

City of Colusa

425 Webster Street ▪ Colusa, California 95932
Tel: (530) 458-4740 ▪ Fax: (530) 458-8674

August 8, 2023

RE: REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES

The City of Colusa, California is pleased to invite your company to participate in the solicitation process for construction management and inspection services for the Walnut Ranch Sewer Main Line and Septic Tank Abandonment Project. The details of the requested service are provided in the Request for Proposals that follows.

If you are interested in participating, please forward three (3) hard copies of your proposal or PDF email to:

Jesse Cain
City Manager – City of Colusa
425 Webster Street
Colusa, CA 95932
citymanager@cityofcolusa.com

All submissions must be received by the City no later than 4:30 pm on September 5th, 2023. No postmarks will be accepted. The proposals must meet all requirements listed in the attached RFP, or otherwise may be deemed ineligible.

If you have any questions or require further information, please contact Jesse Cain at (530) 458-4941. Thank you for your anticipated interest.

CITY OF COLUSA



REQUEST FOR PROPOSAL

Construction Administration

WALNUT RANCH SEWER MAIN LINE AND SERVICES AND SEPTIC TANK ABANDONMENT PROJECT

| | |
|------------------------|--------------------------|
| Release Date: | 08/08/2023 |
| Submittal Date: | 09/05/2023 |
| Contact Person: | Jesse Cain, City Manager |

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I. INTRODUCTION

a) Description of the Project

The Walnut Ranch Subdivision was constructed in two phases in the early 1970's. It consists of 73 single family home lots and is located adjacent and west of Wescott Road near the south edge of town, (see attached location map). Currently the subdivision has full street and water infrastructure improvements, but the residents do not have public sewer. The existing septic systems are failing, and the project proposes to install public sewer main lines, services lines to each home, connect each home to the public sewer, and abandon the existing septic tanks. The City previously received funding through an SRF grant to perform the planning, and engineering design of the project. The City has just received the construction funding approval to move forward with construction and anticipates sending the project out for bid very soon.

b) Purpose of Request

The City desires to contract with an experienced firm to conduct construction administration and inspection services of the project installation and record drawings to ensure that the project moves smoothly, with limited change orders and coordination with the residents on the abandonment of their septic systems and connection to the public sewer.

II. NATURE OF SERVICES REQUIRED

a) Scope of Services

The City of Colusa (the "City") is seeking a consultant that can not only provide the typical qualifications necessary to perform this work but can also provide pro-activeness, collaboration and coordination between the residents and the construction contractor for the work being done on private property.

Outlined below is the scope of work that will guide the development of your proposal. This outline is not necessarily all-inclusive, and the consultant may include in the proposal any additional performance tasks that will integrate innovative approaches to successfully complete the work. At a minimum, the consultant shall be expected to establish detailed outlines, analyses, assessments, and recommendations for the following tasks:

Task 1: Administration: The consultant shall coordinate and conduct all meetings related to the project including but not limited to pre-job kickoff meeting, weekly construction meetings, monthly progress payment meetings, and any on site specific meetings as necessary. All meetings shall have meeting notes documenting the discussions and action items. All prescheduled meetings shall have written agendas. It's up to the consultant as to the time and location. The City of Colusa City Hall conf. room can be scheduled if desired. Review any potential claims. If any are received, review them, and make recommendations.

Task 2. Progress Payments, Contract Change Orders, Requests for Information, Field Directives, etc...: The consultant team shall be responsible for working with the contractor to produce progress payments that are in line with the acceptable work accomplished each month. Any contract change orders shall be produced by the consultant and a written description of the necessary change, a cost analysis of any alternatives considered, and detail of the cost changes either by item or work description so that the City Manager may evaluate the cost change impacts to the project. All field directives not resulting in any cost changes to the work shall be produced in writing. All Requests for Information produced by the contractor shall be routed through the consultant team to the City for response. Consultant shall keep an up to date and accurate log of CCO's, RFI's and FD's.

