



CITY OF
FOLSOM

Request for Proposals

Comprehensive Zoning Code Update

Due: 4:00 pm Friday, November 16, 2018
Community Development Department
50 Natoma Street, 2nd Floor, Public Counter
Folsom, CA 95630

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I. INTRODUCTION

The City of Folsom, California is currently accepting proposals from qualified firms with expertise in zoning for leading a process resulting in the preparation of a new zoning code for the City. Proposals received via the RFP process will be reviewed by selection committee comprised of City staff in the City of Folsom.

II. BACKGROUND

The City of Folsom is a charter city that incorporated in 1946. Located along the western edge of the Sierra Nevada foothills in northeastern Sacramento County, the city is bordered by Folsom Lake and the unincorporated community of Granite Bay in Placer County to the north; unincorporated Sacramento County to the south; the unincorporated community of El Dorado Hills in El Dorado County to the east; and the unincorporated communities of Orangevale and Gold River in Sacramento County, other areas of unincorporated Sacramento County, and the City of Rancho Cordova to the west. The City comprises 17,301 acres and, as of January 1, 2017, the City of Folsom's population was 78,525.

In general, Folsom has four existing areas in terms of its land use patterns. The Historic District is an intense mix of land uses at a small lot, walkable scale. The southwest area of the city, between Highway 50 and East Bidwell Street, has a mix of housing with shopping, schools, parks, and offices, including the Central Business District between Riley Street and East Bidwell Street. The areas west of the American River and north and east of East Bidwell Street are dominated by large residential neighborhoods and linear parkways, with a smaller supply of commercial uses, jobs, and schools. South of Highway 50, the City has approved the Folsom Plan Area Specific Plan (FPASP) that provides a combination of employment-generating uses, retail and supporting services, recreational uses, and a broad range of residential uses and associated infrastructure and roads on approximately 3,510 acres. While the development south of Highway 50 is primarily greenfield development, the area north of the highway is primarily infill. Overall, approximately 30% of all land within the City is covered by specific plans and 77% of the City's inventory of vacant land is in the FPASP. In light of this, the zoning code update will need to focus primarily on the areas around the City's light rail stations, the East Bidwell Mixed-Use Overlay area, and the Historic District as well as any inconsistencies with the new General Plan.

2035 General Plan:

On August 28, 2018, the Folsom City Council unanimously adopted the 2035 General Plan. While striving to maintain the character and prosperity that the City enjoys, the new General Plan lays out a blueprint for the City's future. The first policy of the City's new Land Use Element states that the City will "ensure that the Folsom Zoning Ordinance is consistent with the policies and programs of the General Plan" (LU 1.1.1). In addition to that there are a number of other policy areas that will affect the zoning code update. These include:

- Mixed Use Nodes /Districts and Corridors

- Mixed Use Design
- Transit Priority Areas (TPAs)
- Urban Centers
- Increase in Residential Densities
- Parking Standards
- Standards for Commercial Development
- Community Design Standards

Current Zoning Code

The City's current zoning code is decades old and staff has been patching it through minor amendments in order to keep up with new State requirements. The City is looking for a complete overhaul of its current zoning code. This would be a repeal and replace of the existing code. The state of the current zoning code is not unusual:

- It has not been comprehensively updated for many decades;
- It contains standards that are outdated, difficult to administer, and often hidden in many different sections;
- It is inconsistent with the City's new 2035 General Plan;
- Numerous amendments have been made that sometimes are not consistent with the rest of the code;
- There are inconsistencies between overlay districts and the underlying zoning requirements;
- The code does not reflect recent changes resulting from legal decisions and changes to state laws (i.e., *Reed v. Town of Gilbert*, SB 35, accessory dwelling units, etc.)
- The code lacks the ability to address modern development trends and patterns in City's corridors, mixed use overlay area, and Transit Priority Areas (TPAs).
- Some sections of the code lack specificity or clarity, making zoning enforcement often difficult; and
- It is not user-friendly and lacks graphics to improve readability.

