



**REQUEST FOR PROPOSAL (August 26, 2022)**  
**Folsom Boulevard Class I Bicycle and Pedestrian Overcrossing Feasibility Study**

**I. INTRODUCTION:**

The City of Folsom (City) is seeking an experienced Consultant Team to prepare a Feasibility Study Report (FSR) for the implementation of the Folsom Boulevard Class I Overcrossing. The objective of the FSR is to consider possible alternatives for establishing an east-west gap closure across Folsom Boulevard and the feasibility for its implementation. The City is currently considering a Class I multi-use overcrossing at an undetermined location between Blue Ravine Road and Glenn Drive. The connection must be safe, convenient, and cost-effective.

The overcrossing alternatives will be presented to the general public, property owners, and potential stakeholders in a series of public meetings, as part of the selected consultant's responsibilities, to identify a community preferred alternative. Upon successful selection, the preferred alternative will be used as the basis for grant funding requests and will serve as the project description for the preliminary engineering (PE) phase, neither of which are included in this agreement.

Design Considerations: Overcrossing alternatives should consider various construction types suited to the conditions. The structure footprint should generally remain outside of the existing Sacramento Regional Transit (SacRT) right-of-way. Architectural, cultural, and environmental components should reflect the City's and surrounding area character and will be further developed through the community outreach process. An undercrossing was determined to be infeasible at an earlier stage of this project and as such will not be considered for this feasibility analysis.

Questions regarding this RFP may be addressed to:

Brett Bollinger  
Senior Trails Planner  
[bbollinger@folsom.ca.us](mailto:bbollinger@folsom.ca.us)  
(916) 461-6632

**II. PROJECT BACKGROUND:**

A grade separated Class I overcrossing along Folsom Boulevard would connect Folsom's over 50 miles of Class I trails, plus another 30 miles of planned Class I trails in the Folsom Plan Area (FPA), to the regional trail network. The high-volume Folsom Boulevard is a major barrier in providing a safe crossing for bicyclists and pedestrians. The overcrossing will be a gateway to connect residents, workers, and visitors to a larger network of Class I trails in the region. The overcrossing would provide a seamless connection between the

City's Class I trails network and the regional American River Parkway trails, providing users access to over 80 miles of trails in the region and connecting users to cities, communities, and neighborhoods between Folsom and downtown Sacramento.

The City of Folsom is committed to creating an off-road trail network that can be used by people of all ages and abilities. The Folsom Boulevard Trail Overcrossing was identified in the City's Active Transportation Plan (ATP) as the best solution for trail users to safely cross four lanes of vehicle traffic and an active (and expanding) light rail line. The 2022 ATP can be found on the Folsom website at: [Trails and Bikeways | Folsom, CA](#).

The City of Folsom has also considered the needs of future active transportation users. An overcrossing would provide a safe, direct access for residents east of Folsom Boulevard to the American River Parkway Trail (ARPT) and businesses, including the communities and neighborhoods that border the ARPT. The overcrossing will be a gateway to connect residents and visitors to a larger network of trails in the region. The overcrossing provides a seamless connection between the regional, 15-mile Humbug Willow Creek (HBWC) Trail east of Folsom Boulevard and the 32-mile American River Parkway Trail (ARPT), providing users access to over 80 miles of trails in the region and connecting users to downtown Sacramento.

Public outreach will be a major component of the feasibility study. All stakeholders will be notified of public outreach opportunities. Stakeholders involved with the study would include residents, City departments, SacRT, State Parks, businesses, and local community groups. Public outreach would be in the form of focus groups, City Council meetings, Parks and Recreation Commission meetings, Traffic Safety Committee meetings, and community outreach meetings.

### **III. PROJECT DESCRIPTION:**

The FSR for the Folsom Boulevard Overcrossing would evaluate locations for the span to cross over Folsom Boulevard south of Glenn Drive and north of Blue Ravine Road, connecting the Folsom Parkway Rail Trail east of Folsom Boulevard and the Humbug-Willow Creek Trail (HBWC) to the American River Parkway Trail (ARPT) west of Folsom Boulevard (see **Attachment A**).

