



CITY OF ATWATER

CALIFORNIA

REQUEST FOR PROPOSALS

OCCUPATIONAL HEALTH SERVICES

Date Issued: October 12, 2021
Proposals Due: November 9, 2021, by 4:00 PM

Submit proposals to: City of Atwater
Attn: Lucy Armstrong, City Clerk
750 Bellevue Road
Atwater, CA 95301

REQUEST FOR PROPOSALS

OCCUPATIONAL HEALTH SERVICES

Section 1: Introduction

The City of Atwater (“City”) is soliciting proposals for a licensed medical facility or medical physician to perform occupational medical services for City employees. The ideal respondent will provide pre-employment physicals, return to work/fit for duty exams, workers’ compensation treatment, and more. Proposers must be licensed to practice medicine in the State of California. Due to the full scope of this physical, respondent must describe in detail how they propose to schedule, test, and provide written reports as well as provide sample reporting. Also, to be included is the type of equipment the responder uses in these tests and whether this equipment is on-site. Respondent must also submit a detailed description and photos of the proposed medical facility. Respondent must demonstrate that they perform screenings for heart and lung issues on a regular basis or are able to if not already doing so. If respondent is performing these types of exams, please state so under medical qualifications. Failure to provide this documentation shall cause rejection of qualifications/proposals.

Section 2: Background

The City of Atwater, incorporated on August 16, 1922, is a general law city operating under the City Council/City Manager form of government. Atwater is located in the northeast of Merced County which lies within the central portion of the San Joaquin Valley in the geographic center of the State of California. The City is located six miles northwest of the City of Merced, 65 miles north of the City of Fresno, 45 miles south of the City of Modesto, and 105 miles southeast of San Francisco. The City’s population is approximately 29,000. Currently the City has 80 full-time employees, 13 part-time employees, and 1 volunteer who provide the full range of City services including recreation, police, fire, administration, and public works.

Section 3: Submittal Requirements

Proposals must be submitted in a sealed envelope bearing the caption:

“Proposals for City of Atwater’s Occupational Health Services”

Interested individuals and/or firms are invited to submit four (4) copies of their proposals prior to the deadline.

Proposals are to be addressed to:

Lucy Armstrong
City Clerk
750 Bellevue Road
Atwater, CA 95301

Proposals may be filed in person at Atwater City Hall, at the above address, or may be mailed. Proposals must be received by **Tuesday, November 9, 2021, on or before 4:00 PM.**

Early responses are acceptable; proposals will not be opened until after the submittal deadline. Late proposals will not be accepted. Faxed or emailed proposals will not be accepted. Postmarks prior to the deadline are not sufficient for acceptance. The City will not be responsible for any errors or omissions in the proposals or for any delays in delivery.

Proposals should provide a straightforward and concise presentation adequate to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of contents. Responsiveness to the RFP will be a principal basis for evaluation.

The City reserves the right, without qualification, to reject any or all proposals, to request additional information concerning any proposal for purpose of clarification, to accept or negotiate any modification to any proposal, following the deadline for receipt of all proposals, and to waive any irregularities, if such would serve the best interests of the City, as determined by the City. This solicitation does not obligate the City to enter into an agreement with any proposer. The City reserves the right to cancel this RFP at any time, at its discretion.

Proposals become the property of the City and information therein shall become public property subject to disclosure laws after a Notice of Intent to Award. The City reserves the right to make use of any information or ideas contained in submitted proposals.

The City is not liable for any cost or expense incurred in the preparation of a response to this RFP.

Section 4: Inquiries

Any questions, interpretations, or clarifications, either administrative or technical, from prospective proposers regarding this RFP must be requested in writing, no later than, Tuesday, November 2, 2021. All inquiries must be submitted to Jeanna Del Real, Deputy City Manager, via email to the following email address: jdreal@atwater.org.

Verbal explanations or instructions given during any phase of this solicitation will not be binding. All clarifications made by the City will be in writing and will be provided to all prospective proposers. Any information given a prospective proposer will be furnished

promptly as an Addendum to the solicitation if that information is necessary in submitting proposals or if the lack of it would be prejudicial to other prospective proposers. The Addendum shall have the same binding effect as the remainder of the RFP.

