



Administrative Services Department

Request for Proposals (RFP)  
for  
**Establishment, Administration, and Management  
Services of a Section 115 Trust for Pension**

Issue Date: April 20, 2023

Proposal Due Date: **Friday, May 19, 2023 at 5:00 P.M.**

**RFP COORDINATOR:**

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City of Rocklin  
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## I. INTRODUCTION

The City of Rocklin (hereinafter “City”), is soliciting proposals from eligible and qualified interested firms to provide comprehensive services for the establishment, administration, and management of an Internal Revenue Service (IRS)-approved Section 115 Trust relating to the City’s pension pre-funding, as required to be reported under Governmental Accounting Standards Board (GASB) Statements No. 74 and No. 75.

The City’s goal is to enter into a long-term relationship to obtain required Section 115 Trust management (including establishment and administration) services in the most efficient and cost-effective manner available. This will be a competitive negotiation process. Qualified individuals, firms, contractors, consultants, or entities (hereinafter “Consultant(s)”), that meet the requirements set forth in this Request for Proposals (hereinafter “RFP”), and are capable of providing the services requested are encouraged to participate.

All proposals must be received by the City electronically or via US Mail at 3970 Rocklin Road, Rocklin, CA 95677, no later than 5:00 P.M. on Friday, May 19, 2023. Late proposals will not be considered.

### I.1. BACKGROUND

The City of Rocklin is an incorporated city with a population of 71,663 residents. It is located in South Placer County at the intersection of Interstate 80 and State Highway 65, approximately 21 miles northeast of the City of Sacramento and 14 miles west of Auburn. It is characterized by rolling hill terrain with 360-degree panoramic views of the Sierra Nevada Mountains to the northeast and the Sutter-Butte mountain range in the West.

The people who live and work in the City of Rocklin are the heart of the community and have built a special place for residents and visitors. Rocklin is a preferred location for business and living due to its convenient location, excellent schools, diverse mix of housing, abundant parks and recreational opportunities, and the highest commitment to public safety.

The City is a general law city operating under the City Council/City Manager form of government. The City’s fiscal year (FY) begins on July 1 and ends on June 30.

The City’s FY 2022/23 budget totaled \$102 million for all funds, with an annual General Fund budget of over \$62 million. The City employs 259.88 full-time-equivalent employees and participates in the California Public Employees’ Retirement System (CalPERS) for both Miscellaneous employees and Safety employees. The City’s pension liability amount is approximately \$39.4 million in unfunded pension accrual liability per current actuarial analyses. Information related to the City’s pension liability can be found in Note 10 on page 70 of the Annual Comprehensive Financial Report on the City’s website at

<https://www.rocklin.ca.us/financial-statements>.

The City currently participates in the California Employers' Retiree Benefit Trust (CERBT) Fund through CalPERS, providing post-retirement benefits to eligible employees. The CERBT program will not be affected by this RFP.

## I.2. INSTRUCTIONS

This RFP includes a description of the scope of services, proposal requirements, and instructions for submitting your proposal. Failure to follow these instructions may result in rejection of your proposal.

No oral representations or interpretations will be made to a proposer as to the meaning of this RFP.

Direct all inquiries regarding this RFP to the RFP coordinator, Megan Bressemer, at [megan.bressemer@rocklin.ca.us](mailto:megan.bressemer@rocklin.ca.us) by 5:00 P.M. on Friday, May 5, 2023 with the subject line "**RFP-Section 115 Trust – Questions.**"

Do not contact other individuals or City departments in this regard. Information provided by anyone other than the above contact may be invalid and proposals which are submitted in accordance with such information may be declared non-responsive.

In the event that it becomes necessary to revise any part of this RFP, written addenda will be issued. Any amendment to this RFP is valid only if it is in writing and issued by the City department issuing the RFP. No oral interpretations or answers shall bind the City unless confirmed by the City in writing.

**It is the proposer's sole responsibility to monitor this website for possible addenda to this RFP.** Failure of proposer to retrieve addenda from this site shall not relieve proposer of the requirements contained therein. Additionally, failure of proposer to return a signed addendum, when required, may be cause for rejection of the proposal.

## II. SCOPE OF SERVICES

The City is exploring various options for managing its unfunded long-term pension liabilities. One of the strategies being considered is the establishment of an Internal Revenue Code Section 115 Trust to hold assets aside to fund future pension obligations and expenditures. The objectives of the proposed trust are to provide reasonable returns and maximum flexibility in terms of beneficiaries of trust assets.

