



REQUEST FOR PROPOSAL

FOR

**Consultant Services and Preparation of
6th Cycle Housing Element Update**
(December 31, 2023 – December 31, 2031)

**City of Ripon
Planning Department**

259 N. Wilma Avenue, Ripon, California 95366

Phone: 209-599-2108

kzuidervaat@cityofripon.org

GENERAL INFORMATION

RFP ISSUED: April 12, 2023

RFP RESPONSE DUE DATE: May 31, 2023, 3:00 p.m.

CONTACT PERSON: Ken Zuidervaat
Director of Planning, Building and Economic Development

PHONE: (209) 599-2108

EMAIL: kzuidervaat@cityofripon.org

SUBMIT TO: kzuidervaat@cityofripon.org

POTENTIAL CONTRACT AWARD DATE: June 13, 2023

Questions regarding this RFP may be submitted to Ken Zuidervaat, Director of Planning, Building and Economic Development, via email at: kzuidervaat@cityofripon.org

Questions will be accepted through May 15, 2023, and the City will post responses to questions on the City of Ripon Website. Applicants wishing to receive responses to questions directly may submit a request to the Planning Director to receive all inquiries and City responses.

City of Ripon Request for Proposals

The City of Ripon (“City”) seeks proposals from qualified consultants or consultant teams to prepare an update of the City’s Housing Element for the 2023-2031 Regional Housing Needs Allocation (“RHNA”) planning period (June 30, 2023 –December 31, 2031), related rezonings (optional task if necessary), and environmental review as required under State law.

Background

Officially incorporated in 1945, Ripon is a distinctive Central Valley community along the Stanislaus River, located between Manteca and Modesto on Highway 99. Ripon is a compact city surrounded by almond and walnut orchards, with a revitalized historic downtown and attractive neighborhoods. Because of its charm and small-town atmosphere, Ripon is viewed as the “Jewel” of San Joaquin Valley and remains the preferred residential choice for many residents of the greater San Joaquin County region, and an increasing draw for employers.

Ripon has a population of 15,979 (2022 State Dept. of Finance) and approximately 5,700 households. Ripon is centrally located on Highway 99 linking the San Francisco Bay Area in the west and the Sierra Nevada and foothills to the east. The San Francisco Bay Area is an hour to the west and Sacramento is an hour to the north. The City encompasses approximately 5 square miles.

The City’s original General Plan was adopted in 1988 and a comprehensive update was completed in September 2006. The existing 5th Cycle Housing Element was adopted by the City Council and certified by the State Housing and Community Development Department in 2016.

1. Required Services

The City is seeking a knowledgeable and creative consultant or consultant team to prepare the update of the City’s existing Housing Element in conformance with the State of California’s mandated 6th Cycle Housing Element Planning Period (December 31, 2023 to December 31, 2031), provide support related to any required rezoning (optional task if necessary), and prepare any required environmental reviews analyses and/or environmental review documents as required under State law.

The specific tasks required for the project include Tasks 1 through 9.

Task 1. PROJECT INITIATION

Task 1.1 Kick-Off Meeting

The consulting team will schedule a kick-off meeting with City staff to discuss and refine the scope of services and project schedule. The schedule will address all major stages of the project:

- Identification of milestones, meetings and workshops, and deliverables.
- Discuss potential approaches to address assigned RHNA
- Discuss relevant State Housing Laws which impact City's Housing Element Update
- Discuss Initial Suggestions for new programs or revisions
- Public outreach approach, including number and timing of workshops, meetings, and hearings. Additionally, media/technology and methods for outreach (e.g. Zoom, Go-to-Meeting, Microsoft Teams, Survey Monkey, dedicated Housing Element webpage)
- Delivery of findings and analysis during development of the housing needs data. Potential use of Info-graphics and Technology to enhance comprehension.
- City staff review periods for each deliverable.
- Opportunities to facilitate HCD review.
- Response to HCD review.

Task 1.2 Project Management

This task covers communication and coordination between the consultant and City staff, including bi-weekly check-in meetings, milestone meetings, phone conferences, email exchanges, and other communications to ensure timely delivery and adoption of the updated housing element. Proposals should identify how the consultant team will facilitate regular communication with staff; methods to ensure the project remains on schedule and within budget; and strategies for quickly resolving issues that arise. Describe practices to ensure clear and timely communication and effective project coordination.