Section 5: Schedule

RFP Release Date:	Tuesday, October 12, 2021
Responses Due:	Tuesday, November 9, 2021
Vendor Interviews (week of)	November 15, 2021
Facility Tours:	TBD November 29, 2021
Award of Contract:	Monday, December 13, 2021
Anticipated Start Date:	Monday, January 3, 2022

These dates are subject to change.

Section 6: Scope of Services

The City desires to contract with an individual physician or medical group with the ability to offer quality and timely medical services for City employees and applicants with employment related medical evaluation services. The selected medical provider will provide services including, but not limited to, the following:

- Basic Physical Exam
- Pre-employment physicals which vary in scope depending upon job classification
- Physical Exam – for law enforcement and dispatcher candidates compliant with the California Commission on Peace Officer Standards and Training (POST) regulations <https://www.post.ca.gov/medical-screening-manual.aspx>
- Physical Exam – for firefighter candidates in accordance with the National Fire Protection Association (NFPA) 1582 guidelines https://www.iafc.org/files/1SAFEhealthSHS/shs_FDguideToImplementingNPFA1582.pdf
- Primary care physician for industrial related illness and injuries (workers' compensation cases)
- Audiograms – hearing conservation program required by OSHA
- Vaccines – administer vaccines, including hepatitis, DTAP, and flu shots to employees when requested
- Hepatitis, OPIM, ADT, and other bloodborne pathogen pre-exposure services, and testing with required documentation and/or reports
- Pulmonary Function Test
- TB Skin Test – biannually for employees and volunteers
- Special Procedures – EKG, etc.
- Return to Work/Fit for Duty Exams – for employees returning back from an illness or injury to establish ability to perform essential job functions
- Respirator Exam – required by OSHA to clear employees for respirator use

- Perform Strength and Flex Test – to establish employees’ ability to perform essential job functions based on job descriptions simulated with a physical therapist
- Vision Test – vision testing will include for static far acuity, color, vision, and peripheral vision
- Evaluate Grip Strength
- Other Services – the selected vendor may be requested to conduct return to work, fitness for duty, reasonable accommodation evaluations related to non-industrial conditions, and other services

Keeping the objectives in mind, the City expects that the individual physician or medical group will:

1. Provide State licensed qualified physicians who are board certified.
2. Maintain a computer system to house medical exam testing and results information and provide that information to the City’s Human Resources Department.
3. Provide written testing results with doctor’s dictation to the employee and respective department as referenced above. The employer is to be notified in writing if the employee has a medical physical condition of which he/she has been warned.
4. Provide written Progress Reports (PR-2) timely to the employee (at time of appointment) and the City’s third-party adjustor (TPA) for workers’ compensation occupational illnesses and injuries.
5. Collaboration and coordination with TPA on modified duty and return to work, where applicable.
6. Maintain a facility fully equipped to provide all required testing.
7. Maintain medical records in compliance with State and Federal statutes.
8. Maintain personnel to conduct testing. Work with the City’s Human Resources Department staff to assure program goals and objectives are maintained.
9. Arrange scheduling to enable employees to take all required tests in one scheduled visit, except those procedures that require evaluation before examinations are performed under this Agreement including, but not limited to, blood draw, chest x-ray, EKG, and other diagnostic services.
10. Schedule lab work before the exam so the examiner may have the results when counseling the employee.

11. Schedule employees so that testing may begin within fifteen (15) minutes of the scheduled appointment.
12. Provide employer with written documentation of said physical including all diagnostic results within three (3) business days after said physical via facsimile or electronic mail. A faxed authorization that employee is fit for duty will be required within 24 hours of the exam.
13. Physician will provide employee with a clear, concise, and detailed analysis of the individual's risk factors and direct them, in writing, to correct predisposing conditions. Employee will be provided a form to sign acknowledging receipt of the forms provided by the examining physician.
14. The medical provider must provide sufficient staffing availability to schedule appointments within three (3) City business days of a request for appointment.
15. Shall ensure applicable staff are trained and experienced in urine specimen collection for drug testing and shall be breath alcohol technician certified.
16. Shall meet with City staff and/or designated representatives as reasonably requested.
17. Shall be compliant with the Health Insurance Portability and Accountability Act ("HIPAA") of 1996.
18. Provide a customer service phone number for inquiries on claims, eligibility, services, coverage, or other inquiries from participants during regular business hours.

