CITY OF ATWATER

REQUEST FOR PROPOSALS

FOR
ENGINEERING SERVICES

FOR

2020 URBAN WATER MANAGEMENT PLAN

Proposals due by 15st day of April 2021 by 2:00 PM

Contact Information:

City of Atwater
750 Bellevue Road Atwater,
CA 95301
Attn: Matthew Del Real
Public Works Sewer Division Supervisor

CONTENTS

SECTION 1. BACKGROUND **1**

1.1 Introduction 1

1.2 Statement of Intent 1

1.3 RFP Organization 1

SECTION 2. PROJECT OVERVIEW **1**

2.1 Project Scope 1

2.1.1 Task 1 – Obtain Information and Coordination with City 2

2.1.2 Task 2 – Water Conservation Ordinance Revision 2

2.1.3 Task 3 – Prepare Urban Water Management Plan 2

2.1.4 Task 4 – Public Hearing, Adoption and Submission 2

SECTION 3. PROCUREMENT PROCESS **2**

3.1 Acknowledgement of RFP 2

3.2 Communications and City of Atwater Contact 2

3.3 Procurement Schedule 3

SECTION 4. RFP SUBMISSION REQUIREMENTS **3**

4.1 Submittal Place and Deadline 3

4.2 Submission Format 4

4.3 Submission Content 4

4.3.1 Transmittal Letter 4

4.3.2 Part 1 – Executive Summary 5

4.3.3 Part 2 – Consultant Profile 5

4.3.4 Part 3 – Project Team 6

4.3.5 Part 4 – Experience 7

4.3.6 Part 5 - Safety 8

4.3.7 Part 6 – Project Approach 8

4.3.8 Part 7 – Cost Proposal 8

SECTION 5. RFP EVALUATION AND SELECTION **9**

5.1 General 9

5.2 Responsiveness 9

5.3 Minimum Qualification Requirements 9

5.4 Comparative Evaluation Criteria 10

5.5 Selection Criteria 10
SECTION 6. CONDITIONS FOR RESPONDENTS 10
6.1 Ineligible Firms and Individuals 10
6.2 Conflict of Interest 10
6.3 Confidentiality and Proprietary Information 11
6.4 Rights of the City of Atwater 12
6.5 Obligation to Keep Project Team Intact 13
6.6 Addenda 13
Attachment A Definition of Terms.....1
Attachment B - Insurance Requirements 1
Workers' Compensation 1
2. Commercial General and Automobile Liability Insurance 2
2.1 General requirements 2
2.2 Minimum scope of coverage 2
2.3 Additional requirements 2
3. All Policies Requirements 3
3.1 Acceptability of insurers 3
3.2 Verification of coverage 3
3.3 Subcontractors 3
3.4 Deductibles and Self-Insured Retentions..... 3
3.5 Waiver of Subrogation 4
3.6 Notice of Reduction in Coverage 4
4. Remedies 4

SECTION 1. BACKGROUND

1.1 Introduction

Atwater is a city on State Route 99 in Merced County, California. Atwater is 8 miles (13 km) west northwest of Merced. The city has a total area of 6.1 square miles.

1.2 Statement of Intent

The City of Atwater (City), through the Public Works Department, seeks to retain the services of a professional engineering firm, licensed in the state of California, for the analysis and design of services to prepare an updated 2020 Urban Water Management Plan in accordance with California Water Code Sections 10610-10656

1.3 RFP Organization

This RFP consists of six Sections and five Attachments:

- Section 1: Background
- Section 2: Project Overview
- Section 3: Procurement Process
- Section 4: RFP Submission Requirements
- Section 5: RFP Evaluation and Selection
- Section 6: Conditions for Respondents
- Attachment A: Definition of Terms
- Attachment B: Insurance Requirements
- Attachment C Draft Professional Services Agreement
- Attachment D - Certificate of Compliance with Labor Code § 3700
- Attachment E: Project Background Documents (As-builts provided as a reference only)

The contents of the RFP Attachments take priority over any conflicting statements in the RFP Sections.

Certain project background documents are being made available as Attachment E (Project Background Documents) for the purpose of preparing RFPs. The City of Atwater is providing these documents only for the purpose of obtaining RFPs for the Project and does not confer a license or grant for any other use. The extent to which the Consultant may rely on such background documents is set forth in Attachment C (Draft Professional Services Agreement).

SECTION 2. PROJECT OVERVIEW

2.1 Project Scope

The City of Atwater Public Works Department ("City") is seeking a qualified vendor to provide engineering services to prepare and submit an updated 2020 Urban Water Management Plan (UWMP) in accordance with California Water Code Sections 10610-10656. The proposer (hereinafter Consultant) shall provide the services in close cooperation with the City.

TASK 1 – Obtain Information and Coordination with City

The initial task is to meet with City Staff and review and obtain necessary information to prepare the required UWMP. The City shall provide the Consultant with the existing 2015 Urban Water Management Plan along with relevant and available DWR review comments, and City plans, studies, and information concerning the project.

TASK 2 – Water Conservation Ordinance revision

Assist with the preparation of revisions to the City's water conservation ordinance to fit the updated guidance within the UWMP's Water Shortage Contingency Plan section.