The City seeks a qualified firm to provide the services as outlined below. Best industry practices and/or best management practices may require additional services not explicitly

enumerated. Proposers should identify and price any additional services required and explain them in their response.

Service requirements shall include, but are not limited to:

1. Offer an IRS-approved irrevocable funding vehicle to protect the City's assets.
2. Implement the Section 115 trust program within 90 days of contract execution.
3. In partnership with City staff, develop an Investment Policy for the Section 115 Trust Pension Fund, and prepare asset allocation guidelines for the trust based on the City's investment objectives and risk tolerance, and in compliance with the City's Investment Policy.
4. Provide a full-service program that includes trust administration, trustee, and investment management services.
5. Provide assurance of portfolio compliance with applicable policies and laws.
6. Provide education and presentations regarding the pension trust program to City staff, Investment Advisory Committee, and the City Council.
7. Assist with GASB Statements No. 74 and No. 75 reporting.
8. Provide quarterly and annual comparative performance analyses and evaluation reports of the investments of the trust.
9. Coordinate all contributions into the trust and process any requests for appropriate distribution.

### **III. ASSURANCE OF DESIGNATED PROJECT TEAM**

The Consultant shall assure that a designated project team, including sub-consultants or sub-contractors (if any), is used for this project. Departure or reassignment of, or substitution for, any member of the designated project team, sub-consultant(s) or sub-contractor(s) shall not be made without the prior written approval of the City.

### **IV. PROPOSAL REQUIREMENTS AND RESPONSE FORMAT**

The Consultant is responsible for preparing an effective, clear, and concise proposal. In order to be considered for selection, Consultant must submit a complete response to this *Request for Proposals* that includes the mandatory information and/or requirements in the following format. Responses must be in the same order as the questions presented, stating acceptance of, modifications or additions to, or a statement of the inability to provide, said service. Failure to include all of the information requested below may be cause for the proposal to be rejected.

Additional information may be provided, but should be succinct and relevant to the goals of this RFP. Any additional information that a proposing Consultant wishes to include that is not specifically requested should be included in an appendix to the proposal.

Consultants are encouraged to keep the proposals brief and to the point, but sufficiently detailed to allow evaluation of the project approach. Excessive information will not be considered favorably. Unauthorized conditions, omissions, limitations or provisions attached to a proposal will render the proposal non-responsive and may cause its rejection.

Consultants are warned against making erasures or alterations of any kind, without initialing each and every such change. Proposals that contain erasures or irregularities of any kind, without such initialing, or omissions, may be rejected.

If submitting a paper proposal, the proposal should be bound or contained in a loose-leaf binder. Document pages shall be 8-1/2 inches by 11 inches in size or folded to such a size. Use section dividers, tabbed in accordance with this section as specified below.

1. RFP cover letter introducing the Firm and the name and contact information of the individual who will be the primary contact person. In addition, the cover letter should include:
  - a. Title of this RFP
  - b. Name, address, telephone and fax numbers, and email address of the contact person who will be authorized to make representations for the organization.
  - c. An expression of the proposer's ability and desire to meet the requirements of this RFP, including acceptance of the standard contract terms in Exhibit A or any other addenda.
  - d. The cover letter must be signed by an individual who is authorized to bind the firm contractually.
  - e. A statement affirming that the proposal is a firm offer good for a 120 calendar-day period beginning on May 19, 2023.
  
2. Firm Background and Organization
  - a. Describe the organization, date founded, and ownership of your firm. Has your firm experienced a material change in organizational structure, ownership or management during the past three years and, if so, please describe.
  - b. Provide a brief overview of the firm's senior management staff.
  - c. Describe any other business affiliations.

- d. Did you, or will you, pay a finder's fee to any third party for business related to this account? Specify the recipients of any fee.
- e. Identify the types of accounts primarily sought by your firm.
- f. Is your firm or subcontractor a registered investment advisor under the Investment Advisers Act of 1940? Please attach Part 2A of your most recent Form ADV.
- g. Describe any SEC, FINRA, or regulatory censure or litigation involving your firm, subcontractor, or its employees within the past three years.

### 3. Experience and Qualifications

- a. Describe your firm's experience and ability to meet **each** of the requested services outlined in Section II. Scope of Services. If a requirement cannot be met, please provide an alternative approach.
- b. Provide a statement of your firm's qualifications for performing the requested services.
- c. Describe your firm's specific knowledge and experience with Fiduciary investment functions.
- d. Describe your firm's prior experience with the implementation of IRS Section 115 trusts.
- e. How many California local government clients do you currently have in your Section 115 trust programs for Pension (or OPEB)? Provide a list of those agencies.
- f. Does your Section 115 trust program have approval from the IRS in the form of a Private Letter Ruling (PLR)?
- g. Does your firm require a minimum invested amount to open a Section 115 irrevocable retirement trust account?
- h. Identify the services which would be completed by your firm's staff and those that would be provided by sub-consultants or sub-contractors, if any.
- i. Identify any sub-consultants or sub-contractors you propose to utilize to supplement your firm's staff.