For industrial injury/illness examination, treatment, and reporting, the City expects that the individual physician or medical group will:

1. Provide assessment and treatment services as an independent contractor in accordance with the Medical Treatment Utilization Schedule (MTUS) as mandated by the Division of Workers' Compensation and other evidence based medical guidelines.
2. Provide medical reports and invoices for payment within the time frame specified in the California Code of Regulations, Title 8, Section 9785 and comply with reporting requirements as requested by the City and/or the City's third-party administrator (AIMS).
3. On the same day as the evaluation, provide the City with an injured workers' physical, mental, and any other abilities so the City can determine if the injured worker is able to return to duty.
4. Provide sufficient staffing to treat new injuries and provide the services detailed in the Scope of Work.
5. Provide medical monitoring and modified duty evaluations.

6. Provide first aid and exposure evaluations.
7. Manage medical records and reports in compliance with all applicable regulations and Federal laws.
8. Cooperate fully with the City on any matter arising out of a Workers' Compensation Appeals Board or related lawsuit.

A Physician's Assistant or Certified Nurse Practitioner may treat industrial injuries but must be supervised by a Physician and may only treat as provided in the California Labor Code governing the Workers' Compensation Program.

Section 7: Proposal Content and Requested Information

The City of Atwater requires the applicant to submit a concise proposal clearly addressing all of the requirements outlined in this RFP. Please answer the questions in the format and order presented.

To be considered responsive, the proposal must provide specific and succinct answers to all questions and requests for information. Indirect, imprecise, or incomplete responses can serve only to the disadvantage of the applicant. Submission of individual resumes is optional, but encouraged, although alone will not be considered responsive to any specific questions.

Section 8: RFP Requirements

Responses to this request must include, at a minimum, the following information:

1. Business name, DBA (if applicable) and principal contact person, including office location, address, telephone number, fax number, and e-mail address.
2. Physician/Medical Group Profile:
 - a. Describe your organization including a brief description and history of the clinic and/or individual including the number of years in business, and the number and type of staff.
 - b. Identify key personnel to be assigned to the City including title, telephone number(s), etc.
 - c. Describe your company's experience in providing similar services to other public agencies or private sector employers.
 - d. Discuss your physicians' training including that related to medical treatment, evaluation, and documentation of industrial injuries; and pre-employment requirements of the California Peace Officer Standards and Training (POST).
3. Provide a schedule of your facility hours, including weekends and holidays.
4. Provide a detailed description of facility as well as photos of facility.

5. Please list all services provided in-clinic, indicating the type of equipment used, including, but not limited to:
 - a. Examination and treatment
 - b. X-rays and diagnostics
 - c. Surgery and casting
 - d. Physical therapy and rehabilitation services
6. Provide the company name, contact person, and telephone number for at least three current customers that the City may contact regarding your company's services. Also, provide the same information for at least two previous customers with whom your company is no longer doing business that the City may contact.
7. Detailed budget for supplied scope of work. Each line item shall detail the applicable billing rate and the estimated number of hours to complete the task.
8. The City of Atwater requires a current Business License of all vendors.

Section 9: Review and Selection Process

City staff will evaluate the materials provided in response to the RFP based on the following criteria:

1. Quality and thoroughness of the proposal.
2. Qualifications of entity and key personnel. Includes the ability to provide the requested services, recent experience conducting similar work, and the skills and experience of assigned personnel.
3. Quality, flexibility, and cleanliness of medical facilities. Includes the availability of on-site specialty services, facility hours and availability, and creative approaches to providing services that provide efficiencies and enhanced customer service.
4. Approach and ability to provide the requested scope of services. Includes an understanding of the requested scope of services, knowledge of applicable laws and regulations related to the scope of services, and record of performance.
5. Cost. Although proposals will be evaluated primarily on the basis of qualifications and capability, cost will be considered.