Once developed as part of the FSR, the overcrossing location alternatives will be presented to the general public, property owners, and potential stakeholders in a series of public meetings to identify a community preferred alternative. Upon successful selection, the preferred alternative will be used as the basis for future grant funding requests and will serve as the project description.

## **IV. SCOPE OF WORK**

### **A. Lead Agency:**

The City of Folsom Parks and Recreation Department will be the Lead Agency for the project. The City desires the Feasibility Study Report (FSR) to be completed within 12 months of an executed contract. Anticipated executed contract to be approximately **November 1, 2022**.

### **B. Scope of Services:**

This FSR requires a full-service team with the understanding and ability to deliver a wide range of services including but not limited to project management, public workshop facilitation, bridge design, and cost estimation. Right-of way acquisition, preparation of environmental studies, and permitting are not a part of the scope; however, the consultant must have a working understanding of these project components to adequately study and provide assumptions for their implementation and cost. The consultant should assume all subsequent phases are federally funded.

The scope of service for this agreement shall include all tasks required to prepare a detailed FSR with components as outlined below. At a minimum, the FSR should include the following:

1. Executive Summary (provide summary of all available background information and discussion regarding consistency with the City's General Plan, Active Transportation Plan and Local Roadway Safety Plan)
2. Existing Conditions (complete inventory of existing physical and regulatory conditions)
3. Project Goals
4. Opportunities and Constraints
5. Overcrossing Alternatives (provide two)
  - Alignment Selection Criteria
  - Environmental Considerations (identify likely studies, clearances and permits)
  - Utility Considerations
  - Bridge Types and Design Criteria
  - Probable Impacts and Mitigation Alternatives
  - Architectural and Cultural Considerations
  - Right-of-Way Assumptions (study preliminary R/W needs and identify potential acquisitions, TCEs, and cost estimates)
  - Construction Cost Estimates
6. Comparison of Alternatives (include narrative and detailed matrix)
7. Summary of Community Input
8. Community Preferred Alternative
9. Final Cost Estimate

10. Construction Access, Staging, and Traffic Impacts

11. Conclusions

### **C. Submittals**

Designs for alternatives and the subsequent preferred alternative shall be submitted and discussed with City staff at 50%, 95% and 100% completion. The written FSR shall be submitted at and discussed with City staff 50% and 100% completion.

### **D. Outreach**

The consultant team should assume the following outreach schedule for development of the FSR:

- Two (2) focus group meetings (groups to be determined)
- Two (2) Community Outreach Meetings to introduce the project and present alternatives, select the community preferred alternative, and present and refine the preferred alternative.
- Three (3) public meetings including City Council, Planning Commission, and Parks and Recreation Commission.

The consultant will be responsible for all outreach efforts and organizing meetings.

Alternatives to be presented at Community Outreach Meetings must include high quality 2D and 3D renderings.

To be provided as an “optional” outreach task, the consultant shall host a webpage providing project news, updates, surveys, and to solicit feedback.

## **V. Federal Requirements**

The Feasibility Study Report (FSR) is being funded from the federal bipartisan infrastructure bill, American Rescue Plan Act (ARPA). Since federal funds are being used to conduct the FSR, the selected consultant could be subject to federal requirements, including a pre-award audit that may be required pursuant to Caltrans Local Assistance Procedures Manual (LAPM) Chapter 10 Consultant Selection and Disadvantaged Business Enterprise (DBE) requirements ([Local Assistance Procedures Manual \(LAPM\) Forms | Caltrans](#)).

### Disadvantaged Business Enterprise (DBE)

The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).

Reference **Exhibit 10-I, Notice to Proposers DBE Information** and **Exhibit 10-J, Standard Agreement for Subcontractor/DBE**.

