



CITY OF
FOLSOM
DISTINCTIVE BY NATURE

Request for Proposals

**Development Processing Fee Study
and
Technology Fee Nexus Study**

Due: 4:00 pm Wednesday, June 7, 2023
Community Development Department
50 Natoma Street, 2nd Floor, Public Counter
Folsom, CA 95630
or via email: jkinkade@folsom.ca.us

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I. INTRODUCTION

The City of Folsom, California is currently accepting proposals from qualified firms to perform a study of user fees charged for services associated with the review and processing of development applications, permits, and entitlements. including recommendations for the revision, elimination, and/or implementation of additional development processing fees where appropriate. A second task is to prepare a nexus study for a new technology fee to support the purchase, upgrade, and maintenance of hardware and software associated with the processing of development applications. Proposals received via the Request for Proposals (RFP) process will be reviewed by a selection committee comprised of City staff in the City of Folsom.

Proposals in either physical or electronic (PDF) format are due by 4:00 pm on Wednesday, June 7, 2023, to the following member of staff:

Josh Kinkade, Associate Planner
Community Development Dept.
City of Folsom, California
Email: jkinkade@folsom.ca.us

Any questions regarding this process should be directed to Josh Kinkade at 916-461-6209 or jkinkade@folsom.ca.us.

II. 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 July 1, 2021, the City of Folsom's estimated population was 81,224.

The objective of the RFP is to receive proposals for reviewing and updating the City of Folsom's development processing fees, recommending additional fees (if necessary), and creating a nexus study for a new technology fee. The budget for the development processing fee update project is \$55,000 and the project needs to be completed by September 30, 2023.

Staff:

The City of Folsom's Community Development Department houses the Planning, Building, Development Engineering, Arborist, and Code Enforcement divisions. A project manager has been assigned to the project and will be the Consultant's primary point of contact.

III. SCOPE OF WORK

The selected Consultant will assist City staff in reviewing and updating the City of Folsom's development processing fees, recommend additional fees (if necessary), and, if within grant funding budget and timeline, create a nexus study for a new technology fee.

Project Goals:

The objective of the RFP is to receive proposals for a Development Processing Fee Study for the City of Folsom's Community Development Department (CDD) that includes reviewing and updating all fees and charges for services, recommending additional fees, and ensuring compliance with all applicable laws. Fees include Planning fees, Building fees, Development Engineering fees, and Arborist fees. In addition, the proposal should include a Technology Fee Nexus Study as an optional task to establish a new fee that supports the Department's shift to electronic and online development processing.

City staff have identified the following goals for the fee study effort:

1. Examine whether a reasonable relationship exists between the Department's costs of providing service and its current fees;
2. Review and update all development processing fees and charges for Department services so that they are comparable to those in the region and to the greatest extent possible cover the Department's cost to provide the service;
3. Make the fee structure easier for all parties to understand; and
4. Establish a new technology fee to support the Community Development Department's ongoing efforts to provide online submittal and electronic review process for all permits and projects.

Primary Tasks:

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

1. Provide the City with an anticipated schedule for the work broken down by phase with a goal of completion by September 30, 2023 (3 months)
2. Conduct a comprehensive study of the City's existing development processing fees, rates, and charges. The review should identify the total cost of providing each CDD service in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees and charges by public entities. Existing Development Engineering, Arborist and Planning and fees subject to review are provided in Attachment A. Building fees, including a valuation table, hourly plan check, production home permit, permit transfer, permit re-instatement, permit extension, alternate means and materials, temporary certificate of

occupancy, overtime inspection, and scanning fees will be reviewed and updated as part of this effort as well.

3. Provide a memo recommending the fee or fee range to be charged for each applicable service including new permits and services envisioned in the City's Zoning Code Update. The memo should recommend cost recovery strategies and identify best practices in establishing development processing fees. The memo should review the structures of the fees themselves to ensure developers, residents, and members of the public are able to clearly follow and understand which fees might apply to a given project.
4. Compare service costs with existing recovery levels inclusive of areas where the Community Development Department is currently charging for services as well as areas where the City should charge in relation to Community Development Department practices and/or the practices of similar or neighboring cities.
5. Provide the City with electronic copies of the final fee study (including comparisons to other comparable jurisdictions in the region) in PDF and Microsoft Word formats and related schedules and cost documentation in Microsoft Excel format.