### 4. Qualifications of Staff to be Involved

- a. Identify and provide background information on the key person or personnel who take the most active role(s) in the administration and management of the firm.
- b. Provide resumes and biographical information on key person or personnel

that will be directly involved in the City's account. Include the number of years at your firm, total years of experience, and professional licenses and designations. Include the number of accounts managed and any limits on this.

- c. Describe your firm's training and education efforts to keep account managers informed of developments relevant to government investment managers.
- d. Has there been any turnover of professional staff in the firm in the last three years who were assigned to public sector clients?

#### 5. Proposed Project Plan

- a. Provide a plan as to how you will administer the requested services outlined in this RFP.
- b. Describe the firm's approach and timeframes to completing the services described in Section II. Scope of Services.
- c. Describe the firm's approach to onboarding and transitioning a new client.
- d. Include thorough discussions of methodologies you believe are essential to accomplishing this project. Include any recommended additions to the requirements.
- e. Identify the staff who would be assigned to each task, including sub-consultants and sub-contractors.
- f. List any necessary equipment, training, or installation services required.

#### 6. Professional Approach

- a. Briefly describe your firm's philosophy, including your approach to managing Section 115 trust programs.
- b. What are your approaches to rebalancing or reallocating asset classes, styles, and sectors? How do you add value in this process?
- c. Describe the investment options available. Please provide 1, 3, and 5-year return history and underlying expense ratios for each fund/portfolio. Do your total portfolio returns comply with Global Investment Performance Standards?
- d. How are portfolios managed (e.g. by team, individual manager)? What is the back-up when the manager is away?
- e. Describe your firm's in-house technical and research capabilities. Are outside sources used by the firm on a regular basis?
- f. What percentage of your research is conducted in-house? Describe your



research capability.

- g. What technical analysis (if any) do you use?
- h. How frequently would you suggest your staff meet with the City's staff? Who will attend these meetings?
- i. Briefly describe your firm's investment management philosophy, including your approach to managing governmental portfolios.
- j. Describe your credit review process. Does your firm assign credit research to specialists? Who reviews portfolio lists for credit approval?

## 7. Reporting & Client Service

- a. Include a sample of all type(s) of periodic reports that will be provided to the City.
- b. Include any other report samples that would be relevant to the services requested.
- c. Describe the reporting system used by your firm. Is a client portal available? If so, what kind of information is available in the client portal and for how long?
- d. Describe the frequency and format of reports that you would provide to the City.

## 8. Fees

- a. Provide the complete fee schedule that would apply to this account. Are fees charged in arrears?
- b. What additional expenses not covered through the fee schedule will be expected in order to implement and manage the requested investment advisory services?
- c. If alternative fee schedules could be developed, such as performance fees, describe how you would propose to develop such fee structures.

## 9. References

- a. List the name, address, telephone number, and email of references from at least three (3) current clients similar in size and scope to the City. Include a brief description and dates of the work provided for each reference. California municipal or county services are preferred. You may offer more than three recent similar services if desired. The references should include the start date of the service and the date of completion for each service, if applicable.

## 10. Additional Information

- a. Briefly describe any additional features, attributes, or conditions which the City of Rocklin should consider in selecting your firm. Describe any other services your firm can provide.
- b. Provide any contract language your firm requests or requires to be included in a contract for this service.
- c. Describe your firm's business continuity plan, how often it is updated, and what assistance would be available to the City.
- d. Disclose any and all past or current business and personal relationships with any current City of Rocklin elected official, appointed official, City employee, or family member of any current City of Rocklin elected official, appointed official, or City employee. Any past or current business relationship may not disqualify the firm from consideration.

## 11. By submitting a proposal, the Contractor is verifying they have the following insurance coverage (Refer to Section 18 of Exhibit A – Sample Professional Services Agreement for insurance coverage limits):

- a. Commercial General Liability
  - i. City will be named as Additional Insured with all the appropriate endorsements
  - ii. Personal injury & property damage liability
  - iii. Contractual liability
- b. Independent Contractor's Liability
- c. Automobile Liability Insurance
  - i. Minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence, and a maximum deductible of Five Thousand Dollars (\$5,000) per occurrence
- d. Workers' Compensation
- e. Professional Liability

## V. EVALUATION CRITERIA

The respondents' understanding of the scope of services required includes demonstrated abilities to coordinate delivery of the services and understanding of the needs and operational requirements of the City of Rocklin.