TASK 2. REVIEW OF PREVIOUS HOUSING ELEMENT

Task 2.1 Review Previous Housing Element

The consultant will determine the status, effectiveness, and appropriateness of the current housing programs and review the City's past Housing Element Annual Progress Reports ("APRs"). Consultant will gather and document all available information regarding specific accomplishments. Findings from the evaluation could be detailed in a matrix to be included in the draft Housing Element and used as a basis for recommended program revisions.

TASK 3. HOUSING ELEMENT PREPARATION

Task 3.1 Needs Analysis

The consultant will update the needs analysis pursuant to Government Code Section 65583 with data from the HCD preapproved data packet, 2020 U.S. Census data, American Community Survey, and other relevant sources. Consultant will coordinate with staff to develop a current housing inventory and evaluate housing conditions using state-approved criteria. In furtherance of this task, Consultants may use preapproved data packages from HCD or the San Joaquin County Council of Governments (“COG”) to help update this section of the Housing Element.

The updated needs analysis will include the following.

- **Population and Demographics:** Population trends and projections, race and ethnicity, and population age.
- **Household Characteristics:** Number, size, and type of existing households and characteristics of lower-income households (including extremely low).
- **Employment and Income:** Employment by industry, occupation of employed residents, and income trends.
- **Housing Stock Characteristics:** Housing types and conditions, overcrowded households, and vacancy rates.
- **Housing Costs and Affordability:** Home sale price trends, rental costs, affordability for households at all income levels, and overpayment.
- **Special Housing Needs:** Special housing needs of persons with disabilities (including persons with developmental disabilities), seniors, large households, and female-headed households.
- **At-Risk Housing:** Inventory and analysis of existing affordable units at risk of converting to market rate during the planning period.
- **Opportunities for Energy Conservation:** Pursuant to Senate Bill (“SB”) 375 and Assembly Bill (“AB”) 32, an inventory and analysis of opportunities to encourage the incorporation of energy-saving features, energy-saving materials, and energy-efficient systems and design for residential development.

Task 3.2 Fair Housing Assessment

AB 686 requires each City or County to take actions to overcome patterns of segregation, address disparities in housing needs and access to opportunity, and foster inclusive communities.

The consultant will need to include an assessment of fair housing practices, examine the relationship of available sites in the City to areas of high opportunity, and include recommended actions to affirmatively advance fair housing. The California Tax Credit Allocation Committee/HCD Opportunity Maps shall be included and are intended to display the areas, according to research, that offer low-income children and adults the best chance

at economic advancement, high educational attainment, and good physical and mental health.

The Consultant, while preparing the Fair Housing Assessment, shall also consider and review for the U.S. Department of Housing and Urban Development Affirmatively Furthering Fair Housing criteria, any applicable data for San Joaquin County and utilize any data that is available for the City of Ripon under the Fair Housing Assessment. Additionally, it is expected that the consultant team will solicit input and conduct outreach to Fair Housing Agencies and non-profits serving Ripon and San Joaquin County, in addition to referencing HCD's Memo "Affirmatively Furthering Fair Housing Guidance for All Public Entities and for Housing Elements" (April 2021 update) prior to the preparation of the Housing Element Draft. This document can be found here:

https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf

Task 3.3 Sites Inventory and Analysis of Resources

Sites Inventory and Regional Housing Needs Assessment (RHNA) Analysis. The consultant team will prepare the sites inventory section of the Housing Element, demonstrating how the City will satisfy its RHNA in each income category. This includes identifying safe assumptions, evaluating each site's development potential and suitability for housing of all income levels, documenting development/market trends, past patterns, available infrastructure to support development, analyzing potential policy strategies to increase site capacity, any HCD recommended percentage of "buffer" units and demonstrating development viability of each site (per State law). When preparing the land inventory of potential housing opportunity sites, the Consultant shall reference HCD's "Housing Element Site Inventory Guidebook" (June 10, 2020) and ensure that the prepared housing inventory complies with the requirements of AB 686. This document is available here:

https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf

Task 3.4 Rezoning

The consultant shall work with jurisdiction staff to identify potential areas for rezoning, if the sites analyses determine it is necessary. This must include consideration of the State requirement for maintaining an adequate inventory of housing sites throughout the eight year planning period, required density ranges, and an appropriate number of buffer sites to ensure "No Net Loss" of housing production capacity.

