



CITY OF
FOLSOM
COMMUNITY DEVELOPMENT DEPARTMENT

Request for Proposals

Consultant Assistance for Implementation of Electronic Building and Permitting Software

Due: 4:00 pm Monday, October 19, 2020

Via email: dparrington@folsom.ca.us

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INTRODUCTION

The City of Folsom (City) is requesting proposals from independent consulting firms to assist in the implementation of the City's electronic permit tracking software for the Community Development Department. The City is in the process of setting up TRAKiT version 18.1.3, which is a development permit tracking software program from Central Square (formerly CRW, SunGard, and Superion). Firms interested in being considered for this engagement are invited to submit proposals.

Proposals in electronic format (PDF) are due by 4 pm on Monday, October 19, 2020, to the following staff person:

Desmond Parrington, Principal Planner/Project Manager
Community Development Dept.
City of Folsom, California
Email: dparrington@folsom.ca.us

Any questions regarding this process should be directed to Desmond Parrington at 916-461-6233 or dparrington@folsom.ca.us.

BACKGROUND

The City of Folsom is a charter city that was 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, 2019, the City of Folsom's population was 81,324.

The City's Community Development Department (CDD) in conjunction with the City's Information Services (IS) Division and our vendor, Central Square Technologies (CST), are responsible for installing, configuration, implementing and maintaining TRAKiT, the permit tracking software. The Community Development Department handles all aspects of the development review and approval process for the City of Folsom. The Department consists of four divisions: Planning, Building, Development Engineering and Code Enforcement. TRAKiT is to be used by all divisions to handle the tracking, review and issuance of development related-permits as well as development projects. On average, the City handles approximately 5,000 building permits per year as well as hundreds of planning applications and entitlements.

Current Permitting System Technology

The City has an existing contract with Central Square from 2016 for the installation and setup of GeoTRAK-Property Management, which includes GeoTRAK, PermitTRAK, ProjectTRAK, AEC TRAK, LicenseTRAK, Workspace-Dashboard, and the Reports-Reporting Module. In addition, the contract included iTRAKiT-Inspect & Code, TRAKiT GIS Standard, TRAKiT9 Regulatory Licensing, and TRAKiT-ProjectDox Integration. In November 2018, the City also purchased eTRAKiT Citizen Portal, eTRAKiT Credit Card API, the TRAKiT GIS Advanced Engine, VoiceTRAK Services, and VoiceTRAK-Subscription Services (a Third-Party Service). The City currently has a contract with Avolve for ProjectDox for electronic plan check and that contract includes ProjectDox integration with TRAKiT. Finally, in 2020, the City contracted with Central Square again to install Fusion, which is designed to facilitate communication between all of Central Square's programs as well as other programs. The City's current payment vendor is Automated Merchant Systems (AMS), but it is anticipated that the City will be changing to PAYA this year.

In late 2017, the City began the process of working with Superior (now Central Square) to install, setup and configure TRAKiT and all of its components. While the programs have been installed on the City's Microsoft SQL server, the programs do not currently work as expected. As a result, the City continues to use NaviLine (green screen version), which is installed on-premises in an older IBM AS/400 server. NaviLine Building is used for all building permits, while NaviLine Planning & Engineering is used for planning, engineering, and tree permits. NaviLine Building and NaviLine Planning & Engineering regularly communicate with the City's NaviLine Land Management and NaviLine Utilities programs. It also regularly generates a .txt file that is uploaded into ONESolution Finance (the City's finance and accounting software). These actions are necessary to track payment information as well as identify when addresses are created, and City utility service is required.

Under a separate contact with Avolve Software, the City launched ProjectDox in late April 2020 to provide electronic submittal and electronic plan review for customers in light of the COVID-19 pandemic. ProjectDox 9.8 is currently installed on an on-premise Microsoft server.

Current Permit Tracking Process

As noted above, the City currently uses a combination of NaviLine along with Avolve's ProjectDox software for electronic plan review to handle building, planning, and engineering applications, and permitting. These two systems do not communicate with one another so double entry is required if a project involves plan review.