Staff:

The City of Folsom's Community Development Department houses the Planning, Building, Development Engineering, and Code Enforcement employees. The staff also works closely with the Fire Department on development activities within the City. A project manager has been assigned to the project and will be the Consultant's primary point of contact.

The City anticipates that members of the City's Planning Commission and City Council will play a significant role in the process by guiding and supporting the effort through a series of workshops, discussions, and public engagement opportunities.

III. SCOPE OF WORK

With assistance from City Staff, the selected Consultant will conduct a public process to develop a new Zoning Ordinance for the City of Folsom. The City anticipates that the Consultant will work with staff, the Planning Commission, Council and community to develop a "hybrid" zoning ordinance that incorporates a mix of form-based standards, performance based standards, incentives, and conventional zoning standards as appropriate depending on the area of the city.

Project Goals:

City staff have identified the following goals for the zoning code update effort:

- Implement 2035 General Plan land use policies
- Be consistent with State and federal law
- Be intuitive, graphic and user-friendly
- Create a transparent, predictable and consistent process
- Promote high quality design
- Respond to community concerns
- Promote infill, mixed-use, and transit-oriented development in TPAs and mixed-use overlay areas
- Standardize and simplify development review

Scope of Work:

The Consultant will develop a final work program in conjunction with City staff, but the scope of work should include the following:

- Background: The Consultant will review the key background materials and will join City staff on a tour of the community. At the end of this task, the Consultant will provide a summary of recommended changes to the zoning code. In addition, the Consultant shall prepare a proposed outline laying out the recommended format, content, and organization of the new zoning code. Staff will provide a summary of the key policies and development standards from the following background documents:
 - 2035 General Plan
 - Folsom Plan Area Specific Plan
 - Existing Zoning Code
 - Development standards from other specific plans and planned development (PD) districts in the City.

The City contains a variety of land uses, which will require differing and specific regulations. The Consultant should anticipate participating in a tour of Folsom with staff. The Consultant will then work with staff to identify these areas, determine the appropriate zoning approach to these areas (e.g., form-based, performance-based, incentive-based, or conventional) and draft appropriate zoning regulations. Examples

include Historic Folsom, the areas around the City’s light rail stations, the East Bidwell Mixed Use Overlay, etc.

- **Public Outreach:** The Consultant should incorporate a public outreach component designed to inform community stakeholders, the Planning Commission, Council, and the public on the new zoning code. It should include one (1) community workshop and then five (5) workshops with the Planning Commission based on the phases for the project and two (2) workshops with the Historic District Commission dealing specifically with the Historic District phase. For review and adoption of the new zoning code the Consultant should assume two (2) Planning Commission meetings, and two (2) Council hearings. The Consultant shall be responsible for preparing all presentation materials for the workshops and meetings. The City will establish a project website for the zoning code effort. The Consultant shall provide all outreach materials to the City for posting on the website.
- **Draft Zoning Code:** At a minimum, the comprehensive update of the City’s zoning code should address the following topics:
 - Zoning Code Administration & Permits
 - Zoning Districts
 - Allowed Uses
 - Development Standards
 - Definitions/Glossary

While the new zoning code will be adopted in its entirety, the project will be done in several phases. The Consultant shall identify a budget per phase as well as an overall budget. As noted below, the project schedule should also identify the schedule for each individual phase.

1. Transit Priority Areas and Mixed Use Overlay Area
2. Residential Districts, Allowed Uses, and Development Standards
3. Commercial, Office and Industrial Districts, Allowed Uses, and Development Standards
4. Historic District, Subareas, Allowed Uses, and Development Standards
5. Signs
6. Zoning Code Glossary, Administration and Permits

The Consultant shall prepare an Administrative Draft, a Public Review Draft, a Revised Public Review Draft incorporating changes resulting from the hearing process and other outreach, and a Final Draft of the code for presentation at the City Council hearings. The Public Review Drafts and Final Draft will be fully formatted and will contain a range of graphics, diagrams, tables, and charts that complement and supplement the code. The process of going from Administrative Draft to Public Review Draft and to Final Draft will need to occur in close coordination with the City’s Project Manager, and will require frequent meetings and/or conference calls. Once the Final Draft has been approved by

the City Council, the Consultant shall provide a final version that includes any changes approved by Council.