Task 3: Construction Inspection: The consultant team shall provide an experienced on-site inspector, who has experience with sewer main line,

services laterals, and excellent communication skills to help facilitate work that takes place on private property to connect the residents' homes and abandon their septic systems. It's assumed this project will take 120 working days to complete, and that the construction inspector will be available to be on site the entire time. The proposal cost herein for inspection services shall include prevailing wages, travel time, per diem and any other costs associated with the inspection services under a single hourly rate for inspection services.

Task 4: Pre and Post Project Photos: The consultant team shall produce a data base of pre and post project photo's in particular on each of the 73 lots where sewer service lines are going to be installed, and septic tanks abandoned. The City shall have and be responsible for the collection and approvals from the home owners for temporary construction easements. The photo data base of each lot prior to the installation of improvements is an important historical reference which all parties can recall as may be necessary from time to time.

Task 5: Project Close Out: Consultant shall prepare in conjunction with the construction team and Owner all punch-lists and monitor the completion of the punch-lists by the Contractor. Coordinate and receive all close-out items including as-built drawings, operation and maintenance manuals, and warranties as required. Assist with resolving all contract issues, warranties, bonds, etc. at closeout of project. Prepare a final close out report with recommendation as to final payment, notice of completion, and file system for retrieval of closeout documentation.

b) General RFP Requirement

Sealed Cost Proposal. All proposals must be clearly identified and marked with the appropriate project name, cost proposal per the requirements of this RFP. Cost proposals shall be based on an hourly “not to exceed” amount and shall follow the general format as provided within Exhibit A of this RFP. The City of Colusa may decide, in its sole discretion, to negotiate a price for the project after the selection committee completes its final ranking.

Respondent Qualifications. Respondents must submit evidence that they have relevant past experience and have previously delivered services similar to the requested services within this RFP.

Disadvantaged Business Enterprise Certified Small Business. Pursuant to Department of Transportation policy and 49 CFR Part 23, the City supports the participation of DBE/MBE and Certified Small businesses in the performance of contracts financed with state and federal funds under this RFP. Consultants shall make an effort to involve DBE/MBE or Small businesses in this project.

c) Contents of Proposal

The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of the consultant seeking to provide comprehensive services specified herein for the City of Colusa, in conformity with the requirements of the RFP.

The proposal shall demonstrate qualifications of the firm and its staff to undertake this project. It shall also specify the proposed approach that best meets the RFP requirements. The proposal must address each of the service specifications under the Scope of Work and Performance Tasks.

At minimum, proposals shall include the following information:

- 1) **Contact Information.** Name, telephone number, email address, mailing address, and other contact information for the consultant's project manager.
- 2) **Introduction and Executive Summary.** This section shall document the firm name, business address (including telephone, email address(es), year established, type of ownership and parent company (if any), project manager name and qualifications, and any major features that may differentiate this proposal from others, if any.
- 3) **Work Plan and Project Approach Methodology.** Proposals shall include the following, at minimum:
 - a) Detailed work plan identifying the major tasks to be accomplished relative to the requested tasks and expected product as outlined in this RFP.
 - b) List of projects with similar size, scope, type, and complexity that the proposed project team has successfully completed in the past.
 - c) List of the proposed principal(s) who will be responsible for the work, proposed Project Manager, and project team members.
 - d) Breakout of hours for each member of the team by major task area, and an overall indication of the level of effort (percentage of overall project team hours) allocated to each task.
 - e) List of client references for similar projects described within the RFP.
- 4) **Signature.** Proposals shall be signed in ink by an authorized member of the firm/project team.

III. Implementation Schedule

a) Consultant Selection Schedule

- Request for proposals issued: August 8th, 2023
- Deadline for RFP Clarifications/Questions: August 24, 2023
- Due date for proposals: September 5th, 2023, at 4:30 PM
- City review completed: September 12th, 2023
- City council contact approval: September 19, 2023
- Commence services: to be determined

IV. Submittal Information

DELIVERY OF PROPOSALS

Proposals may be submitted in a sealed envelope plainly marked on its outside with "Walnut Ranch Sewer Main Line, Services and Septic Tank Abandonment Project" or PDF to the City Manager. Proposals shall be received until 4:30 pm local time on 09/05/2023 at the City of Colusa Office, 425 Webster Street, Colusa, CA 95932.