The City expects the consultant to evaluate the City's existing inventory of vacant and developed land within its city limits, existing uses, allowed uses, potential for development,

and the respective land use and zoning designations in order to formulate a recommendation on any potential rezoning to increase densities, change land use designations to allow residential or mixed uses, intensify land use, or propose potential overlay zoning to facilitate housing production. Any annexations, recommended by the consultant must be consistent with HCD's requirements and satisfy LAFCo considerations.

Task 3.5 Electronic Housing Element Site Inventory Form

Pursuant to SB 6 (Chapter 667, Statutes of 2019), jurisdictions adopting their Housing Element on or after January 1, 2021, must prepare and submit an electronic copy of the final sites inventory to HCD using pre-approved Excel spreadsheets. It is anticipated that the consultant will prepare the necessary submittals on behalf of the City using the downloadable Housing Element Sites Inventory Form available at:

https://www.hcd.ca.gov/community-development/housing-element/docs/site_inventory_template09022020.xlsm

Task 3.6 Financial and Programmatic Resources

The consultant shall update the Housing Elements current list of financial, physical, and programmatic resources available to the City of Ripon for affordable housing programs, including local and state funding programs and private-sector resources. HCD has a sample Housing Element Financial and Programmatic Resources Table available for reference at the link below:

<https://hcdcgov.app.box.com/s/mwnoaupw15aq9v0ebpgadchfs5f4hggb>

Task 3.7 Housing Constraints

The consultant will update the analysis of potential and actual governmental and nongovernmental constraints to meeting housing needs, including constraints to the maintenance, improvement, and development of housing (pursuant to Government Code Section 65583(a)(4,5)). Potential constraints to be reviewed include any land use controls, fees and exactions, permit processing procedures, building codes and code enforcement, land and construction costs, and the availability of financing. As a result of the analysis update, the consultant will identify potential recommended programs and strategies to reduce or remove identified constraints.

Task 3.8 Housing Goals, Policies, and Quantified Objectives

The consultant will work with City staff to update goals, policies, programs, and quantified objectives (pursuant to Government Code Sections 65583 et seq.) to address identified housing needs and constraints based on the effectiveness and continued appropriateness of

existing programs, information received through public outreach, the analysis of constraints, and findings from the needs assessment. It is anticipated that the consultant will prepare separate tables or exhibits specifically addressing quantified objectives related to the production, preservation, and rehabilitation of housing during the planning period and separate program exhibits.

All programs must include specific steps, a specific time frame for implementation, identify the department, agencies or officials responsible for implementation, describe the jurisdiction's specific role in implementation, and identify specific, measurable outcomes.

All programs will address:

- All new state requirements since adoption of the City's existing Housing Element.
- Consistency and compliance with the rest of the General Plan elements and community goals.
- Provision of adequate housing sites and infrastructure to meet the fair share of the regional housing need.
- Assistance in the development of affordable housing.
- Promotion of the development of accessory dwelling units.
- Preservation and improvement of existing affordable housing.
- Mitigation of any governmental constraints to providing and improving housing.
- Special housing needs of the elderly, persons with disabilities, extremely low-income residents, persons experiencing homelessness, and other special housing needs.
- Affirmatively furthering fair housing.

TASK 4. PREPARE AND FINALIZE HOUSING ELEMENT

Task 4.1 Administrative Draft

The Consultant shall initially prepare a formatted Administrative Draft Housing Element ("Admin Draft") as an electronic copy in Microsoft Word for staff to review.

Task 4.2 Public Review Draft

The consultant will prepare a Public Review Draft Housing Element ("Public Draft") based on City staff's comments on the Admin Draft. The consultant will provide the Public Draft for staff to post to the City's website prior to submittal to HCD and email interested parties when the Public Draft is available for review. The consultant will document the date the Public Draft was made available for review to the public.