- **Integration of the New Code into User-Friendly Formats:** The Consultant shall work with City staff as well as its information technology vendors to ensure the new code is easily accessible to the public, interactive, and searchable. The City uses Code Publishing for its web platform for the zoning code. The City is also currently migrating its entitlement and permitting process to [Central Square's TRAKiT](#) software system.
- **Zoning Map Revisions:** The Consultant shall work with City staff to identify areas that will require map changes. Staff anticipates that zoning map changes may be required around light rail stations, in the East Bidwell Mixed-Use Overlay area, and possibly in the Historic District. Please note that City staff will handle any necessary changes in GIS to prepare the final map for Council adoption.
- **Environmental Review/CEQA Documentation:** The Consultant shall prepare the necessary CEQA document necessary for adoption of the zoning code. The Consultant should be able to tier off of the recently completed 2035 General Plan EIR and prepare either a letter of consistency or addendum. If higher level of CEQA review is recommended, please provide a justification for that level of review. Consultants may partner with an environmental sub-consultant if they do not have the expertise in-house.
- **Project Schedule:** The Consultant shall provide the City with an anticipated schedule for the work broken down by phase with a goal of completion by mid-2020 (18-months).
- **Deliverables:** The Consultant shall provide the complete zoning code in both paper format (5 copies) and electronic format (Word, PDF) for each draft:
 - Administrative Draft (Internal – staff review only);
 - Public Review Draft (Public document); and
 - Revised Public Review Draft (Public document incorporating comments from meetings)
 - Final Draft for final City Council hearings.

Once Council has approved the final draft, the Consultant shall update the zoning code to include Council-directed changes and then shall provide staff with paper copies (5 copies) and electronic versions of the final zoning code (e.g., Word, PDF and the original files from any other programs used such as Adobe In-Design, Trimble SketchUp, etc.).

For the environmental review, the Consultant shall prepare an initial draft and final version of the CEQA document. Two (2) hard copies and an electronic version shall be provided for each draft.

Optional Tasks:

The City is considering two optional tasks. In the project budget, the cost of the items should be listed separately and independently. These items would not count against the current not-to-exceed amount identified in this RFP.

- **Option 1 - Zoning Handbook:** The Consultant will prepare a simple user-guide/handbook for the public that explains how to use the new zoning code. The handbook should be

easy to understand with graphics and examples that demonstrate how the public can navigate the code and find answers to frequently requested information (e.g., residential setbacks, lot coverage, commercial building signage, accessory structure standards, Historic Folsom development standards, etc.). This should be provided in PDF format that is internally hyperlinked for easy navigation within the handbook.

- Option 2 - Web-Based Zoning Code: The City is contemplating using a new web-based approach to its zoning code that would enable it to contain more graphics, have a more user-friendly layout and allow for easy navigation. This optional task would include formatting the code to make it web-ready. Currently, the City uses Code Publishing for its website but is considering other potential web-platforms. The Consultant would also work with staff and Central Square to connect it with the new TRAKiT and its GIS tool, Geo-TRAK.

IV. SCHEDULE

The following identifies the schedule for the RFP and consultant selection process:

October 15, 2018	RFP Issued
October 26, 2018	Consultant Questions Due
November 2, 2018	City Responses Posted
November 16, 2018	Proposals Due at 4:00 pm
November 28 - 30, 2018	Consultant Interviews (Top Three)
December 7, 2018	Consultant selection
January 8, 2018	City Council Contract Approval

It is anticipated that award of the formal contract with the City of Folsom will occur on January 8, 2019. Following a written notice-to-proceed, to be issued by the City, the Consultant's work shall begin no later than seven (7) days after City Council approval and shall be completed in accordance with the agreed upon schedule.

The notice to proceed issued by the City will specify the work including phases to be completed, a schedule for the work, the basis for payment, and the limits of compensation. The Consultant shall not begin work nor incur any costs associated with any task identified herein without an explicit written notice to proceed.