The City of Folsom’s DBE Goal is 10%.

## **VI. Proposal Format Requirements**

Each response to this RFP shall include the information described in this section. Provide the information in the specified order. Failure to include all of the elements specified may be cause for rejection. Additional information may be provided as an appendix but should be succinct and relevant to the goals of this RFP. Excessive information will not be considered favorably.

Proposals are to be submitted as hard copies, no email submissions in place of hard copies allowed. All copies of the proposal shall be bound or contained in a loose-leaf binder. Document pages shall be 8.5 x 11 inches. An occasional 11" x 17" sheet folded to 8.5" x 11" may be used for exhibits or graphics (narratives are to be excluded). Documents shall include section dividers, tabbed in accordance with this Section, as specified in the subsections below. Attachments (if needed) may be included. Font size shall be eleven (11) or larger, and type shall be Times New Roman, Arial, Calibri, or Cambria. Margins shall be a minimum of one half-inch (1/2") on all sides.

The proposal shall include the following sections in order:

### **A. Title Page**

The Title Page (front cover) shall include title, the name of the respondent's firm, address, and date.

### **B. Cover Letter**

Please include a cover letter (two pages max) describing your firm's interest and commitment to providing service. The cover letter should refer to this RFP by title and date and shall include the name, email address, and telephone number of a contact person within your company. Include a statement that your proposal is a firm offer to enter into a binding agreement with the City in accordance with the provisions of this RFP and shall remain valid for a period of not less than one-hundred-twenty (120) days from the date of submittal.

The cover letter shall be signed by an officer empowered by the firm to sign such material and thereby commit the Consultant to the obligations contained in the RFP. Include statement to that fact.

### **C. Table of Contents**

The Proposal must include a table of contents that clearly identifies material by section and page number.

### **D. Executive Summary**

#### Company Background

Provide a brief summary and profile of the firm's qualifications in relation to the requested services described in Item IV.B. "Scope of Service" of this RFP. Include subconsultants on your team, if any. If you will use subconsultants, identify the services which would be completed by your staff and the services completed by theirs.

Your summary and profile should include: a brief history of the firm, office location(s), services offered, expertise relevant to the requested scope, and size and availability of staff to commit to requested task orders.

#### Qualifications

Provide a summary of the firm's qualifications. This section may also highlight additional qualifications if relevant to the Scope of Service.

#### Relevant Project Experience

List and provide a narrative summary of related project experience. Include a project description and services rendered. Discuss whether the services were completed on time and within budget.

### **E. Scope of Service**

Provide a well-conceived service plan. Include a full description of major tasks, subtasks and schedule of deliverables. This section of the proposal shall establish that the Proposer understands the City's objectives and work requirements and Proposer's ability to satisfy those objectives and requirements.

The scope provided herein, including any service items added, omitted, and/or modified during agreement negotiation, will be inserted into the Consultant agreement. Refer to **Attachment B** entitled "Design Consulting Services Agreement" for a sample agreement.

### **F. Proposed Innovations (Optional)**

The Proposer may also suggest technical or procedural innovations that have been used successfully on other engagements and which may provide the City with better service delivery. In this section discuss any ideas, innovative approaches, or specific new concepts included in the Proposal that would provide benefit to the City.

### **G. Project Schedule**

Provide a proposed schedule to accomplish all of the required tasks; include review/approval milestones and public meetings.

### **H. Staffing Plan and Organization Chart**

The proposal should provide a staffing plan that shows anticipated staffing for the duration of the agreement. Identify all positions available for the Project and their responsibility. Include an organizational chart showing the structure of your firm.

### **I. Resumes**

Provide a brief resume for each key staff member including their education background, licensing (if applicable), availability, and project experience.

## **J. References**

Provide at least three (3) client references (names and current phone numbers) from recent work similar to this scope of services. Include a brief description of each project associated with the references and the role of each team member.