Optional Task:

6. If feasible within the grant-funded budget and required timeline, prepare a nexus study for a new technology fee in accordance with the California Mitigation Fee Act (California Government Code Section 66000 *et seq.*, also known as AB 1600) and recommend a fee amount to be charged to support technology services for the Community Development Department.

IV. SCHEDULE

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

May 8, 2023	RFP Issued
May 15, 2023	Consultant Questions Due
May 22, 2023	City Responses Posted
June 7, 2023	Proposals Due at 4:00 pm
June 12-13, 2023	Consultant Interviews (if needed)
June 15, 2023	Consultant selection
June 16, 2023	City Contract Approval

It is anticipated that award of the formal contract with the City of Folsom will occur on June 16, 2023. Following a written notice to proceed to be issued by the City, the Consultant's work shall begin no later than seven (7) days after City approval and shall

be completed in accordance with the agreed upon schedule. The Consultant shall not begin work nor incur any costs associated with any task identified herein without an explicit written notice to proceed.

V. COMPENSATION

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

- All services rendered as described in the Scope of Work, including all labor, equipment, materials, and expenses, the Consultant shall be compensated on a time and expenses basis by task or phase for work completed.
- Funding for this effort comes from a Local Early Action Plan (LEAP) grant from the California Department of Housing and Community Development via Senate Bill 2 (2017). The City and Consultant will be bound by the requirements of that grant. Note that all Consultant work under this grant must be paid for by September 30, 2023.

VI. PROPOSAL REQUIREMENTS

Submittals

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

City of Folsom
Community Development Department
50 Natoma Street
Folsom, CA 95630
ATTN: Josh Kinkade, Associate Planner
jkinkade@folsom.ca.us

Proposals will be accepted until **Wednesday, June 7 at 4:00 PM (PDT).**

Contents of the Proposal:

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.

- Consultant Background: In two pages or less, provide a brief overview of the Consultant assuming contract responsibilities. All proposed sub-consultants must be identified.
- Project Manager. Provide a professionally oriented biography of the project manager to be assigned throughout this engagement. The biography should highlight experience most relevant to this scope of 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.
- 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 Proposal:

Firms are requested to provide a fee proposal that presents the estimated fee. The fee proposal should reflect the scope of work, term, and compensation conditions cited above. If the optional Technology Fee Nexus Study task is in the proposal, please separate the budget allocated to this specific task from the budget for the primary tasks.

Sufficient information should be provided to justify the proposed fee and to serve as a basis for negotiating a contract. The fee proposal should identify personnel, rates, estimated number of hours, type of equipment if required (i.e., vehicles, etc.), and any outside costs for each identified work element.

Inquiries:

All requests for clarifications or interpretations shall be made in writing and emailed to the project manager for the update, Josh Kinkade, jkinkade@folsom.ca.us. Inquiries shall contain the firm's name, contact person, and email address and be titled "Development Processing Fee Study – RFP." Deadline for inquiries is Monday, May 15, 2023 at 4:00 pm (PDT). City staff will post responses to all inquiries in the form of an addendum with the RFP documents at <https://www.folsom.ca.us/business/rfps-and-bids> on or before Monday, May 22, 2023 by 4:00 pm (PDT).

VII. SELECTION CRITERIA AND PROCESS

The selection committee shall select finalists from the complete proposals received before the deadline. The selection committee shall score finalists based on the following criteria:

- Relevant Experience of Firm/Project Team (25 pts)
- Understanding of the Issues (25 pts)
- Proposed Scope of Work (25 pts)

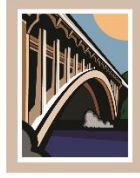
- Client References (15 pts)
- Cost Effectiveness (10 pts)

The top two candidates based on these criteria will then be asked to complete an interview with City staff, which can take place either in-person or virtually. Staff's assessment of this interview will be worth an additional 25 points, and the final consultant choice will be based on the overall score.