V. COMPENSATION

The City will negotiate a contract with the selected Consultant based on the following assumptions and conditions:

- All services rendered as described in the Scope of Work, including all labor, equipment, materials, and expenses, the Consultant shall be compensated on a time and expenses basis by task or phase for work completed.
- Not-to-Exceed amount for services is estimated to be between \$250,000 and \$350,000. This amount should be broken down by phase. A portion of this funding is expected to come from a community design grant to be awarded in December 2018 from the Sacramento Area Council of Governments (SACOG), the regional planning agency for the six-county region. The City and Consultant will be bound by the requirements of that grant.

VI. PROPOSAL REQUIREMENTS

Submittals

Interested firms are invited to submit an electronic copy (PDF format) and five (5) copies of their proposals to the following address:

City of Folsom
Community Development Department
50 Natoma Street
Folsom, CA 95630
ATTN: Desmond Parrington, AICP, Principal Planner

Proposals will be accepted until Friday, November 16, 2018 at 4:00 PM (PST).

Contents of the Proposal:

At a minimum, the proposal should contain the information outlined herein. Additional information that the applicant deems relevant to the selection process may be included; however, concise and focused submittals are strongly encouraged. By submitting a proposal, and unless otherwise stated, it is understood that the Consultant has reviewed the relevant information, and that based on that review, the Consultant has developed an informed understanding of the projected scope of work and has satisfied itself with the applicable conditions and requirements expressed in those documents.

- Consultant Background: In two pages or less, provide a brief overview of the Consultant assuming contract responsibilities. All proposed sub-consultants must be identified.
- Project Team: Provide an organizational chart that identifies the individuals and sub-consultants, if applicable, assigned to and responsible for the key elements of the work

scope and their relationship to those elements. Indicate the number of hours each member has been budgeted and will be assigned to the project. Specifically, identify the personnel assigned to the following duties: project lead, project management, researcher, writing/preparation, graphics, and administration. It is the City's intent to have the proposed project team committed to this project as a contract provision (see Standard Agreement in Attachment 1).

- **Individual Qualifications and Experience:** Provide resumes for each key staff member. Provide up to three examples of recent projects completed (or ongoing) by the proposed project team (staff members, sub-consultants, and public agencies). At least one of those recent projects should include work on sign regulations after the *Reed v. Town of Gilbert* (2015) decision. For each relevant project: 1) indicate the Consultant's role and the staff members who were responsible for the cited project work; 2) provide a brief description of the contract scope of work; 3) state the contract amount and completion date; and 4) include the name, title and phone number of a client reference.
- **Statement of Understanding and Scope of Work:** Proposals should provide a statement of your understanding of the project by highlighting the primary issues and outlining your approach toward addressing those issues. Any recommendations regarding improvements to the process, in order to more effectively meet the City's stated objectives, should be emphasized in your proposal, as a clear means of demonstrating an understanding of the project requirements.
- **Schedule:** Proposals should present an overall project schedule showing milestones, deliverable dates, and the duration of each phase.

Fee Proposal:

Firms are requested to provide a fee proposal that presents the estimated fee. The fee proposal should reflect the scope of work, term, and compensation conditions cited above.

Sufficient information should be provided to justify the proposed fee and to serve as a basis for negotiating a contract. The fee proposal should identify personnel, estimated number of hours, and rate; type of equipment, hours, and rate; and any outside costs for each identified work element.

Any Contract resulting from this solicitation will specify a maximum, not-to-exceed fee amount which estimated to be between \$250,000 and \$350,000. Except in the unusual situation wherein the Consultant encounters circumstances that could not be reasonably anticipated, the City will not authorize payment beyond this amount. In consideration of this, any assumptions and/or the need for any contingencies must be clearly spelled out in the Fee Proposal and used as a basis to compute a "not-to-exceed" figure for the project. This figure should be sufficient to provide for any reasonably anticipated circumstances that may be encountered during project execution and completion.