In the current process, applicants will either drop off a paper application and payment at the counter or they will email the City a completed PDF of the application and then will mail in payment. No online payment option is currently available. City Community Development Department (CDD) staff will then enter the project info into NaviLine's Building module for tracking all building permits and some engineering permits (e.g., grading permits). If electronic

plan review is required, then staff will input the project information using the same NaviLine project number into ProjectDox using the Building workflow. Upon the approval of the submitted plans, the plans are stamped, and a building permit is provided electronically to the applicant.

Building and Engineering inspection requests are handled online through a Microsoft Office form. Phone requests are no longer used. The Certificate of Occupancy forms are still issued in paper though staff is working to create a fillable PDF that can be completed electronically.

If it is an engineering project, planning project or tree permit application then it will be entered into NaviLine's Planning & Engineering module and then if electronic plan review is needed it will be entered into ProjectDox using the Planning & Engineering workflow. Currently, Engineering and Planning projects are input into NaviLine's Planning & Engineering, but only basic information such as project name, location, and brief description are included. Engineering maintains its own Access database outside of NaviLine to track Engineering projects and Planning has an Excel spreadsheet that tracks planning projects.

Payment is handled through the counter or via mail and only cash or checks are accepted. A Click2Gov website was established approximately 10 years ago to allow customers to check the status of their building permit application and to pay with a credit card online, but the site has not been setup to accept online payment. In addition, the site only works for building permit applications not for planning or engineering permits or entitlements.

SCOPE OF WORK

The Consultant will be expected to assist the City's project manager, Community Development staff, and occasionally Information Systems (IS) staff with the setup, configuration and implementation of TRAKiT in order to ensure a successful launch and use of the TRAKiT software. This will include assistance with the configuration of TRAKiT so that it works correctly with the other key programs necessary to allow for TRAKiT to function properly. Such tasks include but are not limited to:

Primary Tasks

- **Review of Workbooks:** The Consultant will review the City's existing PermitTRAK, ProjectTRAK and eTRAKiT workbooks to ensure they are properly configured and will provide recommendations on any necessary modifications.
- **Improvements:** The Consultant will also be expected to include recommendations aimed at improving various aspects of the program and workflow. These may include recommendations for the workbooks, the processes, TRAKiT setup, eTRAKiT portal, PermitTRAK or ProjectTRAK tasks, etc.
- **Integrations:** In order to work properly, TRAKiT will need to work with other City programs and vendors including ESRI's ArcGIS 10.8, Avolve Software's ProjectDox, NaviLine Land Management, NaviLine Utilities, ONESolution Finance, and work with

the payment vendor (either AMS or PAYA). Some of these, if not all, may require custom integrations. The Consultant may need to assist City staff and work with the vendors (i.e., Central Square, Avolve, etc.) to complete these integrations.

- **Data Migration:** Under the current contract, Central Square is responsible for the data migration of all open and active records from NaviLine Building and NaviLine Planning & Engineering into TRAKiT. During this work, there have been problems where fields in NaviLine have not been aligned correctly with fields in TRAKiT. The Consultant may be needed to assist staff as they troubleshoot problems with this data migration.
- **Reports and Forms:** Most CDD forms will need to be converted into forms to be used for TRAKiT. Some forms have already been set up, but others still need to be prepared. Staff will need instructions and guidance from the Consultant on how to set up the forms in TRAKiT and when SSRS needs to be used to set up the forms.
- **Testing:** The Consultant will assist City staff with the testing of all aspects of the TRAKiT system including PermitTRAK, ProjectTRAK, eTRAKiT, iTRAKiT, VoiceTRAK, etc.
- **Training:** While Central Square conducted some basic training with City staff, the TRAKiT system was not working properly at the time. The CDD staff will need additional training with the new system. As part of the training, it is critical that City staff understand what parts of the TRAKiT system the City can configure or modify and what elements must be addressed by Central Square support.
- **Schedule:** With the cooperation of Central Square staff, the City hopes to have the TRAKiT system operational within 6 months. Consultant assistance may be needed to review the schedule and make recommendations for changes.
- **Contract Review:** If the Community Development Department decides to pursue any additional upgrades, the Consultant will assist City staff in the review of any proposed amendments to the contract and negotiations with Central Square.
- **Ability to Work with Multiple Groups:** The Consultant will need to work not only with CDD staff but also with the City's Information Services staff, including GIS staff as well as with other City departments that may use TRAKiT, such as Fire, Utilities and Public Works, and the software vendors under contract with the City.