VIII. CONTRACT CONDITIONS

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

Attachment A
Development Engineering/Arborist and Planning Fee Schedules



CITY OF
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DISTINCTIVE BY NATURE

Community Development Department
50 Natoma Street, Folsom, CA 95630
ENGINEERING SERVICE FEES

Effective July 21, 2020. All Fees Due Upon 1st Submittal

Engineering Plan Check & Inspection - \$1 to \$10,000	6% of first 10k
Engineering Plan Check & Inspection - \$10,001 to \$99,999	7% next 90k
Engineering Plan Check & Inspection - \$100,000 to \$199,999	5% next 100k
Engineering Plan Check & Inspection - \$200,000 to \$299,999	4% next 100k
Engineering Plan Check & Inspection - \$300,000 +	2% remainder
Assessment District / CFD Payment Processing	\$2,516
Encroachment Permits	\$132 + \$1.91/sq. ft.
Encroachment Permits (annual)	\$2,588
Final Map Amendment / Certificate of Correction	\$2,899
Final Map Check	\$10,463
Lot Line Adjustment / Parcel Merger Review (Engineering)	\$4,696
Parcel Map Check	\$5,605
Research of Engineering Records / Misc. Engineering Services (hourly)	\$101
Review of Right-of-Way / Easement Docs	\$1,302
Right-of-Way / Easement Abandonment	\$2,392
Subdivision Agreement Processing	\$1,057
Transportation Permit	\$19
Transportation Permit (annual)	\$84
Tree Removal Permit – Permitted Removal	\$37
Tree Removal Permit – Nonpermitted Removal	\$428

CITY OF FOLSOM
MASTER FEE SCHEDULE AS OF JULY 1, 2020

PLANNING

A.	Annexation Processing	\$5,379
B.	Appeal	
	Appeal of Staff Decision - Owner Occupied	\$239
	Appeal of Staff Decision - by Developer/Other	\$479
	Appeal of Commission Decision - Owner Occupied.....	\$239
	Appeal of Commission Decision - by Developer/Other	\$479
C.	Code Amendment	\$2,134
D.	Conditional Use Permit (CUP)	
	CUP Review (Major) (deposit)	\$5,528
	CUP Review (Minor) (deposit)	\$2,683
	CUP Modification (deposit)	\$1,567
E.	Condominium Conversion Fee.....	\$11,137
F.	Design Review	
	Multi Family/Commercial (deposit)	\$2,054
	Single Family Dwelling (deposit)	\$58
	Historic District Multi-Family/Commercial (deposit)	\$2,054
	Historic District Single Family Dwelling (deposit)	\$58
G.	Development Agreement Processing (deposit)	\$5,141
H.	Entertainment Permit	\$44
I.	Environmental Review	
	Environmental Impact Review & Report	\$8,128
	Environmental Mitigation Program Monitoring.....	\$5,992
	Initial Environmental Study/Assessment (deposit).....	\$6,051
	Notice of CEQA Determination	\$282
J.	General Plan	
	General Plan Amendment <5 acres	\$4,073
	General Plan Amendment >5 acres	\$8,146