Task 4.3 HCD Public Review Draft

Following all initial community outreach workshops and meetings, the consultant will prepare summary notes or minutes of the community workshop and a summary of all other comments received during the public review period. Considering input received at the community workshop

and any other input received during the public comment period, the consultant, in consultation with City staff, will revise the Public Draft to create the Draft Housing Element for submission to HCD ("Draft Housing Element").

Once the Draft Housing Element is finalized, the City will hold all required meetings and necessary approvals and it will be submitted for an initial 60-day review by HCD. The consultant will prepare a transmittal letter to HCD detailing how the Draft Housing Element meets State law requirements. The consultant shall review HCD's "Completeness Review Checklist," available on HCD's website and ensure that the submittal comports to HCD's requirements. The checklist is available here:

<https://www.hcd.ca.gov/community-development/housing-element/docs/housing%20element%20completeness%20checklist.pdf>

Task 4.4 Adopted Final Housing Element

The consultant shall prepare a final Housing Element that incorporates any changes to the Draft Housing Element from staff, HCD, or public comments received. The consultant shall anticipate at least two 60-day review periods by HCD.

TASK 5. STATE CERTIFICATION

The consultant in support of City staff or any other City authorized representatives should act as a liaison to HCD. This service will include:

- Submittal of the initial Draft Housing Element to HCD (60-day review).
- Calls and emails with HCD staff to discuss comments.
- Consideration of incorporation of HCD's requested revisions and submittal of a revised draft (60- day review)
- Submission of the final draft to HCD for review and approval (90-day review).

TASK 6. COMMUNITY OUTREACH

The consultant team shall develop a program that effectively reaches, educates, and engages the community throughout the Housing Element update. This should include strategies to ensure broad inclusion, particularly of hard-to-reach groups and special needs populations. Outreach is expected to begin early in the process and continue throughout for feedback on important topics, such as draft ideas, site options, the Draft Housing Element, and environmental reviews. Consultant should lead the engagement as well as write a summary of the work.

TASK 7. PUBLIC HEARINGS

The consultant team should prepare to assist with public hearings— at least two hearings each to present the Draft Housing Element to the Planning Commission and City Council prior to submitting the Housing Element to HCD, and one public hearing with the Planning Commission and City Council for adoption after incorporating revisions required by HCD.

TASK 8. ENVIRONMENTAL REVIEW

It is anticipated that the appropriate California Environmental Quality Act (CEQA) documentation will be a Notice of Exemption, however the consultant team shall prepare a brief Initial Study, post, and file all the appropriate environmental documents for compliance with the California Environmental Quality Act (CEQA). Should further CEQA documentation be required, the City of Ripon will negotiate for the additional environmental review through a change order to the contract. In addition, the Consultant will be responsible for preparing all notices and mailings for SB 18 and AB 52.

TASK 9. REVIEW GENERAL PLAN FOR CONSISTENCY

The consultant shall review and identify amendments for sections of the City's General Plan, Municipal Code and other adopted plans/regulations that may need to be amended to be consistent with the 2023-2031 Housing Element.

2. Proposal Requirements

The proposal shall be based on and incorporate all of the provisions identified in this Request for Proposals (RFP). The proposal should be submitted in a format that can readily be incorporated into the City's standard form Professional Services Agreement (Appendix A) including Project Description, Scope of Services, Duties of Consultant, Duties of the City, Fees and Payment, Timing and Schedule for Completion. Generally, the proposal should include the information specified below. The consultant is encouraged to include any additional items deemed desirable or necessary.

Approach and Work Program. The consultant shall describe an overall approach to the project work program for accomplishing the project objectives, specific techniques to be used, and specific administrative and operational management expertise which would be employed.

Exceptions. Any exceptions to the scope of work or Professional Services agreements shall be detailed in the proposal.

Schedule. Proposals should provide a detailed schedule for the completion of services. Timeframes should be stated in terms of the number of calendar days or weeks required to complete the specified tasks using the City's notice to proceed as the start date. The schedule should identify the periods as the total elapsed time from the start date. The schedule should track the independent timing for each of the different documents to be developed, reviewed, and adopted. The schedule should include a rough outline of the community meetings and public hearings to be included in the process.