In accordance with the objectives of the City of Rocklin, the following criteria will be used

as the weighting basis for evaluation of the proposals and the award recommendation:

1. Qualifications as they relate to this project (30%);
  - a. Firm's experience with the planning and implementation of a Pension Trust.
  - b. Firm's experience with Fiduciary investment advisory services.
  - c. Qualifications of proposed key personnel.
  - d. Communication skills.
2. Apparent ability to provide the required services in a timely manner (10%);
  - a. Accessibility of staff.
  - b. Flexibility and readiness in completing specified work.
3. References – firm's reputation for integrity and competence (20%);
4. Fees (20%); and
5. Quality and responses to questionnaire outlined in Section IV (20%).

Award may not be made to the respondent submitting the lowest price proposal. The City of Rocklin will choose the firm submitting the best and most responsive overall proposal to satisfy its needs.

## **VI. SELECTION PROCESS**

1. Proposals submitted will be reviewed by a selection committee. Consultants that have submitted the best and most complete proposals may be invited to an interview. The number of Consultants invited to an interview may vary depending upon the number of proposals submitted.
2. The City reserves the right to make a selection after review of the proposals without oral interviews; therefore, the proposal should be submitted initially on the most favorable terms that the Consultant might propose.
3. A contract will be negotiated with the Consultant considered best meeting the City's need for these services. In the event a mutually satisfactory contract cannot be negotiated with the City's first choice, negotiations may be terminated and commenced with the Consultant considered next best in meeting the City's needs for these particular services.
4. The selected Consultant will be required to execute a City-prepared contract. The contract may further refine the scope of services and will provide for the terms and conditions of employment.
5. The award of any contract is expressly contingent upon City Council approval and the

availability of funds. City staff may not legally bind the City to a contract.

6. The City reserves the right to reject any or all proposals, or to waive minor irregularities in said proposals, or to negotiate minor deviations with the successful Consultant(s). In the case of differences between written words and figures in a proposal, the amount stated in written words shall govern. In the case of a difference in unit price versus the extended figure, the unit price shall govern.

## VII. INQUIRIES

All questions and inquiries must be submitted via email to [megan.bressesem@rocklin.ca.us](mailto:megan.bressesem@rocklin.ca.us). The deadline to submit questions is no later than **5:00 P.M. on May 5, 2023**.

Emails must be clearly labeled in the subject line “**RFP-Section 115 Trust – Questions**” for convenience purposes. The City reserves the right to decline a response to any questions. A summary of the questions submitted, including responses deemed relevant and appropriate by the City, will be shared with all other proposers, but the name of the firm asking the question will be redacted. Responses will be released in the form of an addenda available on the **City’s website**, <https://www.rocklin.ca.us/rfps>, by **May 10, 2023**.

## VIII. SUBMITTAL

One (1) copy of your complete written proposal must be submitted via email or three (3) hard copies via mail in sealed envelopes marked and received no later than **5:00 P.M. PDT on May 19, 2023**, to the address below. Proposals will not be accepted after this deadline. Faxed proposals will not be accepted. Email to [megan.bressesem@rocklin.ca.us](mailto:megan.bressesem@rocklin.ca.us) with the subject line “**RFP-Section 115 Trust**” or mail to:

City of Rocklin  
Megan Bressesem, Management Analyst  
3970 Rocklin Road, 2<sup>nd</sup> Floor  
Rocklin, CA 95677

## IX. KEY DATES

Below is a general timeline outlining the process steps with estimated dates for each step of the RFP process. By participating in the RFP process, proposers agree that they can adhere to the following:

Any change in the scheduled dates for the Deadline for Written Questions or to the Proposal Submission Deadline will be advertised in the form of an addendum to this RFP.

The schedule for the evaluation process and other future dates may be adjusted without notice.

<b>Calendar Item</b>	<b>Date</b>
RFP Released by the City	04/20/2023
Deadline for Written Questions	05/05/2023
City Responses to Written Questions	05/10/2023
Proposal Submission Deadline	05/19/2023
Finalist Interviews (if necessary)	TBD
Contract Negotiations	TBD

## **X. GENERAL INFORMATION**

The City of Rocklin reserves the right to reject any or all proposals and will not be liable for any costs incurred by responding firms relating to the preparation and submittal of proposals, making of initial presentation to the City, negotiating a contract for services, or any other expense incurred by the bidder prior to the date of an executed contract. In addition, no bidder shall include any such expenses as part of the price proposed to conduct the scope of work for this project.