TASK 3 –Prepare Urban Water Management Plan

Based on initial review and discussions with Department of Water Resources (DWR) staff and City staff, the consultant will prepare the UWMP in a format meeting the current DWR guidelines for the presentation to the public, and submission to DWR.

TASK 4 – Public Hearing, Adoption and Submission

Assistance Assist with the presentation of the completed 2020 UWMP to the public and City Council for the Public Hearing and adoption. Submit the adopted plan to DWR no later than September 1, 2021.

- Develop the Project execution plan, including Project schedule.
- Produce the basis-of-design report.
- Develop the engineering design (including preparing and submitting intermediate design review packages at 10%, 60%, and 90%) and value-engineering activities in conjunction with City of Atwater.
- Prepare a project cost model and provide detailed cost estimates as the design and design alternatives are advanced.
- Perform engineering studies (such as subsurface investigations, pilot studies, raw water/ wastewater analyses, etc.) to support design and cost estimating.
- Identify Project permitting requirements and initiate certain permitting activities.
- Complete the final design.

SECTION 3. PROCUREMENT PROCESS

3.1 Acknowledgement of RFP

Each potential Respondent should provide the City of Atwater, within ten days of receipt of this RFP, an acknowledgement that it has received the RFP and is a potential Respondent. Such acknowledgement shall identify and provide full contact information for the Respondent Contact,

who shall be the Respondent's single point of contact for the receipt of any future documents, notices and addenda associated with this RFP. Such acknowledgement must be sent in writing and a copy electronically transmitted to the City of Atwater Contact.

3.2 Communications and City of Atwater Contact

On behalf of the City of Atwater, Matthew Del Real, Public Works Sewer Division Manager, will act as the sole point of contact for this RFP and shall administer the RFP process. All communications shall be submitted in writing, by fax, or by email, and shall specifically reference this RFP. All questions or comments should be directed to the City of Atwater Contact as follows:

Matthew Del Real
Public Works Sewer Division Supervisor
City of Atwater
750 Bellevue Road
Atwater, CA 95301
Phone (209) 357- 6375
Email:mdelreal@atwater.org

No oral communications from the City of Atwater contact or other individual is binding. No contact with City of Atwater staff, City Council members, City Planning Commissioners, or any other public official, concerning the Project during the procurement process is allowed. A violation of this provision may result in disqualification of Respondent.

3.3 Procurement Schedule

The current procurement schedule is as follows:

EVENT	TARGET DATE
1. Proposal Release Date	March 24, 2021
2. Deadline to Submit Written Questions	April 12, 2021
3. Release of Responses to Written Questions	April 14, 2021
4. Proposal Deadline – Proposals **Must be RECEIVED**	April 21, 2021 @ 2:00 PM
5. RFP Evaluations/Selections	April 21, 2021
6. Award Professional Services Agreement	April 26, 2021

SECTION 4. RFP SUBMISSION REQUIREMENTS

4.1 Submittal Place and Deadline

Two bound paper documents (one original and one copy), as well as one electronic version of the RFP on USB flash drive in PDF format or a bid may be submitted via email to larmstrong@atwater.org, must be received no later than **2:00 PM on April 21, 2021**, addressed to:

Lucy Armstrong
C/O Office of the City Clerk
City of Atwater
750 Bellevue Rd
Atwater, CA 95301
Email:larmstrong@atwater.org

Each Respondent assumes full responsibility for timely delivery of its RFP at the required location. It is the Consultant's responsibility to verify receipt of the RFP if sent via email. Any RFP received after the submittal deadline will be deemed non-responsive and returned. The delivered packaging containing the RFP documents must note "**RFP - Engineering Services for the 2020 Urban Water Management Plan**" on its face.

The RFP must include a Cost Proposal submitted in a separate sealed envelope and must be plainly marked on the outside as "**Sealed Cost Proposal for Request for Proposals for Engineering Services for the 2020 Urban Water Management Plan"**

4.2 Submission Format

The RFP must not exceed 50 total pages (most or all 8½ x 11 inches with 1-inch or greater margins), excluding the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, and appendices. A maximum of ten of the total pages may be 11 x 17inch tri-fold format. Eleven-point font or larger must be used in RFP Parts 1 – 7.

4.3 Submission Content

The content requirements set forth in this RFP represent the minimum content requirements for the RFP. It is the Respondent's responsibility to include information in its RFP to present all relevant qualifications and other materials. The RFP, however, should not contain standard marketing or other general materials. It is the Respondent's responsibility to modify such materials so that only directly relevant information is included in the RFP.

The RFP must include the following information in the order listed:

- Transmittal Letter
- Part 1 – Executive Summary
- Part 2 – Consultant Profile
- Part 3 – Project Team
- Part 4 – Experience
- Part 5 – Safety
- Part 6 – Project Approach
- Appendix B – Resumes
- Appendix C – Financial Statements

- Part 7 – Cost Proposal – must be submitted in a separate sealed envelope and must be plainly marked on the outside as "**Sealed Cost Proposal for Request for Proposals for Engineering Services for the 2020 Urban Water Management Plan.**"

4.3.1 Transmittal Letter

Respondents must submit a transmittal letter (maximum two pages) on the Respondent's letterhead. It must be signed by a representative of the Respondent who is authorized to sign such material and to commit the Respondent to the obligations contained in the RFP. The transmittal letter must include the name, address, phone number and e-mail address for the Respondent Contact, and must specify who would be the Consultant's signatory to any contract documents executed with the City of Atwater. The transmittal letter may include other information deemed relevant by the Respondent.