Inquiries:

All requests for clarifications or interpretations shall be made in writing and shall be emailed to the project manager for the update, Desmond Parrington, dparrington@folsom.ca.us. Inquiries shall contain the firm's name, contact person, and email address and be titled "Zoning Code Update – RFP." Deadline for inquiries is Friday, October 26, 2018 at 4:00 pm (PST). City staff will post responses to all inquiries in the form of an addendum with the RFP documents at https://www.folsom.ca.us/services/rfps_and_bids.asp on or before Friday, November 2, 2018 by 4:00 pm (PST).

VII. SELECTION CRITERIA AND PROCESS

The selection committee shall select finalists from the complete proposals received before the deadline. The City may ask finalists to present their proposals in person before final selection. The selection committee shall score finalists on a 100-point scale based on criteria that include:

- Relevant Experience of Firm (25 pts)
- Relevant Experience of Project Team (25 pts)
- Understanding of the Issues (25 pts)
- Public Outreach Process (15 pts)
- Clarity of Presentation (10 pts)

Please note that if the Consultant does not have in-house expertise to prepare the CEQA document necessary for the adoption of the new zoning code and map, the Consultant may select a sub-consultant to perform that work. However, the City reserves the right to accept or reject that sub-consultant based on their qualifications and experience.

VIII. RESOURCES

The following documents are available for viewing and download at the locations listed below.

2035 General Plan and General Plan EIR

<http://folsom2035.com/documents>

Zoning Code

<https://www.codepublishing.com/CA/Folsom/#!/Folsom17/Folsom17.html>

Historic District Regulations (Chapter 17.52 of Zoning Code)

<https://www.codepublishing.com/CA/Folsom/#!/Folsom17/Folsom1752.html#17.52>

Zoning Map (will be available on the website by 10/26)

<https://www.folsom.ca.us/community/planning/zoning.asp>

Ordinance No. 1158 – Creating Mixed Use District Zoning and Mixed-Use Handbook
<https://webagenda.folsom.ca.us/MG122046/AS122055/AI122337/DO122479/Document.htm>

Folsom Plan Area Specific Plan
https://www.folsom.ca.us/community/planning/planning_documents_and_guidelines.asp

Historic District (including subareas and design and development guidelines)
<https://www.folsom.ca.us/community/planning/historic/default.asp>

East Bidwell Complete Streets Plan
https://www.folsom.ca.us/community/planning/projects/east_bidwell.asp

IX. CONTRACT CONDITIONS

The selected Consultant will be required to sign a standard City agreement and maintain required insurance coverage as indicated in Attachment 1. Unless indicated otherwise, submission of a proposal indicates that the proposer accepts the terms of the standard agreement.

Attachment 1

**Sample City of Folsom Community Development Department's
Agreement for Consulting Services**



CITY OF
FOLSOM
DISTINCTIVE BY NATURE

**CITY OF FOLSOM
COMMUNITY DEVELOPMENT DEPARTMENT
AGREEMENT FOR CONSULTING SERVICES WITH**

Project:

This Agreement, for reference dated _____, is made by and between the City of Folsom, a Municipal Corporation, hereinafter referred to as "City" and _____ hereinafter referred to as "Consultant."

WITNESSETH:

WHEREAS, City desires to hire _____ to provide _____

_____; and,

WHEREAS, Consultant, by reason of its qualifications, experience, and facilities for performing the type of services contemplated herein, has proposed to provide the requested services;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, City and Consultant agree as follows:

I. Scope of Service

The scope of service covered by this Agreement includes all consulting services described and contained in Exhibit A, attached hereto and by this reference incorporated into this Agreement. In the event of a conflict between the terms and conditions in this Agreement and the terms and conditions in Exhibit A, the terms and conditions set forth in this Agreement shall prevail.

II. Term of Agreement

This Agreement shall be effective as of the date executed by all parties and approved as to form by the City Attorney and shall continue until all services provided for in this Agreement have been performed unless otherwise terminated as set forth in Paragraph XVII of this Agreement.