1. Proposals must be valid for 120 calendar days beginning May 19, 2023.
2. The City reserves the right to expand or diminish the scope of the work subject to negotiation with the successful bidder.
3. The City is not required to select the proposal that may indicate the lowest price or costs. The City expressly reserves the right to reject all proposals at its sole discretion and opinion, without indicating any reason(s) for such rejection. If all proposals are rejected, the City may or may not request additional proposals. The City may withdraw this RFP at any time without advance notice.
4. The successful firm shall defend, indemnify, save and hold harmless the City of Rocklin, its officers, agents, and employees, from any demands, claims, suits, damages, or actions that may be brought by third persons on account of bodily injury or death; personal injury; damage to property or personal interest; or violation of any law, regulation or ordinance; where the third person's loss, demand, claim, suit, damages, or action arises in whole or part out of any negligent or other act or omission of the contracting agency or its officers, employees, and agents, while performing the services agreed to save and except those actions arising out of the sole negligence of the City.
5. The successful firm shall submit appropriate evidence of required insurance coverage, licenses, or permits prior to the effectuation of any contract for services described herein, as required by the City. A copy of the City's Professional Services Agreement is included as Exhibit A, and by submitting a bid a bidder is consenting to abiding by

the provisions therein.

6. The successful firm shall not transfer the responsibility for any part of their contractual obligation without prior written approval of the City Manager of the City of Rocklin.
7. The City reserves the right to terminate the agreement upon giving the successful firm a 45-day written notice of termination.
8. In the event it becomes necessary to revise any part of this RFP, written addenda will be issued. It is the proposer's sole responsibility to monitor this website for possible addenda to this RFP. Failure of proposer to retrieve addenda from this site shall not relieve proposer of the requirements contained therein. Additionally, failure of proposer to return a signed addendum, when required, may be cause for rejection of the proposal.

Thank you very much for taking your valuable time to respond to this RFP.

## **XI. EXHIBITS**

Exhibit A      Sample Professional Services Agreement

## Exhibit A - Sample Professional Services Agreement

*The following sample **Professional Services Agreement** is provided for reference only and is subject to change without notice.*

### CONTRACT FOR SERVICES

THIS CONTRACT is made on \_\_\_\_\_, 20\_\_\_, by and between the CITY OF ROCKLIN a municipal corporation ("City"), and [company legal name] "Contractor," who mutually agree as follows:

#### 1. SCOPE OF SERVICES

Subject to the terms and conditions set forth in this agreement, Contractor shall provide to the City the services described in the Scope of Work, Exhibit A. Contractor shall provide the services at the time, place and in the manner specified in Exhibits A and/or B. Contractor shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of the services: (a) Contractor notifies the City and City agrees the services are outside the scope of Exhibit A; (b) Contractor estimates the additional compensation required for these additional services; and (c) City after notice, approves in writing a supplemental agreement specifying the additional services and the amount of compensation therefore. City shall have no obligation whatsoever under this agreement or any supplemental agreement, unless and until the agreement or supplemental agreement is approved by the City Manager, the City Manager's authorized designee, or by the Rocklin City Council, as required by the Rocklin Municipal Code or other local law or policy.

#### 2. COMPENSATION

A. The City shall pay Contractor for the services rendered pursuant to this agreement at the times and in the manner set forth in the Scope of Services, Exhibit A, the Schedule for Performance, Exhibit B, and in accordance with the Schedule of Fees in Exhibit C, but in no event shall the total compensation exceed the **total sum of \$[ ]**. The payments specified in Exhibits A and/or B shall be the only payments to be made to Contractor for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, City approves additional compensation for additional services.

B. Contractor shall furnish City with invoices for all expenses as well as for all materials authorized by this Contract. The invoices shall be submitted with the monthly billings. Reimbursable expenses shall be limited to actual expenditures of Contractor for expenses that are necessary for the proper completion of the services and shall only be payable if specifically authorized in advance by City.

C. Contractor shall submit all billings/invoices for services to City in the manner specified in Exhibit B. Contractor's fees shall be as specified in the Scope of Work, Exhibit A or the Schedule of Fees as set forth in Exhibit C. All invoices submitted by Contractor shall contain the following information:

- (1) Job/project name or description;
- (2) City's current purchase order and/or work order number (if applicable);
- (3) Contractor's invoice number;
- (4) Date of invoice issuance;
- (5) Description of services billed under invoice, including the description of tasks performed and the corresponding rate charged for the completion of that task;
- (6) Amount of invoice, itemizing all authorized reimbursable expenses; and
- (7) Total billed to date under agreement.