4.3.2 Part 1 – Executive Summary

The executive summary (maximum three pages) must include a concise overview of the key elements of the RFP and must summarize and refer to information in the RFP concerning satisfaction of the Minimum Qualifications Requirements. The executive summary shall not be used to convey additional information not provided elsewhere in the RFP.

4.3.3 Part 2 – Consultant Profile

A detailed and complete description of the company proposed as the Consultant must be provided in Part 2 of the RFP. (The term "company" can refer to either a single entity or a joint venture.) Information concerning Key Personnel and other firms that may be included on the Project Team, such as subconsultants and subcontractors, should be provided in Part 3 of the RFP. The Profile must include the following information.

- **General**
  Provide general information about the Consultant, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and non-professional), years in business, and evidence of required licenses.

Legal structure

Identify whether the Consultant Company is organized as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity. As applicable, identify the owners of the Consultant Company (*e.g.*, shareholders, members, partners, and the like) who hold an interest of ten percent or more.

- **Project office location**
  Identify where the Consultant intends to maintain its project office(s) and where the majority of the design work will be performed.

- **Financial condition**
  In RFP Appendix C (Financial Statements), provide audited financial statements for the Consultant for the past three years and quarterly financial statements certified by the chief financial officer for the current year. If the Consultant Company is a joint venture, LLC or partnership, such financial statements must be provided for each partner or member.

- **Insurance**
  A letter or Certificate of Insurance from the Consultant insurance company must be provided stating its ability to acquire and provide the minimum limits for the required insurance as listed in Attachment B (Insurance Requirements).

  The required insurance must be obtained and maintained from insurance companies that have an A.M. Best Rating of A:VII or better and are duly licensed or authorized in California.

The RFP must provide the following additional information pertaining to factors or events that have the potential to adversely impact the Consultant's ability to perform its contractual commitments.

- **Material adverse changes in financial position**. Describe any material historical, existing or anticipated changes in financial position, including mergers, acquisitions, takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode of conducting business.

- **Legal proceedings and judgments**. List and briefly describe any pending or past (within 10 years) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to The City of Atwater. If no such proceedings or judgments are listed, provide a sworn statement to that effect from the general counsel.

- **Completion of contracts**. Has the Consultant failed to complete any contract, or has any contract been terminated due to alleged poor performance or default within the past 10 years? If so, describe the circumstances.

- **Violation of laws**. Has the Consultant been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wages within the past 10 years? If so, describe the circumstances.

- **Debarred from bidding**. Has the Consultant been debarred within the past 10 years, or is it currently under consideration for debarment, on public contracts by the federal government or by any state? If so, describe the circumstances.

If any of the above questions are answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Respondent's responsibility to: (1) describe in detail the unfavorable factor or event; and (2) provide sufficient information to demonstrate that the

unfavorable factor or event will not adversely impact the Consultant's ability to perform its contractual commitments.

The Respondent must notify the City of Atwater of any changes subsequent to submission of the RFP and before the selection process is completed (and, in the case of the selected Respondent, before executing the Professional Services Agreement).

4.3.4 Part 3 – Project Team

The composition, organization and management of the Project Team must be described in two separate subsections.

Consultant/other firms:

- Identify any other firms (such as subcontractors and subconsultants) included on the Project Team along with the Consultant and describe the scope of each firm's services and responsibilities.

Key Personnel

- Identify all Key Personnel (and their firm affiliations) on the Project Team and describe their specific responsibilities during the Project.
- Provide organizational charts showing the reporting relationships and responsibilities of all Key Personnel (along with their firm affiliations) and describe the approach to the management of such Key Personnel.
- Indicate the commitment of all Key Personnel in terms of an estimated percentage of time during the Project.
- Provide resumes for all Key Personnel in RFP Appendix B (Resumes). Resumes must be limited to **two** pages per individual and include:
  - —Academic and professional qualifications
  - —Professional registration (as applicable)
  - —Experience as it relates to the Project and to the individual's specified role on the Project

Any change in the firms or Key Personnel included in the RFP would require The City of Atwater's approval.

4.3.5 Part 4 – Experience

The RFP must describe the performance history and experience of the Project Team on similar projects and provide information concerning safety.

Reference Projects

The Respondent shall submit descriptions of reference projects to demonstrate relevant experience.

Each project description shall contain at least the following information:

- Name of owner
- Owner reference and contact information
- Role of respondent
- Contract value
- Year started and year completed
- Description of the project showing relevance to this Project
- Names of firms and Key Personnel that participated in project and are included in this RFP, along with a clear description of the roles and responsibilities of each

In addition, a one-page summary table should be provided to cross-reference the Project Team (firms and Key Personnel) with participation in the reference projects.