III. Schedule for Performance

City and Consultant agree that time is of the essence in the performance of this work, and Consultant agrees to produce documents and perform services in the times stated in the Proposal or within 12 months after Agreement is fully executed. Deviations from time schedule may be made with the approval of the Community Development Director.

IV. Compensation

Compensation for all of the services described and contained in Exhibit A shall be paid on a time-and-materials, not-to-exceed basis. The maximum compensation for all of the services specified in Exhibit A, including any and all costs or expenses, is \$_____. In the event the cost for services exceeds \$_____, Consultant agrees to complete all services enumerated in Exhibit A at no additional expense to City.

The City shall have the right to review all books and records kept by the Consultant and any subcontractors in connection with the operation and services performed under this Agreement. The City shall withhold payment for any expenditure not substantiated by Consultant's or subcontractor's books and records. In the event the City has made payment for expenditures that are not allowed, as determined by the City's audit, the Consultant shall reimburse the City for the amount of the unallowed expenditures. City shall make no payment for any services not specified in Exhibit A of this Agreement unless such additional services and the price thereof are agreed to in writing and approved by the City prior to the time that such additional services are rendered.

V. Invoicing, Payment, Notices

Consultant shall submit periodic invoices, not more frequently than monthly, for the services rendered during the preceding period. Invoices shall describe the services performed and costs incurred, the person(s) rendering performed services, the amount of time spent by such person(s), and the applicable hourly rate.

Consultant shall transmit invoices and any notices required by this Agreement, to City as follows:

Community Development Department
City of Folsom
50 Natoma Street
Folsom, California 95630

City shall transmit payments on invoiced amounts, and any notices required by this Agreement to Consultant as follows:

Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Email: _____

VI. Professional Services

Consultant agrees that services shall be performed and completed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and its subcontractors or agents are engaged. Consultant shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the work of City or the operations or procedures of the City without the prior written consent of City.

Consultant further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.

VII. Independent Contractor

It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, Consultant is to acquire same at its sole expense.

Consultant's assigned personnel shall not be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished. Any third persons employed by Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.

Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement. In the event 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 the City, Consultant shall further indemnify, protect, defend, and hold harmless the 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.

VIII. Authority of Consultant

Consultant enters into this Agreement as an independent contractor and not as an officer, employee or representative of the City. Accordingly, Consultant shall provide information, recommendation, and advice to City, but shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity as agent, or to bind City to any obligations whatsoever.

IX. Conflict of Interest

Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Consultant further agrees to complete any statements of economic interest required by either City ordinance or State law.

Neither this Agreement, any duties or obligations under this Agreement, nor the intention or expectations of the City will cause the Consultant to be a "public official" as that term is used in California Government Code section 87100. The City and Consultant agree that the Consultant is not a "public official" or "participating in governmental decisions" as those

terms are used in section 87100. The City and Consultant also agree that no actions and opinions necessary for the performance of duties under this Agreement will cause the Consultant to be a “public official” or “participating in a governmental decision” as those terms are used in section 87100. Nothing in this Agreement shall be construed to be inconsistent with the Consultant’s status as an independent contractor.

X. Assignment and Subcontracting

Consultant's rights, duties and obligations under this Agreement are not assignable or transferable, and Consultant shall not subcontract any work, without the prior written approval of the Community Development Director.

This agreement shall constitute written approval for Consultant to subcontract with MRO Engineers, Inc. to perform the work specified in Exhibit A to this Agreement.

City does not assume any liability, duty or obligation to Consultant’s subcontractors, sub consultants, or agents, including but not limited to Natural Investigations Company, Inc. by execution or performance of this Agreement, and no subcontractors, sub consultants, agents or other parties, are third party beneficiaries of this Agreement.

XI. Ownership of Work Product

All technical data, evaluations, reports, plans and other work products of Consultant provided hereunder shall become the property of City and shall be delivered to City upon completion of the services authorized hereunder. Consultant may retain copies thereof for its files and internal use. City representatives shall have access to work products for the purpose of inspecting same and determining that the services are being performed in accordance with the terms of the Agreement. Publication of the information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by City.