## **K. Cost Proposal and Rates**

This section of your proposal shall include all costs to provide the services desired. Include a detailed cost schedule with all proposed staff, the hours each person will devote to given task and all reimbursable services to complete work described in the proposed Scope of Service. The cost proposal must also include current hourly rates for all project staff including subconsultants, regardless of tier.

## **VII. Consultant Selection**

It is the City's intent to select the most qualified and responsive firm. This determination will be made by the City in its sole discretion. It is the City's desire to have the final report delivered in a timely manner. An accelerated timeline will be seen favorably. The firm(s) submitting the top-ranked proposal(s) may be invited for interviews. Consultants will be evaluated in accordance with the subsections below.

### **A. Tentative Selection and Award Schedule**

The following represents a tentative selection schedule for this consultant procurement process. Any change in the scheduled dates for final questions or proposal submission date will be advertised in the form of an addendum to this RFP. The schedule for the evaluation process and other future dates may be adjusted without notice.

Publish RFP	August 26, 2022
Proposal Submission Date	September 30, 2022 (no later than 2:00 p.m.)
Proposal Evaluation	October 3, 2022 – October 7, 2022
Interviews (if conducted)	October 10, 2022 – October 14, 2022
Consultant Selection	October 14, 2022
City Council Contract Authority	October 25, 2022
Contract Approval and Execution	October 26, 2022 – November 11, 2022

**B. Evaluation Criteria:** The following evaluation criteria and rating schedule will be used to determine the most qualified and responsive firm(s).

#### **1. Project Understanding (20 Points)**

- Clear Understanding of the Project
- Adherence to instructions within the RFP
- Quality and insight of the Scope of Services

#### **2. Qualifications (20 Points)**

- Thorough explanation of qualifications
- Possess additional qualifications for the betterment of the project

**3. Schedule (20 Points)**

- a) Ability and commitment to deliver the project in a timely fashion
- b) Detailed proposed schedule

**4. Past Experience in Performing Similar Projects (25 Points)**

- a) Experience providing service on projects of similar scope and size
- b) Experience providing public outreach and building consensus
- c) Specific staff experience on similar projects

**5. Cost (15 Points)**

- a) Provide a cost proposal indicating breakdowns per task and a summary of the Consultant fee
- b) Total fee shall be given as hourly with a not-to-exceed amount
- c) Include a budget for estimated reimbursable expenses and charges. This will be considered in the total fee proposal

**TOTAL POINTS (100)**

Reference checks will be performed by the selection committee for the top-ranked firms.

**VIII. SELECTION PROCESS**

Proposals will be reviewed for responsiveness and screened by a selection committee in accordance with the above criteria. The firm(s) submitting the top-ranked proposal(s) may be invited for interviews.

City may elect to interview one or more Consultants. Interviews (if any) will be determined after review of the proposals submitted. Interviews, if held, will be scored and ranked separately from the written proposals. However, the City may use criteria similar to the above evaluation criteria to score and rank firms' responses to interview questions or instructions, in addition to other relevant information provided or requested.

**IX. RIGHTS RESERVED BY THE CITY AND CONTRACT REQUIREMENTS**

- A.** The City reserves the right to reject any and all proposals.
- B.** The City reserves the right to waive informalities in proposals.
- C.** The City is not obligated to award all tasks of the proposal selected but may award any combination of tasks best suited for completion of the project as the City envisions it. Elements and/or tasks may be added or deleted at the discretion of the City pending negotiation of the scope of work and compensation.
- D.** The Consultant selected to perform the work will be required to complete the standard City of Folsom Design Consulting Services Agreement (**Attachment B**) and must meet the minimum insurance requirements stated therein.



- E. The Consultant shall require each Subconsultant, to the extent of the work to be performed by the Subconsultant, to be bound to the Consultant by terms of the City's Design Consulting Services Agreement, and to assume toward the Consultant all the obligations and responsibilities which the Consultant assumes toward the City.