4.3.6 Part 5 - Safety

Provide a summary description of the Consultant's corporate safety program and include safety statistics or records indicating categories of accidents and their incidence or frequency rates for the past five years. The following safety records must be provided for the Consultant's for the current and past five years:

- The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau. (The EMR is also referred to as the experience modification rating, experience modification factor, experience modifier or Xmod.)
- The days-away-from-work injury incidence rate. A day-away-from-work injury is an injury that prevents an employee from returning to his or her next regularly scheduled shift. The incidence rate is calculated by multiplying the number of days-away-from-work injuries for the particular year by 200,000 and then dividing the product by the person-hours worked for that year.

4.3.7 Part 6 – Project Approach

Provide a conceptual description (maximum five pages) of the approach for managing and performing its services of the Project. The following items should be addressed:

- Discuss how a collaborative relationship with the City of Atwater would be established during design development, scheduling and cost estimating.
- Identify the work components critical to the Project's success and how these components would be achieved.
- Discuss how key risk factors will be identified and mitigated.
- Project specific safety plan.
- Project specific quality plan.
- Schedule.

4.3.8 Part 7 – Cost Proposal

Total lump sum proposal price must be filled in, in ink or typewritten. During the Solicitation Period, the City reserves the right to request additional information or clarifications from respondents or to allow corrections of errors or omissions. At the discretion of the City, contractors submitting proposals may be requested to make oral presentations as part of the evaluation process.

The cost proposal must be submitted in a separate sealed envelope and must be plainly marked on the outside as "**Sealed Cost Proposal for Request for Proposals for Engineering Services for the 2020 Urban Water Management Plan**."

SECTION 5. RFP EVALUATION AND SELECTION

5.1 General

The RFPs will be reviewed and evaluated by the City of Atwater's selection committee (with assistance provided by outside advisors if desired by City of Atwater) according to the requirements and criteria outlined in this Section 5. During the RFP evaluation process, written questions or requests for clarifications may be submitted to one or more Respondents regarding its RFP or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the Respondent from further consideration. In addition, the City of Atwater may require that all or a limited number of Respondents participate in interviews.

5.2 Responsiveness

Each RFP will be reviewed to determine whether it is responsive to the RFP. Failure to comply with the requirements of this RFP may result in rejection of the RFP as non-responsive. At its sole discretion, however, the selection committee may waive any such failure to meet a requirement of this RFP and may request clarification or additional information to remedy a failure.

5.3 Minimum Qualification Requirements

Each responsive RFP will be reviewed to determine whether it meets the Minimum Qualification Requirements outlined in this subsection. At its sole discretion, the selection committee may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard. Any RFP that does not satisfy all the following Minimum Qualification Requirements may be rejected.

- **Material adverse condition.** The Consultant must not be subject to a material adverse condition, such as pending litigation, insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide performance bonds or insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate/absorb Project risks.

- **Licensing and registration.** Each firm must be licensed in California for the type of work to be performed. The Designer must include in responsible charge a civil engineer registered in California.

- **Design experience.** Within the past 10 years, the Designer must have successfully completed the design of at least three analysis and design of rehabilitation/replacement of Wastewater Pump Station projects for municipal clients in the California.

5.4 Comparative Evaluation Criteria

The selection committee will evaluate and rank the responsive RFPs that satisfy the Minimum Qualification Requirements by applying the weighted comparative evaluation criteria set forth below. Financial condition is evaluated on a pass/fail basis as part of the Minimum Qualification Requirements.

- **Experience and capabilities**
  - **Consultant/other firms** **30%**
  - **Key Personnel** **30%**
- **Organization, management and safety** **15%**
- **Project approach** **20%**
- **Local Business Preference** **5%**

5.5 Selection Criteria

- Proposed Work Plan and Approach.
- Familiarity with policies and procedures related to the work effort.
- Quality and completeness.
- Relevance and conciseness.
- Qualification relating to design of wastewater pump stations • Qualifications and experience of staff.
- Completion of similar projects and references.

SECTION 6. CONDITIONS FOR RESPONDENTS

6.1 Ineligible Firms and Individuals

The following firms and individuals are serving in an advisory capacity to the City of Atwater for this Project and are therefore not eligible to assist or participate with any Respondent that submits an RFP for the Project.

- **VVH Consulting Engineers**

6.2 Conflict of Interest

Each Consultant submitting an RFP is responsible for determining whether or not its participation or the participation of other Project Team members in the proposed Contract constitutes a conflict of interest or a potential conflict of interest under California Government Code Sections 1090 or 83111-83116, or other applicable law. Each Consultant must investigate and manage any potential conflict of interest as part of considering whether to submit an RFP and when assembling its Project team. Given the complexity in determining the existence of a conflict of interest, it is difficult to generalize about what facts might, or might not, result in a conflict of interest. Accordingly, the following are intended to be general guidelines that potential Respondents should treat solely as a starting point in their analysis:

- Any person or firm who substantially participated in the preparation of this RFP package, or any material element thereof, is prohibited from participating in the preparation of a proposal by, or otherwise being a part of, any Consultant responding to this RFP.
- A Consultant is prohibited from including as a member of the Project Team or otherwise using on this project any person who substantially participated in the preparation of the RFP, or any material element thereof.
- The prohibition set forth in the two preceding bullet points is generally not intended to apply to a person or firm who prepares a foundational report or study, such as a master plan, soils report, or environmental clearance document.