Both parties recognize that the City is a public entity subject to the requirements of the California Public Records Act (“PRA”). Consultant understands that the release of any written, printed, graphic, or electronically recorded information and document delivered by Consultant to the City will be governed by the PRA and agrees that the release of such material pursuant to the PRA shall not require Consultant’s prior consent or approval.

XII. Indemnification

To the fullest extent permitted by law, Consultant agrees to immediately indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, and volunteers from and against any and all claims, losses, liability, or damages (“Claims”) that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of Consultant, its subcontractor, sub consultants, agents, and employees (“Consultant”). Consultant assumes no responsibility to indemnify City for the negligent acts or omissions or willful misconduct of City, its officers, officials, employees, agents, and volunteers or other parties who are not a Consultant as defined above (“Third Parties(y)"). The Consultant’s obligation to indemnify applies unless it is finally

adjudicated that the liability was caused by the negligence or willful misconduct of an indemnified party or Third Party. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party or Third Party, then Consultant's indemnification obligation shall be in proportion to the established comparative fault of Consultant.

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend allegations of Consultant negligence, recklessness or willful misconduct, whether Consultant is specifically identified or not in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its council members, officers, and employees, immediately upon tender to Consultant of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are partially responsible for the claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts in a cross-claim, counter claim, third party complaint or defense (affirmative defense or by reference in the action) that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the indemnified party.

XIII. Insurance

During the term of this Agreement, Consultant shall maintain insurance coverage as set forth in Exhibit B, attached hereto and incorporated herein by reference, at its own cost and expense.

XIV. Employment Practices

Consultant, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.

XV. Licenses, Permits, Etc.

Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature that are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant 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 which are legally required for Consultant to practice its profession at the time the services are performed.

XVI. Records

Consultant shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Agreement in accordance with generally accepted accounting principles and practices.

XVII. Termination

City and Consultant may terminate this Agreement by providing thirty (30) days written notice prior to the effective termination date.

In the event of such termination, City shall pay Consultant for all services actually rendered up to and including the date of termination. Consultant shall deliver to City copies of all drawings, reports, analyses, and investigations whether completed or not, that were prepared or were being prepared under the provisions of this Agreement.

XVIII. Amendments

Any modification or amendment of any provision of this agreement shall be in writing and must be executed by both parties hereto.

XIX. Incidental Beneficiaries

It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to City and Consultant. Nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the City and Consultant that any such person or entity, other than City and Consultant, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

XX. Miscellaneous Provisions

A. Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees according to law.

B. Venue: This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.

C. Enforceability: If any term or provision of this Agreement is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Agreement shall remain binding.

D. Time: All times stated herein or in any other contract documents are of the essence.

E. Binding: This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of Consultant and to the successors in interest of City in the same manner as if such parties had been expressly named herein.

F. Survivorship: Any responsibility of Consultant for warranties, insurance, indemnity, record keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.

G. Waiver: In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

XXI. Entire Agreement

This instrument and any attachments hereto constitute the entire Agreement between the City and Consultant concerning the subject matter hereof.

XXII. Authority to Execute

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

XXIII. Counterparts

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all of the signatories hereto have signed a counterpart of this Agreement. All counterparts so executed shall constitute one Agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

END OF TEXT - SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

COMPANY NAME

(If a corporation, must be signed by two officers of the corporation per Corporations Code section 313.)

Date

Tax I.D. Number

Signature

Signature

Print Name

Print Name

Title

Title

CITY OF FOLSOM, A Municipal Corporation:

Date _____ Elaine Anderson, City Manager

ATTEST:

FUNDING AVAILABLE:

Christa Freemantle, City Clerk Date James W. Francis, Finance Director Date

ORIGINAL APPROVED AS TO CONTENT:

ORIGINAL APPROVED AS TO FORM:

Pam Johns Date Steven Wang, City Attorney Date
Community Development Director

NOTICE: SIGNATURE(S) ON BEHALF OF CONSULTANT MUST BE NOTARIZED. A certificate of acknowledgment in accordance with the provisions of California Civil Code section 1189 must be attached for each person executing this agreement on behalf of consultant. This section provides, at part (b): "Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made."