Costs. Proposals should include costs for the completion of each major task in the work program. Each task should clearly identify the consultant team member who will be primarily responsible for completing the task. This section should include billing and expense reimbursement rates. Costs shall be submitted in a not-to-exceed maximum amount for all work. Indicate hourly rates of individuals involved, number of hours for each component, task or product and the fee structure for additional work outside of the contract and optional items. A time and materials rate schedule should also be provided for use in negotiating any Changes in Work required during the course of the contract.

Staffing. The project manager and key personnel, including those of any subcontractor, shall be designated. The person(s) who will attend and facilitate public meetings and presentations should be identified and should be the same persons making any presentations to the Selection Committee if necessary. The geographic location of the firm and key personnel shall also be identified. Any proposed sub-consultants shall be listed. Their responsibilities should be included in the proposal, if necessary. There shall be no changes in the project manager, sub-consultants, or key staff without approval of the City.

Qualifications. Proposals should include consultant's qualifications to perform the work required, and should document previous similar work by the consultant. Brief resumes of the project manager, key personnel, and subcontractors should be included, as should three references for recent (i.e. last 3 years) comparable work.

Work Sample. One sample of a recently adopted housing element prepared by the consultant and/or staff assigned to the project shall be provided in an electronic format or as a link to an online document.

Proposal Terms and Conditions. The proposal should include a statement to the effect that the proposal is a firm offer for a minimum 90-day period beginning on the application deadline. The proposal should also include a statement that all work will be performed at a not-to-exceed price.

Proposal as Sole Representation. Firms responding to the RFP must represent themselves solely by the written proposal. The proposal should also contain the name, title, address, and telephone number of the individual with authority to bind the company and also who may be contacted during the period of proposal evaluation. The proposal shall be signed by an official authorized to bind the consultant.

3. General Information - Minimum Qualifications.

In order to qualify as responsible, a prospective consultant must, in the opinion of City staff, meet the following standards as they relate to the RFP:

1. Have adequate staff, equipment, technical and financial resources for performance, or have the ability to obtain such resources that are required for performance, including a demonstrated ability to meet work schedule time frames and deliverables.
2. Have a satisfactory record of performance.
3. Be an Equal Opportunity Employer.

Compliance with Terms and Conditions of the Professional Service Agreement.

The consultant and sub-consultants will be required to comply with all terms and conditions set forth in the City of Ripon Standard Form Professional Services Agreement including all insurance requirements (See Appendix A). Any exceptions from these terms and conditions must be specified in the proposal, and any exception may be a basis for rejection of the proposal from further consideration.

Proposal Revision and Modification. Staff may request that the consultant alter a submitted proposal when deemed necessary and appropriate to clarify that the proposal fully addresses the City's needs. In the event that a consultant agrees to modify the proposal, a change in the cost of the services as set forth in the proposal may be made. Otherwise, the cost stated in the original proposal shall remain effective. Any additional work required beyond the scope of the contract shall be, with prior notification and contract amendments, mutually agreed to by the City and the consultant, and shall be billed on a not-to-exceed estimated time and materials basis to the City. Contract amendments will be made only in unusual circumstances, where clearly justified by the consultant and as determined necessary by the City.

Limitations. All reports and pertinent data or materials will become the property of the City of Ripon.

The consultant will have normal access to the public records and files for local government agencies in preparation of the proposal or documents. No compilation, tabulation, or analysis of data, definition or opinion, etc. shall be anticipated by the consultant from the agencies, unless volunteered by a responsible official of these agencies.

Firms submitting a proposal for this RFP must provide a statement that nothing contained in the submitted proposal will be proprietary. All proposals shall become the property of the City of Ripon once submitted.

A request for proposals does not commit the City to award a contract, to pay any costs incurred in the preparation of the proposal, or to procure or contract for services and supplies. The City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified source, or to cancel in part or in its entirety this request for proposals, if it is in the best interest of the City to do so. The City may require the consultant to

participate in negotiations and to submit such price, technical, or other revisions of the proposal as may result from negotiations.

Contract with Consultant. The consultant selected will be asked to agree to and enter into the City's Standard Form Professional Services Agreement (See Appendix A).

Contract Payment. The City will release payment to the consultant in increments based on itemized invoices submitted no more frequently than monthly as the work progresses. Contract payment shall be made on the basis of satisfactory performance by the consultant as determined by the City.