Mr. Jesse Cian, City Manager
425 Webster Street
Colusa, CA 95932
citymanager@cityofcolusa.com
530.458.4941, extension 105

All proposals received by **4:30 p.m. on 9/05/ 2023** will be given equal consideration. Minority, women-owned and disadvantaged business enterprises and Small Business enterprises are encouraged to apply.

Proposals should not exceed 30 pages; including any supporting material, charts, or tables.

Facsimiles will not be accepted. Proposals received after the stated date and time, or at a different location, will not be accepted for consideration.

V. Evaluation and Selection Process

a) Review of Proposals

Proposals will be reviewed and evaluated by a committee of City Staff. Based upon the proposals submitted, the committee will select the proposal which best meets the City's requirements.

b) Evaluation Criteria

Evaluation considerations will include the following:

- 1) Responsiveness of the proposal in clearly stating the understanding of the work to be performed in demonstrating the intention and ability to perform the work.
- 2) Cost. Cost will be a primary factor in the selection of a consulting firm.
- 3) The consultant's related experience with similar projects, including the consultant's ability, familiarity, and involvement in handling similar types of activities
- 4) Specific qualifications of the consultant's project manager and key staff's experience related to the work. The consultant's understanding of the project scope and knowledge of local/regional issues.
- 5) The consultant's project understanding, proposed project approach and methodology, project work plan, and project management techniques The consultant's current workload, availability of key personnel, and record of past performance

- 6) The consultant or subconsultant is documented as a Disadvantaged Business Enterprise (DBE) and/or Minority Business Enterprise (MBE) or Certified Small Business.

The City reserves the right to utilize additional services of the selected consultant in specialized areas as appropriate.

Notification of acceptance or rejection by the City will be made to all firms.

The city of Colusa reserves the right to waive informalities and to reject any and all proposals. This RFP does not commit the city to award a contract, pay any costs incurred in the preparation of proposals, or to procure or contract for supplies or services. The city also reserves the right to waive minor irregularities in any proposal.

The City of Colusa reserves the right to negotiate with any qualified source or to cancel in part or in it's entirely this RFP if it is in the best interest of the City to do so. The City may require the selected consultant to participate in negotiations, and submit such costs, technical or other information that may result from these negotiations.

As appropriate, indemnification provisions will be incorporated in the agreement that will be executed between the provider selected and the city.

VI. Contract

a) Agreement for Services

The successful offer shall be required to enter into an Agreement of Services with the city of Colusa. The scope of work, terms and conditions, and other express requirements set forth in this RFP shall be incorporated by reference into the actual executed Agreement for Service upon award. Where there is a conflict between the terms of the Agreement and the express, stringent, or particular terms set forth in the RFP, the provision or requirement set forth in the RFP shall control.

b) Insurance Requirements

Selected firm must provide a certificate of endorsement naming City of Colusa as additional insured complying with insurance requirements listed in the attached Sample Agreement.

ATTACHMENT A

Project Location Map

**ATTACHMENT A PROJECT
LOCATION MAP**



Walnut Ranch

ATTACHMENT B

Agreement Template

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF COLUSA AND**

_____ **[insert contractor name]**
(Standard Agreement)

THIS Agreement (“Agreement”) for consulting services is made by and between the City of COLUSA (“City”) and [insert contractor name] (“Consultant”) (together referred to as the “Parties”) as of _____, 2023 (the “Effective Date”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City a comprehensive Master Water Plan, as described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____ or the date the Consultant completes the services specified in Exhibit A, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, requests in writing the reassignment of any such persons to ensure Consultant performs services in accordance with the Standard of Performance, Consultant shall, immediately upon receiving City’s request, reassign such persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided herein above and to satisfy Consultant’s obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$139,400, as set forth in Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant’s estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant.

Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless waived by the City Manager, or his or her designee:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall pay undisputed invoices that comply with the above requirements within 30 days from the receipt of the invoice.

2.3 Final Payment. Consultant shall submit its final invoice within 60 days of completing its services. Consultant's failure to submit its final invoice within this 60 day period shall constitute Consultant's waiver of any further billings to, or payments from, City.

2.4 Reimbursable Expenses. Reimbursable expenses, if any, are specified in Exhibit B and included in the total compensation referenced in Section 2. Expenses not listed in Exhibit B are not chargeable to, or reimbursable by, City.

2.5 Payment of Taxes. Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.6 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written authorization from the City Manager, or his or her designee.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall be fully responsible for the acts and omissions of its subcontractors or other agents.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.
- b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and non-contributing.
- d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- e. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 per occurrence or claim covering the Consultant's errors and omissions.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 **All Policies Requirements.**

4.4.1 **Submittal Requirements.** Consultant shall submit the following to City prior to beginning services:

- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

4.4.2 **Acceptability of Insurers.** All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.3 **Deductibles and Self-Insured Retentions.** Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than \$100,000.

4.4.4 **Wasting Policies.** No policy required herein shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.4.7 Excess Insurance. If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.

5.1 General Requirement. To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers (collectively, “Indemnitees”) from and against any and all liability, loss, damage, claims, expenses, and costs, including without limitation, attorney’s fees, costs and fees of litigation, (collectively, “Liability”) of every nature arising out of or in connection with Consultant’s performance of the services under this Agreement, or its failure to comply with any of its obligations contained in this Agreement, or its failure to comply with any applicable law or regulation, except such Liability caused by the sole negligence or willful misconduct of City.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damage or claims for damages whether or not such insurance policies shall be determined to apply.

5.2 PERS Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City

for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City.
- 6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. Consultant shall also, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.
- 7.3 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.
- 7.4 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable

federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Upon ten days' prior written notice, City may cancel this Agreement at any time and without cause upon such written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.
- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by the parties hereto.
- 8.3 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City Manager, or his or her designee. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the City Manager, or his or her designee.
- 8.4 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant, including but not limited to the provisions of Section 5, shall survive the termination of this Agreement.
- 8.5 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.5.1** Immediately terminate the Agreement;

- 8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- 8.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.5.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.
- 8.5.5 The remedies mentioned in this Agreement are not exclusive of any other right, power or remedy permitted by law. The City's failure or delay in exercising any remedy shall not constitute a waiver of such remedy or preclude the further exercise of City's rights.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All final versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement, and the City may use, reuse or otherwise dispose of the documents without Consultant's permission. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential drafts and will not be released to third parties by Consultant without prior written approval of City.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the

examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Colusa County or in the United States District Court for the Eastern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*
- Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 10.7 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.8 Notices. Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, or (ii) certified United States mail, postage prepaid, return receipt requested,. Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Consultant : [insert name]

City: City of Colusa
425 Webster Street,
Colusa, CA 95932
ATTN: City Manager

10.9 Professional Seal. Where applicable in the determination of the City Manager, or his or her designee, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled “Seal and Signature of Registered Professional with report/design responsibility.”

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent there are any inconsistencies between this Agreement, the Exhibits, and Consultant’s proposal, the Agreement shall control. To the extent there are any inconsistencies between the Exhibits and the Consultant’s Proposal, the Exhibits shall control.

Exhibit A Scope of Services
Exhibit B Compensation Schedule

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.13 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

The Parties have executed this Agreement as of the Effective Date.

CITY OF COLUSA

CONSULTANT

Jesse Cain, City Manager

[insert name]

Attest:

Shelly Kittle, City Clerk

Approved as to Form:

Ryan Jones, City Attorney

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT

By: _____

Title: _____

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