## **X. PROPOSAL DUE DATE**

Four (4) hard copies of the proposal and one electronic PDF version of the proposal, on a flash drive or emailed, are **due** at the City of Folsom City Clerk's Office **no later than 2:00 p.m., Friday September 30, 2022**. Submit proposals in a sealed envelope on which the project name is printed to:

Brett Bollinger  
Senior Trails Planner  
City of Folsom  
**C/O City Clerk's Office**  
50 Natoma Street  
Folsom, CA 95630

## **XI. ATTACHMENTS**

- A. Folsom Boulevard Class I Overcrossing Area Map
- B. Design Consulting Services Agreement (Sample)

**Attachment A**

**Folsom Boulevard Class I Overcrossing Area Map**





hamlin Park

Rollingwood Bluffs

Jenkins Educational Solutions

Lake Natoma Island

Feasibility Study Area

Mississippi Bar Drive River Access

SIERRA ESTATES

Kikkoman Foods, Inc

SUNCOUNTRY FOLSOM

FOLSOM HEIGHTS

Glenn Station Park & Ride

One

Epic Wireless Group

Out of Bounds Craft Kitchen and Biergarten

Business Central

Goodwill

Folsom Lake Toyota Service Center

WinCo Foods

Dos Coyotes Border Cafe

CRESTLEIGH-NATOMA STATION

COVENTRY AT NATOMA STATION

Corner Tavern & Grill

Caliber Collision

GEKKEIKAN SAKE (USA), INC

Quick Quack Car Wash



**Attachment B**

**Design Consulting Services Agreement (Sample)**

Project:

**CITY OF FOLSOM**  
\_\_\_\_\_  
**DEPARTMENT**  
**AGREEMENT FOR DESIGN CONSULTING SERVICES WITH**  
\_\_\_\_\_

This Agreement is entered into as of \_\_\_\_\_, ("Effective Date") by and between the City of Folsom, a Municipal Corporation, hereinafter referred to as "City" and \_\_\_\_\_ a (California Corporation, Sole Proprietorship, Partnership, Limited Liability Company) hereinafter referred to as "Consultant."

**WITNESSETH:**

WHEREAS, City desires \_\_\_\_\_; 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**

The term of this Agreement shall commence on the Effective Date and shall continue until all services provided for in this Agreement have been performed or for one year, whichever is sooner, 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 \_\_\_\_\_ (days/months) after Agreement is fully executed. Deviations from time schedule may be made with the approval of the \_\_\_\_\_ 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. Invoices that include charges for services rendered during the month of June shall not include any charges incurred after June 30th. A separate invoice shall be submitted for all services rendered after June 30th.

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

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:

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## **VI. Professional Services**

Consultant is an \_\_\_\_\_ firm, licensed by the State of California. 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 \_\_\_\_\_ Director.

This agreement shall constitute written approval for Consultant to subcontract with \_\_\_\_\_ 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 \_\_\_\_\_ 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 that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of Consultant, its subcontractor, sub consultants, agents, and employees ("Claims"). 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. 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. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified 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, agents 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's share of the cost to defend shall not exceed Consultant's proportionate percentage of fault, and 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.

For consulting services related to engineering design, Consultant agrees to comply with the terms of Exhibit C that is attached hereto and incorporated herein by reference.

#### **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.

\_\_\_\_\_  
A California Corporation

*(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 Andersen, City Manager

ATTEST:

FUNDING AVAILABLE:

\_\_\_\_\_  
Christa Freemantle, City Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
Stacey Tamagni, Finance Director

\_\_\_\_\_  
Date

ORIGINAL APPROVED AS TO CONTENT:

ORIGINAL APPROVED AS TO FORM:

\_\_\_\_\_  
Director of \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steven Wang, City Attorney

\_\_\_\_\_  
Date

**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.

SAMPLE

## **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)
  - 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.

## EXHIBIT C

### SPECIAL PROVISIONS (ENGINEERING DESIGN)

#### **1. Record Retention**

The Consultant agrees to keep proper books of records and account in which complete and correct entries will be made of payroll costs, travel, subsistence and field expenses. Said books shall, at all times, be available for at least three (3) years after final payment for reasonable examination by the City.