D. City shall make payment to Contractor net 30 days from receipt of an acceptable invoice. If Contractor's performance is not in conformity with the Scope of Work, Exhibit A, or the Schedule of Performance, Exhibit B, or the provisions set forth above, payments may be delayed or denied, unless the Contractor's failure to perform is a documented result of the City's failure to conform with the Schedule of Performance, or if the Schedule of Performance is extended pursuant to Section 4. City shall not be responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described above, or as set forth in the Schedule of Performance.

E. During performance of the agreement and for a period of three (3) years after completing all services, Contractor shall maintain all accounting and financial records related to this Agreement, including but not limited to records of Contractor's costs for all services performed under this agreement and records of Contractor's reimbursable expenses, in accordance with generally accepted accounting practices, and shall keep and make the records available for inspection and audit by representatives of the City upon reasonable written notice.

F. Contractor shall pay when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of payment upon request. Contractor hereby agrees to indemnify City for any claims, losses, costs, fees, liabilities, damages or injuries suffered by City arising out of Contractor's breach of this section.

### **3. FACILITIES AND EQUIPMENT**

Contractor shall at its sole cost and expense, furnish all facilities and equipment that may be required for Contractor to perform services pursuant to this agreement. City shall furnish to Contractor, only the facilities and equipment listed in Exhibit A (if any) according to any terms and conditions set forth in Exhibit A.

### **4. TERM OF CONTRACT**

A. This agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the agreement and shall continue in effect until [insert term date] unless sooner terminated as provided herein.



B. The services of Contractor are to commence upon execution of this Contract and shall be undertaken and completed in accordance with the Schedule of Performance attached hereto and incorporated herein by this reference as **Exhibit B**.

## **5. SUSPENSION/TERMINATION:**

A. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving written notice of suspension to Contractor. If City gives such notice, Contractor shall immediately suspend its activities under this agreement.

B. This Contract may be terminated by either party, provided that the other party is given not less than **thirty (30)** calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. If the agreement is terminated by the City:

- i. Contractor shall immediately cease rendering services pursuant to this agreement;
- ii. Contractor shall, not later than five days after such notice of termination, deliver to City copies of all information prepared pursuant to this agreement;
- iii. City shall pay Contractor the reasonable value of services rendered by Contractor prior to termination; provided however, City shall not in any manner be liable for lost profits that might have been made by Contractor had the agreement not been terminated or had Contractor completed the services required by this agreement. Contractor shall furnish to City such financial information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Contractor. The foregoing is cumulative and does not affect any right or remedy that city may have in law or equity.

Notwithstanding any provisions of this Contract, Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by Contractor, and the City may withhold any payments due to Contractor until such time as the exact amount of damages, if any, due the City from Contractor is determined.

## **6. INDEPENDENT CONTRACTOR**

Contractor enters into this Contract as an independent contractor and not as an employee or agent of the City. Contractor shall have no power or authority by this Contract to act on behalf of City in any capacity whatsoever as an agent, or to bind the City in any respect or to any obligations whatsoever. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees, agents, contractors or subcontractors of the Contractor and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this agreement.

## **7. AMENDMENTS, CHANGES OR MODIFICATIONS**

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

## **8. EXTENSIONS OF TIME**

Contractor may, for good cause, request extensions of time to perform the services required hereunder. Such extensions shall be authorized in advance by the City in writing and shall be incorporated in written amendments to this Contract or the attached Work Program in the manner provided in Section 7.

## **9. PROPERTY OF CITY**

It is mutually agreed that all materials prepared by the Contractor under this Contract shall become the property of the City, and the Contractor shall have no property right therein whatsoever. Immediately upon termination, the City shall be entitled to, and the Contractor shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by the Contractor in performing this Contract which is not Contractor's privileged information, as defined by law, or Contractor's personnel information, along with all other property belonging exclusively to the City which is in the Contractor's possession.

## **10. COMPLIANCE WITH ALL LAWS:**

Contractor shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, all applicable laws, ordinances, and codes of federal, State and local governments, which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract.

For all leases and purchases of materials, equipment, supplies or other tangible personal property used to perform the agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit or Seller's Permit from the California State Board of Equalization, in accordance with the applicable SBE criteria and requirements. This provision applies in all instances unless prohibited by the funding source for the agreement.