Contract Termination. The City shall have the right to terminate the Professional Services Agreement at any time and without cause upon written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services satisfactorily completed as of the date that written notice of termination is received by consultant; City, however, may condition payment of such compensation upon Consultant delivering to City documents and records identified in Section 8.1 of Professional Services Agreement (See Appendix A).

Conflict of Interest. In the Professional Services Agreement the Consultant shall stipulate that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Consultant's work product prepared pursuant to the Agreement.

4. Selection Process

Selection Criteria (in random order):

- Completeness and responsiveness to this RFP;
- Qualifications and previous successful performance of the consultants on similar projects;
- Review of references;
- Local familiarity;
- Public participation experience working with the public in formulating goals and consensus;
- Timeframe and availability of consultants;
- Contract fee as negotiated and ultimately agreed upon. Price is not the sole basis for selection, but may be considered in the criteria for evaluating proposals.

The schedule for the selection process is:

- RFP Released: April 12, 2023
- Deadline for RFP Questions May 10, 2023
- Proposals Due: May 31, 2023
- Consultant Selection: June 1 to June 5, 2023
- City Council Approval: June 13, 2023
- Notice to Proceed: By June 30, 2023

The proposals will be reviewed by City Staff and ranked according to the selection process outlined above. The top ranked firms will be presented to the City Council for a firm selection and final approval.

The City will negotiate a contract with the most qualified firm with compensation the City determines is fair and reasonable based upon the scope of work. Fee proposals from competing consultants may be used to assist City staff in determining a fair and reasonable compensation.

5. Contractual Requirements

Final contract approval requires City Council approval for execution by the Mayor. Following the final by the City Council and contract negotiations the contract shall be agendized with the Council and must be approved and executed prior to any work being performed by the consultant.

Appendix A

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF RIPON AND

Click or tap here to enter consultant name.

This Agreement for Professional Services (“Agreement”) is entered into on, [Click here to enter a date.](#) (the “Effective Date”) between the City of Ripon, a California municipal corporation (“City”) and [Click or tap here to enter consultant name.](#) (“Consultant”), (together sometimes referred to as the “Parties”).

Section 1. SERVICES. In accordance with the terms and conditions set forth in this Agreement, Consultant agrees to perform all services described in the Consultant’s Scope of Services attached hereto as Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and said scope of services, this Agreement shall prevail.

- 1.1 Term of Services.** This Agreement shall begin upon signature by all Parties and shall end when Consultant completes the work described in said scope of work, or no later than two (2) years from the date this Agreement was signed by City, which ever is longer, unless the term of the Agreement is otherwise terminated or modified, as provided for herein. Notwithstanding the foregoing,
- 1.2 Standard of Performance.** Consultant shall diligently perform all services required in connection with this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services in connection with this Agreement.
- 1.4 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services satisfactorily completed as of the date that written notice of termination is received by consultant; City, however, may condition payment of such compensation upon Consultant delivering to City documents and records identified in Section 8.1 of this Agreement.

Section 2. COMPENSATION.

City hereby agrees to pay Consultant an amount **NOT TO EXCEED** [Click here to enter amount.](#) for all work described within the Cost Proposal set forth in Exhibit A and made a part of this Agreement.

- 2.1 Invoices.** Consultant shall submit invoices as necessary during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date.
- 2.2 Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred.
- 2.3 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

Section 3. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the Agreement. *(Rev 3/18)*

- 3.1 General Liability.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Consultant's general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required.
- 3.2 Workers' Compensation.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.
- 3.3 Auto Liability.** Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident. If Consultant owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.
- 3.4 Professional Liability.** Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- 3.5 All Policies Requirements.**

3.5.1 Verification of Coverage. Prior to beginning any work under this Agreement, Consultant shall, at the sole option of the City, provide City with (1) certified Certification of Insurance that demonstrates compliance with all applicable insurance provisions contained herein; (2) certified policy endorsements to the general liability policy adding the City of Ripon as an Additional Insured and declaring such insurance primary in regard to work performed pursuant to this Agreement; or (3) upon request by the City, complete certified copies of all policies and/or complete certified copies of all endorsements that demonstrate compliance with this Section 3.

3.5.2 Notice of Reduction in or Cancellation of Coverage. A copy of the cancellation provisions must be attached to all insurance obtained in accordance with this Agreement.