EXHIBIT A

SCOPE OF WORK

See the following pages.

EXHIBIT B
INSURANCE

NOTE: The word “Consultant” in this Exhibit refers to either “Consultant” or “Contractor” as the term is used in the Agreement/Contract to which this Exhibit is attached.

A. During the term of this Agreement, Consultant shall maintain in full force and effect at all times during the term of the contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

- a. General liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:

Each occurrence:	One Million Dollars (\$1,000,000)
Products & Completed Operations:	One Million Dollars (\$1,000,000)
Personal & Advertising Injury:	One Million Dollars (\$1,000,000)
- e. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the ‘each occurrence’ limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
- f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the ‘each occurrence’ limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
- g. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
- b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).
- c. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars (\$1,000,000)
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- d. If Automobile Liability coverage, as required above, is provided by the Commercial General Liability form, the General Liability policy shall include an endorsement providing automobile liability as required above.
3. **Workers' Compensation**
- a. Workers' Compensation Insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and Employer's Liability coverage.
 - b. Employer's Liability Coverage with a limit not less than \$1,000,000 per accident for bodily injury and disease.
 - c. Consultant shall sign and file with the City department responsible for this Agreement/Contract the Worker's Compensation Certificate contained in the Project Manual.
4. Insurance Required in the Supplementary Conditions: Consultant shall be required to comply with all conditions as stipulated in the Standard Construction Specifications, any supplementary conditions and any special provisions as applicable.
5. Professional Liability Insurance
If required, errors and omissions, malpractice or professional liability insurance with coverage of not less than \$1,000,000 per occurrence.
6. Other Insurance Provisions:
- a. The Consultant's General Liability and Automobile Liability policies shall contain, or be endorsed to contain, the following provisions:
 - i. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insureds on a separate endorsement as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant in a form acceptable to the City Attorney.
 - ii. The Endorsement requirement may be satisfied with express provisions in the insurance policy(ies) which identifies any person or entity required to be included as an insured under the policy. A copy of the declarations page identifying the policy number, and pertinent provisions in the policy providing additional insured coverage, shall be provided to the City.
 - iii. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
 - b. For any claims related to the project, the Consultant's General Liability and Automobile insurance coverage shall be primary insurance in their coverage of the City and its officers, officials, employees, agents, or volunteers, and 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 shall not contribute with it.
 - c. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect

coverage provided to the City, its officers, officials, employees, agents or volunteers.

- d. The Consultant's Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
 - e. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after **30 days prior written notice** by certified mail has been given to the City. Ten days prior written notice by certified mail shall be given to the City in the event of cancellation due to nonpayment of premium.
7. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII**.
 8. The Consultant shall furnish the City with Certificates of Insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, the Standard Specifications, Special Provisions and/or any Supplementary Conditions. **The Consultant shall furnish complete, certified copies of all required insurance policies, including original endorsements specifically required hereunder if requested.**
 9. The Consultant shall report, by telephone to the Project Manager within 24 hours, and also report in writing to the City within 48 hours, after Consultant or any Subcontractors or agents have knowledge of, any accident or occurrence involving death of or serious injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property of the City or others, arising out of any work done by or on behalf of the Consultant as part of the contract.
 10. Such report shall contain:
 - a. the date and time of the occurrence,
 - b. the names and addresses of all persons involved, and
 - c. a description of the accident or occurrence and the nature and extent of the injury or damage.
 11. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
 12. If the Consultant fails to procure or maintain insurance as required by this section, the Standard Specifications, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the contract.
 13. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
 14. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Subcontractors of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.

15. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
16. In the event Consultant carries Excess Liability Coverage, the Excess Liability Coverage shall apply to any and all claims related to the project on a primary and non-contributory basis, and the City's insurance or self-insurance coverage shall be excess to the Consultant's Excess Liability Coverage.