The existence of such a conflict of interest is a basis for City of Atwater to disqualify a Consultant's participation in this RFP process. If the City of Atwater determines that a Consultant is disqualified because of the existence of such a conflict of interest, it will provide the Consultant with a written statement of the facts leading to that conclusion.

6.3 Confidentiality and Proprietary Information

All materials and information submitted to The City of Atwater under this RFP process becomes the exclusive property of The City of Atwater but, if not otherwise a public record under the California Public Records Act (California Government Code section 6250 et seq.), shall not be open to public inspection. All submissions and other correspondence will be subject to the following requirements:

- The City of Atwater has a substantial interest in not disclosing submissions during the evaluation process. For this reason, The City of Atwater will not disclose any part of the submissions before it issues the Final Notice of Determination. After issuance of the Final Notice of Determination, all submissions will be subject to public disclosure to the extent such information constitutes a public record under the California Public Records Act.
- There are a limited number of exceptions to the disclosure requirements under the Public Records Act, such as for trade secret information. The City of Atwater is not in a position to determine what information in a submission, if any, may be subject to one of these exceptions. Accordingly, if a Consultant believes that any specific portion of its submission

is exempt from disclosure under the Public Records Act, the Consultant must mark the portion of the submission as such and state the specific provision in the Act that provides the exemption and the factual basis for claiming the exemption. For example, if a Consultant believes a submission contains trade secret information, the Consultant must plainly mark the information as "Trade Secret" and refer to the appropriate section of the Public Records Act which provides the exemption for such information and the factual basis for claiming the exemption.

- If a request is made for information in a submission that a Consultant has properly marked as exempt from disclosure under the Public Records Act (e.g. information that the Consultant has marked as "Confidential", "Trade Secret" or "Proprietary"), The City of Atwater will provide the Consultant with reasonable notice of the request and the opportunity to seek protection from disclosure by a court of competent jurisdiction. It will be the Consultant's sole responsibility to seek such protection from a court. Failure to identify proprietary information will result in all unmarked sections being deemed nonproprietary and available upon public request.
- Any submission that contains language attempting to make all or significant portions of the submission exempt from disclosure or that fails to provide the exemption information required above will be considered a public record in its entirety. Therefore, do not mark your entire submission as "confidential," "trade secret," or "proprietary."

6.4 Rights of the City of Atwater

In connection with this procurement process, including the receipt and evaluation of RFPs and award of the Professional Services Agreement, The City of Atwater reserves to itself (at its sole discretion) all rights available to it under applicable law, including without limitation, with or without cause, and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this RFP, in whole or in part, at any time prior to the execution of the Contract, without incurring any obligations or liabilities.
- Modify the procurement schedule.
- Waive deficiencies, informalities and irregularities in an RFP and accept and review a nonconforming RFP.
- Suspend and terminate the procurement process or terminate evaluations of RFPs received.
- Permit corrections to data submitted with any RFP.
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Respondents to seek an improved understanding of any information contained in an RFP.
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the RFP's.
- Seek clarification from any Respondent to fully understand information provided in the RFP and to help evaluate and rank the Respondents.

- Reject an RFP containing exceptions, additions, qualifications or conditions not called for in the RFP or otherwise not acceptable to the City of Atwater.
- Conduct an independent investigation of any information, including prior experience, included in an RFP by contacting project references, accessing public information, contacting independent parties, or any other means.
- Request additional information from a Respondent during the evaluation of its RFP.
- Retain all bids submitted and to use any ideas in a bid proposal regardless of whether that proposal is selected. Submission of a bid indicates acceptance by the contractor of the conditions contained in the specifications, unless clearly and expressly noted in the bid proposal submitted and confirmed in the contract between the City and the contractor selected.
- Award a contract to the responsible Service Provider who best meets the City's needs by demonstrating the competence, and qualifications necessary for the satisfactory performance of the required services, shall not necessarily be based on the lowest-priced proposal, but shall be based on a determination of which services offered serve the best interest of the City, except as otherwise provided by law, taking into consideration adherence to the included specifications. A contract may be awarded to the next responsible Service Provider if the successful Service Provider refuses or fails to execute the contract. All Service Providers that were not selected by the City shall be notified in writing. Nothing herein shall obligate the City to award a contract to any responding Service Provider. Any contract awarded will be nonexclusive, and the City reserves the right to seek services from other sources, in the City's sole discretion.

6.5 Obligation to Keep Project Team Intact

Respondents are advised that all firms and Key Personnel identified in the RFP shall remain on the Project Team for the duration of the procurement process and execution of the Project. (The anticipated dates for award of the Contract and for completion of the Project are set forth in Subsection 2.2 of this RFP.) If extraordinary circumstances require a change, it must be submitted in writing to the City of Atwater Contact, who, at his or her sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the Contractor's control. Unauthorized changes to the Project Team at any time during the procurement process may result in elimination of the Respondent from further consideration.