Section 4. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. *(Rev 3/18)*

4.1 Indemnity for Professional Liability: When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

4.2 Indemnity for Other Than Professional Liability: Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.

Section 5. STATUS OF CONSULTANT.

5.1 Independent Consultant. At all times during the term of this Agreement, Consultant shall be an independent Consultant and shall not be an employee of City. Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent.

Section 6. **LEGAL REQUIREMENTS.**

- 6.1** **Governing Law.** The laws of the State of California shall govern this Agreement.
- 6.2** **Compliance with Applicable Laws.** Consultant and any sub-Consultants shall comply with all laws applicable to the performance of the work in connection with this Agreement.
- 6.3** **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any sub-Consultants have all licenses, permits, qualifications, and approvals of whatsoever nature, that are legally required to practice their respective professions.
- 6.4** **Nondiscrimination and Equal Opportunity.** In compliance with federal, state and local laws, Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, sub-Consultant, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement.
- 6.5** **Work Requiring Payment of Prevailing Wages.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which these services are to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code shall be paid to all workers engaged in performing the services under this Agreement.

Section 7. **MODIFICATION.**

- 7.1** **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 7.2** **Assignment and Subcontracting.** Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the sub-Consultants noted in the proposal, without prior written approval of the City.
- 7.3** **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 7.4** **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 7.4.1** Immediately terminate the Agreement;
- 7.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant in accordance with this Agreement;

- 7.4.3** Retain a different Consultant to complete the work described in said scope of work not finished by Consultant; or
- 7.4.4** Charge Consultant for City's excess cost of completion of the unfinished work described in Exhibit A, if any. City's excess costs shall be reimbursed by Consultant where City's reasonable cost of completion paid to another qualified new consultant exceeds the amount City would have paid to Consultant pursuant to Section 2 absent the material breach; provided, however that any such excess cost reimbursement shall not exceed 25% of Consultant's quoted price for any unfinished task. Thus, by way of example, if following a material breach by Consultant a specific task which is budgeted at \$10,000 has not commenced or adequately completed, and City must retain another new qualified consultant to complete that specific task Consultant would be responsible to reimburse City in the amount of up to \$2,500 (25% of the Consultant's \$10,000 quoted price for the subject task). By way of further example, if the Consultant's cost of completion of that specific task is \$14,000, Consultant would be responsible to reimburse City in the amount of up to \$3,500 (25% of the Consultant's \$14,000 quoted price for the subject task).

Section 8. **KEEPING AND STATUS OF RECORDS.**

- 8.1** **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains in accordance with this Agreement and that relate to the matters covered under the terms of this Agreement shall be the property of the City. This clause does not include instruments of service.
- 8.2** **Consultant's Books and Records.** Consultant shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 8.3** **Confidential Information and Disclosure.** During the term of this Agreement, either party (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Consultant understands that the City is a public entity and is subject to the laws that may compel it to disclose information about Consultant's business.

Section 9 **MISCELLANEOUS PROVISIONS.**

- 9.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 9.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Joaquin or in the United States District Court for the Eastern District of California.
- 9.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect.
- 9.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 9.5 Contract Administration.** This Agreement shall be administered by Kevin Werner, who shall act as the City's representative. All correspondence shall be directed to or through the representative.
- 9.6 Notices.**

Any written notice to Consultant shall be sent to:

[Click here to enter consultant name.](#)

[Click here to enter consultant title.](#)

[Click here to enter company name.](#)

[Click here to enter street address.](#)

[Click here to enter city, state, zip.](#)

Any written notice to the City shall be sent to:

Mr. Kevin Werner

Administrator/City Engineer

City of Ripon

259 N. Wilma Avenue

Ripon, CA 95366

9.7 Integration; Incorporation. This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All Exhibits attached hereto are incorporated by reference herein.

9.8 Alternative Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, City and Consultant agree to resolve the dispute in accordance with the following:

Each party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority. If dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code Section 900, *et. seq.*

9.9 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the date signed by the City.

CITY OF RIPON

CONSULTANT

Michael Restuccia, Mayor

Click here to enter name., Click here to enter title.

Attest:

Lisa Roos, City Clerk

Approved as to Form:

Thomas Terpstra, City Attorney