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.

- **Front-Facing Customer Web Portal for eTRAKiT.** Central Square notified the City that eTRAKiT does not currently comply with the Web Content Accessibility Guidelines

(version 2.0). It is not clear when eTRAKiT will be WCAG-compliant or when it will be replaced by Citizen Engagement, which is expected to be WCAG 2.0-compliant. The City is interested in exploring whether a WCAG-compliant portal could be developed which interfaces behind the scenes with eTRAKiT and TRAKiT.

- Preparation of a Database for Historic Permit Data. Since the City has been using NaviLine for over two decades, the City will not be migrating most of this data into TRAKiT given the cost. Only active projects will be migrated into TRAKiT. However, the City still needs a way to be able to look up closed projects. The data can be exported out of NaviLine as .txt or .csv files and the City can obtain the field descriptions from NaviLine. The Consultant would set up a database with all the historic NaviLine permit and project data as well as create a search tool that would allow City staff to look up closed projects and permits. This database would be housed on the City's Microsoft server.

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 \$35,000 and \$50,000.

PROPOSAL REQUIREMENTS

The proposal should contain the information outlined below. 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.

The proposal should be prepared to include the following information:

- Transmittal Letter. A letter signed by an authorized representative clearly stating the firm's understanding of the work to be performed and its capabilities to that work.
- Qualifications and Experience. Describe the qualifications of the firm, focusing particularly on experience in completing similar engagements for public agencies of similar scale and objectives. A minimum of three specific examples is preferred.

- Project Manager. Provide a professionally oriented bio of the project manager to be assigned throughout this engagement. The bio should highlight experience most relevant to this scope of work.
- Approach. Describe the general approach if your firm is selected for this engagement, including key tasks, deliverables, anticipated level of effort and timelines consistent with the Scope of Services.
- References. Provide two comparable references, including name and contact information (phone number and email address are required).
- Fee Information. Since this contract is based on time and materials, please describe the hourly fee rate(s) for the proposed scope of services.
- Optional Tasks. As noted earlier, the City is considering two optional tasks. In the proposal, 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.

The City reserves the right to negotiate the scope of services and fee terms as mutually agreed to by the parties. Furthermore, the City reserves the right to reject all proposals. The selection of the firm will be based on the selection criteria listed on the following page.

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 "TRAKiT Assistance RFP." Deadline for inquiries is Wednesday, October 14, 2020 at 4:00 pm (PDT).

Submittals

Interested firms are invited to submit an electronic copy (PDF format) of their proposal to the following email address:

dparrington@folsom.ca.us

Desmond Parrington, AICP, Principal Planner/Project Manager

Proposals will be accepted until **Monday, October 19, 2020 at 4:00 PM (PDT)**.

SELECTION SCHEDULE

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

October 5, 2020	RFP Issued
October 19, 2018	Proposals Due at 4:00 pm

October 20 and 21, 2020	Consultant Interviews (if needed)
October 22, 2020	Consultant selection and notification
November 2, 2020	City Contract Approval

It is anticipated that award of the formal contract with the City of Folsom will occur on November 2, 2020 or earlier. 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 the notice-to-proceed and shall be completed in accordance with an agreed upon schedule. The Consultant shall not begin work nor incur any costs associated with any work identified herein without an explicit written notice to proceed.

SELECTION CRITERIA AND PROCESS

The City shall select finalists from the proposals received by the deadline. The City may request interviews with the Consultant(s) before final selection. Proposals shall be scored on a 100-point scale:

- Relevant Experience of Firm/Project Manager (30 pts)
- Familiarity with TRAKiT [or other Comparable Permit Tracking Software] (25 pts)
- Understanding of the Development Process (20 pts)
- Client References (15 pts)
- Cost Effectiveness (10 pts)

CONTRACT CONDITIONS

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

ATTACHMENT A
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.