6.6 Addenda

If any revisions to the RFP or procurement process become necessary or desirable (at the City of Atwater's sole discretion), the City of Atwater may issue written addenda. **The City of Atwater will not transmit addenda to potential Respondents.** The City of Atwater will post all addenda on the City of Atwater's website at https://www.atwater.org/bids-rfps-RFPs.. **It is Respondent's responsibility to obtain all addenda prior to submitting its RFP.**

Attachment A
Definition of Terms

The definitions of some of the capitalized terms used in this RFP are presented below:

Designer – The Consultant or other firm (such as a subconsultant or joint venture partner) that will provide professional design services and have responsible charge of the design, including preparation of the construction documents.

Draft Contract – The draft contract, including the agreement and all of its attachments, presented as RFP Attachment C (Draft Contract).

Key Personnel – The individuals, employed by Consultant or another firm included on the Project Team, who would fill certain key roles in delivery of the Project and related services by the Consultant, including the following positions: project manager, safety manager, design manager, and [additional positions].

Minimum Qualification Requirements – The requirements set forth in Subsection 6.3 of this RFP that, at a minimum, must be satisfied (or waived by the City of Atwater) in order for the RFP to be evaluated and ranked according to the comparative evaluation criteria.

Owner – City of Atwater

Project – City of Atwater

Project Team – The Consultant, Key Personnel and any additional firms (such as subcontractors and subconsultants) included in the RFP.

Respondent – The entity responding to this RFP by submitting the RFP.

Attachment B - Insurance Requirements

Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Professional shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's bid. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

1. Workers' Compensation

Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with bodily injury limits of not less than ONE MILLION DOLLARS ($1,000,000.00) on a per accident and by disease basis. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Contractor shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in **Exhibit D**. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement, and such waiver of subrogation shall be so stated on Insurance Services Office ("ISO") endorsement form CG 24 04.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Contractor shall notify City within fourteen (14) days of notification from Contractor's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

The requirement to maintain Statutory Worker's Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Contractor does not have any employees.

2. Commercial General and Automobile Liability Insurance

2.1 General requirements

Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS ($2,000,000.00) and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00). The commercial general liability and automobile liability insurance shall be per occurrence,

combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

2.2 Minimum scope of coverage

Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

2.3 Additional requirements

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

b. The City shall be listed and named as an additional insured on Insurance Service Office ("ISO") endorsement form CG 20 10 11 85 if commercially available, or CG 20 10 (all other editions other than 11 85), as follows: "The City of Atwater, its elected officials, officers, agents, and employees".

c. The Certificate of Insurance must list the "City of Atwater listed as ADDITIONAL INSURED" in the field entitled "Description of Operations":

d. The Certificate of Insurance must list the "City of Atwater" in the field entitled "Certificate Holder":

e. The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.

f. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

g. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

h. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the

City. Contractor shall notify City within fourteen (14) days of notification from Contractor's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

3. All Policies Requirements

3.1 Acceptability of insurers

All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

3.2 Verification of coverage

Prior to beginning any work under this Agreement, Contractor shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.3 Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor.All coverages for subcontractors shall be subject to all the requirements stated herein.

3.4 Deductibles and Self-Insured Retentions

Contractor shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Contractor may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Contractor procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

3.5 Waiver of Subrogation

Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Contractor, its employees, agents, and subcontractors.

3.6 Notice of Reduction in Coverage

In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than five (5) days after Contractor is notified of the change in coverage.

4. Remedies

In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement

Attachment C
Draft Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ATWATER AND _____ (PROFESSIONAL)

THIS AGREEMENT for professional services is made by and between the City of Atwater, a California municipal corporation ("City") and _____, a _____, ("Professional") as of _____, 2021 (the "Effective Date"). City and Professional shall be referred to herein separately as a "Party" and collectively as "Parties".

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Professional shall provide to City the services described in the Scope of Work attached hereto and incorporated herein as Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and the Exhibit A, this Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the date first noted above and shall end on _____, the date of completion specified in Exhibit A. Professional shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Professional to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

1.2 Standard of Performance. Professional shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Professional is engaged in the geographical area in which Professional practices its profession. Professional shall prepare all work products required by this Agreement in a substantial, firstclass manner and shall conform to the standards of quality normally observed by a person practicing in Professional's profession.

1.3 Assignment of Personnel. Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Professional shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons. All personnel, including those reassigned at City's request, shall be supervised by Professional. Professional is prohibited from subcontracting this Agreement, or any part of it, unless such subcontracting is expressly approved by City in writing.

1.4 Time. Professional shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Professional's obligations hereunder.

Section 2. COMPENSATION.

City hereby agrees to pay Professional a sum not to exceed _____, notwithstanding any contrary indications that may be contained in Professional's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Professional's fee schedule regarding the amount of compensation, attached as Exhibit B, the Agreement shall prevail. City shall pay Professional for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Professional for services rendered pursuant to this Agreement. Professional shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Professional shall not bill City for duplicate services performed by more than one person.