K.	Home Occupation Permit Fee	\$29
L.	Indoor Marijuana Cultivation Permit	\$253
M.	Landmark Tree.....	\$280
N.	Large Family Day Care Home	\$26
O.	Lot Line Adjustment	
	Lot Line Adjustment – Engineering	\$4,696
	Lot Line Adjustment/Parcel Merger - Planning	\$943
P.	Non-Residential Plan Check Fee.....	10% of Building Permit Fee
Q.	Opinion on a Planning Matter	\$245
R.	Preliminary Project Review (deposit)	\$609
S.	Planned Development	
	Planned Development Review (deposit).....	\$8,525 + \$426/acre
	Planned Development Extension Review (deposit)	\$2,989
	Planned Development Modification Review (deposit).....	\$8,513
T.	Rezoning Request	
	Rezoning Request Review – 5 acres or less (deposit)	\$2,792
	Rezoning Request Review – 5+ acres (deposit)	\$5,575
U.	Signs	
	Sign Permit - Staff	\$120
	Sign Permit Extension.....	\$55
	Special Event Sign Permit.....	\$60
	Historic District Sign Review	\$58
	Planned Development Sign Permit (deposit)	\$1,195
	Temporary Sign Permit	\$10
	On-Site Subdivision Signs.....	\$120
	Off-Site Subdivision Signs.....	\$167 +\$500 refundable deposit per sign
	Off-Site Weekend Directional Signs.....	\$167 +\$200 refundable deposit
	Uniform Sign Program	\$280

V.	Site Design Review	
	Site Design Review	\$280
	Site Design Review – Planning Commission (deposit)	\$4,455
W.	Special Event Permit	
	Special Event Permit	\$60
	Block Party Permit	\$60
X.	Specific Plan	
	Specific Plan Review (deposit)	\$5,976
	Specific Plan Amendment Review (deposit)	\$6,574
Y.	Street Name Review/Change	\$1,195
Z.	Temporary Use Permit Review	\$60
AA.	Tentative Map/Parcel/Subdivision Map	
	Tentative Parcel Map Review (deposit)	\$5,305
	Tentative Map Amendment Review (deposit)	\$8,841
	Tentative Map Extension Review (deposit)	\$3,798
	Tentative Subdivision Map Review (deposit)	\$6,417 +\$32/Lot
BB.	Unattended Donation Box	\$187 + \$47 Renewal
CC.	Variance	
	Variance Review – Single Family Dwelling (deposit)	\$1,567
	Variance Review - Other (deposit)	\$1,567
DD.	Zoning Verification Review	\$288

Attachment B
Sample City of Folsom Consultant and Professional Services Agreement



CITY OF
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CITY OF FOLSOM CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into as of _____ 2023 ("Effective Date") 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 a consultant to provide _____ services at various locations throughout the City and on an on-call basis; 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:

1. 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.

2. 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 17 of this Agreement.

3. 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 in the times stated in the Proposal. Deviations from the time schedule stated in the Proposal may be made with the approval of the _____ Director, or his/her authorized representative.

4. **Compensation**

Compensation for the services shall be paid on a time-and-materials, not-to-exceed basis. The maximum compensation for 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 disallowed 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.

5. **Invoicing, Payment, Notices**

A. 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.

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

Project Manager's Name _____ Department _____
City of Folsom
50 Natoma Street
Folsom, California 95630

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

6. 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.

7. Independent Contractor

A. 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.

B. Consultant's assigned personnel shall not be entitled to any benefits payable to employees of City.

C. 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.

D. 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.

E. Any third persons employed by Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.

F. 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.

8. 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.

9. 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.

10. 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 City.

11. 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.

12. Indemnification

Consultant shall indemnify, protect, defend, save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply, and shall further survive the expiration or termination of this Agreement. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

13. Insurance

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

14. 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.

15. Licenses, Permits, Etc.

Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, obtain and/or keep in effect 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.

16. 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.

17. Termination

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

B. In the event of such termination, City shall pay Consultant for all services actually rendered up to and including the date of termination.

C. Consultant shall deliver to City copies of all drawings, reports, analyses, and investigations whether completed or not, prepared or in the process of being prepared under the provisions of this Agreement.

18. Amendments

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

19. 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.

20. 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 state court 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.

21. Entire Agreement

This instrument and any attachments hereto constitute the entire Agreement between the City and Consultant concerning the subject matter hereof and supersedes any and all prior oral and written communications between the parties regarding the subject matter hereof.

22. 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.

23. 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.

CONSULTANT:

(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

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."

SAMPLE

EXHIBIT A

(Scope of Work)

See 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)
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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 claim.
- 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 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.

SAMPLE