## **11. WARRANTIES AND RESPONSIBILITIES - CONTRACTOR**

A. Contractor agrees and represents that it is qualified to properly provide the services set forth in **Exhibit "A"** in a manner which is consistent with the generally accepted standards of Contractor's profession.

B. Contractor is duly licensed, qualified and experienced to perform the services set forth in the Scope of Services, Exhibit A. Contractor represents and warrants that Contractor has all licenses, permits, qualifications and approvals of whatsoever nature that are legally required for Contractor to practice its profession or provide any services under this agreement. Contractor represents and warrants that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this agreement, any licenses, permits and approvals that are legally required for Contractor to practice its profession or provide such services. If Contractor is an out

of state corporation, Contractor further warrants and represents that it possesses a valid certification of qualification to transact business in the State of California issued by the California Secretary of State.

C. Contractor shall perform all services required pursuant to this agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's profession in California. Contractor shall devote such time and effort to the performance of services pursuant to this agreement as is necessary for the satisfactory and timely performance of Contractor's obligations under this agreement. Neither party shall be considered in default of this agreement to the extent that party's performance is prevented or delayed by any cause that is beyond the reasonable control of that party.

D. All products of whatsoever nature that Contractor delivers to City pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Contractor's profession, and shall be provided in accordance with any scope of services or schedule of performance specified in Exhibits A or B.

E. Contractor shall assign only competent personnel to perform services pursuant to this agreement. Contractor shall designate a project manager who at all times shall represent the Contractor before the City on all matters relating to this Contract. The project manager shall continue in such capacity unless and until he or she is removed at the request of the City, is no longer employed by Contractor, or is replaced with the written approval of the City, which approval shall not be unreasonably withheld. Contractor shall notify City in writing, of any other changes in Contractor's staff assigned to perform the services required under this agreement, prior to any such performance. In the event the City desires the removal of any person assigned by Contractor to perform services pursuant to this agreement, because the City in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from the City of the desire for the removal of such person.

F. Contractor agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and local law.

G. Contractor shall provide corrective services without charge to the City for services which fail to meet the above professional and legal standards and which are reported to Contractor in writing within sixty (60) days of discovery. Should Contractor fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and the Contractor agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this agreement is based on such independent investigation and research. Contractor shall be liable for any expenses thereby incurred.

## **12. SUBCONTRACTING**

None of the services covered by this Contract shall be subcontracted without the prior written consent of the City, which will not be unreasonably withheld. Contractor shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Contractor.

### **13. ASSIGNABILITY**

Contractor shall not assign or transfer any interest in this Contract whether by assignment or novation, without the prior written consent of the City. The City has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on Contractor under this agreement. However, claims for money due or to become due Contractor from the City under this Contract may be assigned to a financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City.

### **14. INTEREST IN CONTRACT**

Contractor covenants that neither it, nor any of its employees, agents, contractors, or subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Contract, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder. Contractor shall make all disclosures required by the City's conflict of interest code in accordance with the category designated by the City, unless the City Manager determines in writing that Contractor's duties are more limited in scope than is warranted by the category designated by the City code and that a narrower disclosure category should apply. Contractor also agrees to make disclosure in compliance with the City conflict of interest code if, at any time after the execution of this Contract, City determines and notifies Contractor in writing that Contractor's duties under this Contract warrant greater disclosure by Contractor than was originally contemplated. Contractor shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the City.

### **15. MATERIALS CONFIDENTIAL**

To the extent permitted by law, all of the materials prepared or assembled by Contractor pursuant to performance of this Contract are confidential and Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order.

### **16. LIABILITY OF CONTRACTOR-NEGLIGENCE**

Contractor shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of the Contractor's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Contractor or its employees, agents, contractors or subcontractors.

### **17. INDEMNITY AND LITIGATION, COSTS**

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City, its officers, officials, agents, employees and volunteers against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees, arising from all acts or omissions of Contractor, or its officers, agents or employees in rendering services under this Agreement; excluding however, such liability, claims, losses, damages or expenses arising from the City's sole negligence, or

willful acts. The provisions of this paragraph shall survive termination or suspension of this Contract. These Indemnification provisions are independent of and shall not in any way be limited by the Insurance requirements of this agreement. City approval of the Insurance required by this Agreement does not in any way relieve the Contractor from liability under this section.