Professional and City acknowledge and agree that compensation paid by City to Professional under this Agreement is based upon Professional's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Professional. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Professional and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Professional shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs, if any, incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the number of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Professional and each employee, agent, and subcontractor of Professional performing services hereunder;
- The Professional's signature; and
- Professional shall give separate notice to the City when the total number of hours worked by Professional and any one individual employee, agent, or subcontractor of Professional reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete work.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable

costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Professional.

2.3 **Final Payment**. City shall pay the last ten percent (10%) of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 **Total Payment**. City shall pay for the services to be rendered by Professional pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Professional in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Professional submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 **Hourly Fees**. Fees for work performed by Professional on an hourly basis shall not exceed the amounts shown on the fee schedule set forth in Exhibit B.

2.6 **Reimbursable Expenses**. Reimbursable expenses, if any, are set forth in Exhibit B, and shall not exceed _____ ($_____). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 **Payment of Taxes**. Professional is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 **Payment upon Termination**. In the event that the City or Professional terminates this Agreement pursuant to Section 8, the City shall compensate the Professional for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Professional shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 **Authorization to Perform Services**. The Professional is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator, as defined in Section 11.9.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Professional shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Professional only the facilities and equipment listed in this Section, and only under the terms and conditions set forth herein.

City may furnish, at its sole discretion, physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Professional's use while consulting with

City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. **INSURANCE REQUIREMENTS**. Before beginning any work under this Agreement, Professional, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Professional shall provide proof satisfactory to the City of such insurance that meets the requirements of this Section and under forms of insurance satisfactory in all respects and that such insurance is in effect prior to beginning work to the City. Professional shall maintain the insurance policies required by this Section throughout the term of this Agreement. The cost of such insurance shall be included in the Professional's bid. Professional shall not allow any subcontractor to commence work on any subcontract until Professional has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to the City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Professional shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. Professional shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Professional. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than TWO MILLION DOLLARS ($2,000,000) per accident. In the alternative, Professional may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Professional, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

The requirement to maintain Statutory Worker's Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Professional does not have any employees.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Professional, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS ($2,000,000.00) and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00). The commercial general liability and automobile liability insurance shall be per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Professional, including the insured's general supervision of Professional; products and completed operations of Professional; premises owned, occupied, or used by Professional; and automobiles owned, leased, or used by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by

the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of Professional to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Professional, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS ($2,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed $150,000 per claim. An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.2 Claims-made form. The following provisions shall also apply if the professional liability coverage is written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Professional must purchase an extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work under this Agreement, whichever is later.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this Section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Professional shall furnish City with certificates of insurance evidencing required policies delivered to Professional by the insurer, including complete copies of all endorsements attached to those certificates. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Professional beginning work, it shall not waive the Professional's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Subcontractors. Professional shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Professional shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Professional may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Professional procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.4.5 Wasting Policies. Except for Professional Liability insurance policy, no policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.6 Waiver of Subrogation. Professional hereby agrees to waive subrogration which any insurer or contractor may require from vendor by virtue of the payment of any loss. Professional agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Professional, its employees, agents, and subcontractors.

4.5 Remedies. In addition to any other remedies the City may have if Professional fails to provide or maintain any insurance policies, or policy endorsements, to the extent and within the time herein required, the City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies the City may have and are not the exclusive remedy for Professional's breach:

- ✦ Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

✦ Order Professional to stop work under this Agreement or withhold any payment that becomes due to Professional hereunder, or both stop work and withhold any payment until Professional demonstrates compliance with the requirements hereof; and/or ✦ Terminate this Agreement.

Section 5. INDEMNIFICATION AND PROFESSIONAL'S RESPONSIBILITIES.

5.1 General Requirement. Professional shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Professional or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Professional shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Professional or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Professional 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 Professional 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. By execution of this Agreement, Professional acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.2 PERS Indemnification. In the event that Professional or any employee, agent, or subcontractor of Professional 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 City, Professional shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Professional 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.

5.3 Design Professionals. To the extent that the services under this Agreement include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Professional's duty to indemnify under Sections 5.1 and 5.2 shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

Section 6. STATUS OF PROFESSIONAL.

6.1 Independent Contractor. At all times during the term of this Agreement, Professional shall be an independent contractor as defined in Labor Code Section 3353 and shall not be an employee of City. Nothing contained in this Agreement shall be construed to be inconsistent with the foregoing relationship or status. City shall have the right to control Professional only insofar as the results of Professional's services rendered pursuant to this Agreement and assignment of personnel pursuant to Section 1.3; however, otherwise City shall not have the right to control the means by which Professional accomplishes services rendered pursuant to this Agreement. Professional shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by Professional are employees and agents of Professional and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Professional by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Professional and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Professional shall not allow any employee to become eligible for a claim for PERS benefits.

6.2 Professional Not an Agent. Except as City may specify in writing, Professional shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Professional shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Professional and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Professional's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

7.3 Other Governmental Regulations. To the extent that this Agreement may be

funded by fiscal assistance from another governmental entity, Professional, and any subcontractors, shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits**. Professional represents and warrants to City that Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Professional represents and warrants to City that Professional and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Professional and any subcontractors shall obtain and maintain valid Business Licenses from City during the term of this Agreement.