#### **2. Accuracy and Completeness**

The Consultant has total responsibility for the accuracy and completeness of the investigations, calculations, reports, plans and related designs, specifications, and estimates prepared for the Project and shall check all such material accordingly. The plans will be reviewed by City for conformity with Project objectives and compliance with City Standards. Reviews by City do NOT include the detailed review or checking of major design components and related details or the accuracy with which such designs are depicted on the plans. The responsibility for accuracy and completeness of such items remains solely with the Consultant.

The Consultant shall provide an independent analysis of all structural computations and plans submitted to the City. The independent analysis shall be performed by an engineer licensed in the appropriate discipline. The signature of the checker shall appear on all plan sheets.

In the event that the items requiring interpretation in the drawings or specification are discovered during the bidding period, said items shall be analyzed by the Consultant for decision by City as to the proper procedure to be followed. Corrective action taken will either be in the form of an addendum prepared by the Consultant and issued by City or by a covering change order after the award of the construction contract.

During construction, the Consultant shall furnish all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders resulting from negligent errors and omissions of the Consultant. Such drawings shall be requested in writing from the Consultant by City and shall be furnished at no additional

cost to City. The original tracing(s) of the drawings and contract wording for change orders shall be submitted to City for duplication and distribution.

### **3. Professional Seal**

The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of the certificate, and signature of the professional engineer responsible for their preparation. The signature and registration number of the checker shall also appear on all sheets.

### **4. Sole Source Materials or Equipment**

The Consultant or its subconsultants shall not incorporate in the design any materials or equipment of single or sole source origin without prior written approval of the City.

### **5. Documentation**

The Consultant shall document the results of all work to the satisfaction of the City. This may include, but not be limited to, preparation of progress and final reports, calculations, and construction records.

### **6. Ownership of Documents**

Tracings, plans, specifications, maps and as-built plans prepared or obtained under this Agreement shall be delivered to and become the property of the City. The basic survey notes and sketches, charts, computations and other data prepared under this Agreement shall be made available upon request to the City without restriction or limitation on their use. City may revise documents on other projects at its own risk.

### **7. Copyrights**

The City shall have the right to use of reports, designs, details, or products developed as part of this Agreement for purposes of maintenance, remodeling or reconstruction of existing facilities, or construction of new facilities without additional compensation to the Consultant or without restriction or limitation on its use. The City will hold harmless the Consultant for any use or reuse of these reports, designs, or details for purposes other than the project associated with this Agreement unless the City obtains a validation of

that use or reuse from the Consultant.

## **8. Changes in Work**

The City reserves the right to change the scope of work as necessary to complete the project. In the event that such a change would materially change the amount or character of the work reasonably considered necessary to be performed under the original scope of this Agreement, an Agreement adjustment shall be negotiated based upon the estimated number of hours the revised or added task would consume based upon the unit rates as shown in Exhibit A.

## **9. Construction Plans and Specifications**

All construction plans prepared in accordance with this agreement shall be ink on Mylar drawings using the release of AutoCAD by Autodesk that is compatible with the City's release at the time of the Agreement. Library files associated with the plans shall be included with this submittal. Final as-built drawings will be on mylar.

All construction plans and specifications prepared in accordance with this agreement shall be submitted in final form to the City on a flash drive as well as a hard copy of final specifications. "Microsoft Word" software shall be used for producing specifications.

## **10. Compliance with Law**

Consultant shall prepare plans and construction documents in compliance with all applicable requirements of all federal, state, and local laws, codes, rules, regulations, ordinances, and standards, including, but not limited to the requirements of The American Disabilities Act.

SAMPLE