## **18. CONTRACTOR TO PROVIDE INSURANCE**

Contractor agrees to have and maintain the policies set forth below, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

### **A. MINIMUM SCOPE AND LIMIT OF INSURANCE**

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

3. **Workers' Compensation** as required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. If Contractor has no employees, Contractor must notify City if an employee is hired, verify proof of coverage for any subcontractors, and agrees to hold City harmless and defend City from claims arising from failure to provide workers' compensation benefits.

4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Contractor's profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate. Professional liability coverage shall extend for at least five years after completion of the Contractor's services under this Agreement.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

### **B. OTHER INSURANCE PROVISIONS**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

2. **Primary Coverage.** For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. **Notice of Cancellation.** Each insurance policy required above shall not be canceled, except with 30 days' notice to the City, with ten days' for notice of cancellation due to non-payment.

4. **Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect 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.

5. **Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

6. **Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

7. **Claims Made Policies.** If any of the required policies for professional liability insurance provide claims-made coverage:

- i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

8. **Verification of Coverage.** Contractor shall furnish the City with original Certificate of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to the City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9. **Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

10. **Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## 19. GENERAL/MISCELLANEOUS PROVISIONS:

A. **Contract Documents.** This agreement and its exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If any portion of the Contract Documents shall be in conflict with any other portion, provisions contained in the Contract shall govern over conflicting provisions contained in the exhibits to the Contract. In the event of any conflict between the terms or conditions of this written agreement and any terms or conditions of any document prepared or provided by Contractor and made a part of this agreement, including without limitation any document relating to the scope of services or payment therefor, the written terms of this document shall control over those terms or conditions.

B. **Non-Discrimination in Employment and Equal Employment Opportunity.** Contractor shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, color, ancestry, national origin, religious creed, sex (including pregnancy, childbirth breastfeeding or related medical condition), sexual orientation, gender, gender identity, gender expression and age (over 40), disability (mental and physical), medical condition, marital status, citizenship, and military and veteran status.

C. **Inspection of Records.** Contractor shall maintain and make available for inspection by the City and its auditors accurate records of all of its costs, disbursements and receipts with respect to any work under this Contract. Such inspections may be made during regular office hours at any time until six (6) months after the final payments under this Contract are made to the Contractor.

D. **Entire Agreement.** This Contract constitutes the entire agreement between the parties relative to the services specified herein and supersedes whatever oral or written understanding they may have had prior to the execution of this agreement. No alteration or modification of this agreement shall be valid or effective unless and until such modification is evidenced by a writing signed by both parties to this Contract, by persons authorized to act on behalf of the parties. There are no understandings, agreements, conditions, representations,

warranties or promises, with respect to this Contract, except those contained in or referred to in the writing.

E. **Severability.** If any portion of this agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

F. **Waiver.** Neither City's acceptance of, or payment for, any service performed by Contractor, nor any waiver by either party of any default, breach, or condition precedent, shall be construed as a waiver of any provision of this agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

G. **Notice.** All notices that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

City: City of Rocklin  
Administrative Services Department  
Finance Division  
3970 Rocklin Road  
Rocklin, CA 95677

City of Rocklin  
Office of the City Attorney  
3970 Rocklin Road  
Rocklin, CA 95677

Contractor: [Company Legal Name]  
[Company Address]

H. **Enforcement of Agreement.** This Contract shall be interpreted, governed and enforced in accordance with the laws of the State of California. Venue of any action arising out of this Contract shall be brought and maintained in Placer County California, regardless of where else venue may lie. The parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such courts.

I. **Attorney's Fees.** In any action brought by either party to enforce the terms of this Contract, each party shall bear responsibility for its attorney's fees and all costs regardless of whether one party is determined to be the prevailing party.

J. **Power and Authority to Enter into Agreement.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other



contract or Agreement to which Contractor is obligated, which breach would have a material effect hereon.

K. **Counterparts; Electronic Signatures.** This Agreement may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. The words “execution,” “signed,” “signature,” and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement, shall include digital electronic signatures (DocuSign). The use of digital electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law.

L. **Exhibits.** All exhibits referred to herein and attached hereto, are by this reference incorporated as if set forth fully herein.

CONTRACTOR

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

[Name, Title]

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

[Name, Title]

CITY OF ROCKLIN

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

Aly Zimmermann, City Manager

ATTEST:

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

Hope Ithurnburn, City Clerk

APPROVED AS TO FORM:

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

City Attorney

EXHIBIT A

Contractor Proposal/Scope of Work

EXHIBIT B

Schedule of Performance

EXHIBIT C

Schedule of Fees

EXHIBIT D

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

[Labor Code § 1861]

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.

CONTRACTORS

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

[Title]