7.5 **Nondiscrimination and Equal Opportunity**. Professional 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, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Professional under this Agreement. Professional shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Professional thereby.

Professional shall include the provisions of this Section in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination**. City may cancel this Agreement at any time and without cause upon written notification to Professional.

Professional may cancel this Agreement upon _____ days' prior written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Professional shall be entitled to compensation for services performed to the satisfaction of the City to the effective date of termination; City, however, may condition payment of such compensation upon Professional delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Professional or prepared by or for Professional or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Section 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Professional understands and agrees that, if City grants such an extension, City

shall have no obligation to provide Professional with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Professional for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments**. The Parties may amend this Agreement only by a writing signed by all the Parties.

8.4 **Assignment and Subcontracting**. City and Professional recognize and agree that this Agreement contemplates personal performance by Professional and is based upon a determination of Professional's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Professional. Professional may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Professional shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 **Survival**. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Professional shall survive the termination of this Agreement.

8.6 **Options upon Breach by Professional**. If Professional materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement. City shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the services required by this Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Professional pursuant to this Agreement;

8.6.3 Retain a different professional to complete the work described in Exhibit A not finished by Professional; or

8.6.4 Charge Professional the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Professional pursuant to Section 2 if Professional had completed the work.

Section 9. Confidentiality. Professional understands and agrees that, in the performance of services under this Agreement or in the contemplation thereof, Professional may have access to confidential information or other materials exempt from public disclosure, and that such information may contain sensitive or confidential data, the disclosure of which to third parties may be damaging to City ("Confidential Information") or any third party. Professional shall not, either during or after the Term, disclose to any third party any Confidential Information without the prior

written consent of City. If City gives Professional written authorization to make any such disclosure, Professional shall do so only within the limits and to the extent of that authorization.

Section 10. KEEPING AND STATUS OF RECORDS.

10.1 Records Created as Part of Professional'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 Professional prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Professional hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Professional agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

10.2 Professional's Books and Records. Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other 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 Professional to this Agreement.

10.3 Inspection and Audit of Records. Any records or documents that Section 10.2 of this Agreement requires Professional to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of the City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 11. MISCELLANEOUS PROVISIONS.

11.1 Attorneys' Fees and Costs. 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 and costs, 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.

11.2 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 Merced or in the United States

District Court, Eastern District of California.

11.3 **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. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

11.4 **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.

11.5 **Successors and Assigns**. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

11.6 **Use of Recycled Products**. Professional shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

11.7 **Conflict of Interest**. Professional may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Professional in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code section 81000 et seq.

Professional shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code sections 1090 et seq.

Professional hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Professional was an employee, agent, appointee, or official of the City in the previous twelve months, Professional warrants that it did not participate in any manner in the forming of this Agreement. Professional understands that, if this Agreement is made in violation of Government Code section 1090 et seq., the entire Agreement is void and Professional will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Professional will be required to reimburse the City for any sums paid to the Professional. Professional understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

11.8 **Solicitation**. Professional agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

11.9 **Contract Administration**. This Agreement shall be administered by _____ ("Contract Administrator"). All

correspondence shall be directed to or through the Contract Administrator or his or her designee.

11.10 **Notices.** Any written notice to Professional shall be sent to:

_____

_____

_____

Email Address (for Insurance Update Requests)

_____

Any written notice to City shall be sent to:

_____

_____

_____

11.11 **Professional Seal**. Where applicable in the determination of the contract administrator or when required by law, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

_____

Seal and Signature of Registered Professional with report/design responsibility.

11.12 **Integration**. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and the fee schedule attached hereto and incorporated herein as Exhibit B, represents the entire and integrated agreement between City and Professional and supersedes all prior negotiations, representations, or agreements, either written or oral.

11.13 **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.

11.14 **Time is of the Essence**. Time is of the essence in this Agreement for each covenant and term of a condition herein.

11.15 **Authority**. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into the Agreement have been fully complied with.

11.16 **Drafting and Ambiguities**. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

11.17 **Headings**. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

11.18 **IRS Form W-9.** Professional shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

[signatures on the following page]

Draft

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY

_____

Lori Waterman, City Manager

_____

Lucy Armstrong, City Clerk

_____

Frank Splendorio, City Attorney

Attest:

PROFESSIONAL

_____

[NAME, TITLE]

Approved as to Form:

Attachment D - Certificate of Compliance with Labor Code § 3700

Release and Indemnification

The undersigned, on behalf of and as the duly certified representative of Contractor, certifies as follows:

1. Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Contractor has complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor Code §§1860, 1861.)

2. Should Contractor fail to secure Workers' Compensation coverage as required by the State of California, Contractor shall release, hold harmless, defend and indemnify the City of Atwater from and against any damage, liability, claim, cause of action and any other loss, including without limitation, court costs, reasonable attorney's fees and costs resulting from any failure to take and/or maintain Workers' Compensation insurance as required by law. The provisions of this Exhibit shall survive termination, suspension and/or completion of this Contract. It is further understood and agreed that this release and assumption of risk is to be binding on Contractor's successors, heirs, and assigns.

Contractor

By: _____

Date: _____

Signature: _____

Attachment E - Project Background Documents