who performed the Services,

- iii. a detailed description of the Services performed on each date,
- iv. the hourly rate at which the Services on each date are charged,
- v. an itemization of all costs incurred and
- vi. the total charges for the Services for the month invoiced.

As long as the Consultant performs the Services to the satisfaction of the City, the City shall pay the Consultant an all-inclusive compensation that shall not exceed the amount as detailed in Exhibit A except pursuant to an authorized written change order issued pursuant to Section 15 of this Agreement before the Services requiring additional compensation are performed. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City's staff.

- B. The Consultant's compensation for the Services shall be full compensation for all indirect and direct personnel, materials, supplies, equipment, and services incurred by the Consultant and used in carrying out or completing the Services. Payments shall be in accordance with the payment schedule established in Exhibit A or elsewhere in this Agreement or its exhibits.
- C. The City shall have the right to receive, upon request, documentation substantiating charges billed to the City pursuant to this Agreement. The City shall have the right to perform an audit of the Consultant's relevant records pertaining to the charges.
- D. Any Services performed more than sixty (60) days prior to the date upon which they are invoiced to the City shall not be compensable.

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

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

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

Consultant shall hold harmless and indemnify, including without limitation the cost to defend, the City and its officers, officials, employees, and volunteers from and against any and all claims, demands, damages, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, any sub-consultant, anyone directly or indirectly employed by them, or anyone they control in the performance of the Services. This indemnity does not apply to liability for damages or loss, arising from the sole negligence, active negligence, or willful misconduct or material defects in design by the City or its agents, servants, employees or independent contractors other than Consultant who are directly responsible to the City, or arising from the passive negligence of the City, its

officers, agents, employees or volunteers, unless caused in part by Consultant. City agrees that in no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault unless otherwise allowed by California Civil Code Section 2782.8, as amended.

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

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

- A. Workers' Compensation Coverage. Workers' Compensation insurance as required by the State of California, with statutory limits, and Employer's Liability Insurance with limits of no less than \$1,000,000.00 per accident for bodily injury or disease. In the alternative, Consultant may rely on a self-insurance program to meet its legal requirements as long as the program of self-insurance complies fully with the provisions of the California Labor Code. Consultant shall also require all subcontractors, if such are authorized by the City, to similarly provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the subcontractor's employees. All Workers' Compensation policies shall be endorsed with the provision that the insurance shall not be suspended, voided, or cancelled until thirty (30) days prior written notice has been provided to City by the insurer. The Workers' Compensation insurance shall also contain a provision whereby the insurance company agrees to waive all rights of subrogation against the City and its elected or appointed officials, officers, agents, and employees for losses paid under the terms of such policy which arise from the Services performed by the insured for the City.
- B. Commercial General Liability Coverage (CGL). Commercial general liability insurance covering CGL on an "occurrence" basis, including products and completed operations, bodily injury, personal injury and advertising injury, and property damage insurance for all activities of the Consultant and its subcontractors, if such are authorized by the City, arising out of or in connection with the Services. The insurance shall be written on the most recent Insurance Services Office (ISO) form and include a broad form comprehensive general liability endorsement. The insurance shall be in an amount of not less than \$1,000,000.00 per occurrence. General liability coverage written on a claims-made basis shall not be acceptable absent prior written authorization from the City.
- C. Automobile Liability Coverage. Automobile liability insurance written on the most recent Insurance Services Office (ISO) form covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$1,000,000.00 combined single limit for each occurrence.

- D. Policy Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following provisions:
1. The City, and its elected or appointed officials, employees and agents shall be named as insureds or additional insureds with regard to damages and defenses of claims arising from activities performed by or on behalf of the Consultant.
  2. The insurance afforded by each policy shall apply separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limits of liability.
  3. The insurance shall be primary insurance as respects the City and its elected or appointed officers, officials, employees and agents. Any other insurance maintained by the City or its elected or appointed officers, officials, employees, agents or volunteers shall be in excess of this insurance and shall not contribute with it.
  4. The insurance shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been provided to the City.
  5. Any failure to comply with the reporting requirements of any policy shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, or agents.
- E. Professional Liability Coverage. If required by the City, Consultant shall also take out and maintain professional liability, errors and omissions insurance in an amount not less than \$1,000,000.00. The professional liability insurance policy shall be endorsed with a provision stating that it shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days written notice has been provided to the City.
- F. Insurance Certificates and Endorsements. Prior to commencing the Services under this Agreement, Consultant shall submit to the City documentation evidencing the required insurance signed by the insurance agent and the companies named. This documentation shall be on forms which are acceptable to the City and shall include all required endorsements and verify that coverage is actually in effect. This Agreement shall not be effective until the required insurance forms and endorsements are submitted to and approved by the City. Failure to provide these forms within the time period specified by City may result in the award of this Agreement to another Consultant should the City, in its sole discretion, decide to do so. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

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

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

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

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

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

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

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

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

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

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

Upon written request by Consultant, City may suspend, in writing, all or any portion of the

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

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

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

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

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

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

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

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

Within thirty (30) days after the Consultant substantially completes performance of the Services, or within thirty (30) days after the termination of this Agreement, the Consultant shall deliver to the City all files, records, materials and documents drafted or prepared by

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

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

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

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

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

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

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

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

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



**Section 19. Severability.**

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

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

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

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

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

**Section 22. Written Notification.**

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

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

If to Consultant:

**Section 23. Execution.**

This Agreement may be executed in original counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one original counterpart

is signed by both parties hereto. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart. In accordance with applicable law, the Parties may execute this Agreement by electronic signature and, if they do so, an electronic signature and this Agreement will have same legal validity and enforceability as a manually executed signature and agreement.

**Section 24. Successors.**

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

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

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

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

CITY

CONSULTANT

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

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

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

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

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

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

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

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

APPROVED AS TO FORM:

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