The City reserves the right to conduct independent reviews, interview the respondents, and tour facilities prior to making any selection. At a minimum, the proposed lead individual and other key staff members should appear at the interview. If you or your firm is selected to participate in an oral interview, you will be notified the week prior to the

scheduled interview. The City of Atwater will not be liable for any costs associated with your firm preparing its response to this RFP.

Section 10: Acceptance or Rejection of Proposal

The City reserves the right to accept or reject any or all responses received in response to this request. The City also reserves the right to waive any informality, technical defect, or clerical error or irregularity in any response. Additionally, the City may, for any reason, decide not to award an agreement based on this RFP. The City reserves the right to cancel this RFP. The City shall not be obligated to respond to any responses submitted, nor be legally bound in any manner by the submission of the response.

Section 11: General Description of Proposed Agreement

Upon conclusion of the RFP process, the Deputy City Manager will recommend an individual and/or firm to enter into negotiations for the requested services. The recommended individual and/or firm will enter into contract negotiations with the City in substantial conformity with the selected proposal and the form of the City's Professional Services Agreement.

While finding a single provider for services is preferable, the City is willing to consider proposals to perform a portion of the requested services.

Section 12: Insurance and Indemnification Requirements

The selected vendor, at vendor's sole cost and expense and for the full term of the agreement or any extension thereof, shall obtain and maintain at least all of the insurance requirements outlined in Exhibit C of the City's Professional Services Agreement (attached).

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City of Atwater as to form and content. The selected vendor agrees to provide the City with a copy of said policies, certificates, and/or endorsements.

The selected vendor shall satisfy these insurance requirements prior to approval of the agreement. Please address any issues with respect to insurance requirements in your response to the proposal.

Section 13: Examination of Proposed Material

The submission of a response to this RFP shall be deemed a representation and certification by the vendor that vendor has investigated all aspects of the RFP, is aware of the applicable facts pertaining to the RFP process, its procedures, and requirements, and has read and understood the RFP. No request for modification of the responses to this request shall be considered after its submission on grounds that the vendor was not fully informed as to any facts or condition.

Section 14: Public Nature of Proposed Material

Responses to this RFP become the exclusive property of the City, including all material in or with any proposal or response. At such time as the Deputy City Manager recommends a vendor the City Council, all responses to the RFP received become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the vendor as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary." The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the Public Records Act. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Atwater may not be in a position to establish that the information that a vendor submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the City will provide the vendor who submitted the information with reasonable notice to allow the vendor to seek protection from disclosure by a court of competent jurisdiction.

Section 15: Disqualification

Factors such as, but not limited to, any of the following may be considered just cause to disqualify a response to the RFP without further consideration:

1. Evidence of collusion, directly or indirectly, among vendors in regard to the amount, terms, or conditions of this proposal.
2. Any attempt to improperly influence any member of the selection staff.
3. Existence of any lawsuit, unresolved contractual claim, or dispute between vendor and the City.
4. Evidence of incorrect information submitted as part of the RFP.
5. Evidence of vendor's inability to successfully complete the responsibilities and obligations of the proposed scope of work.
6. Vendor's default under any agreement, which results in termination of the agreement.

Section 16: Non-Conforming Response

A response shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or

limitation of form or to a RFP may be sufficient grounds for non-acceptance of the response, at the sole discretion of the City.

Section 17: Non-Discrimination/Non-Preferential Treatment

The successful vendor shall not discriminate, in any way, against any person based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, or any other protected classification in connection with or related to the performance of City of Atwater contracts.

Section 18: Prohibition of Gifts

City officials are subject to several legal and policy limitations regarding receipt of gifts from persons, firms, or corporations either engaged in business with the City or proposing to do business with the City. The offering of any illegal gift shall be grounds to disqualify a vendor. To avoid even the appearance of impropriety, vendors should not offer any gifts or souvenirs, even of minimal value, to City officers or employees.

Section 19: Additional Terms and Conditions

1. It is anticipated that the award of the agreement resulting from the RFP shall include terms and conditions similar to those referenced in the City's Professional Services Agreement. Exceptions proposed by the vendor, if any, to the terms and conditions included in the Professional Services Agreement should be included in the response. The City reserves the right to consider any proposal exceptions during its evaluation of the acceptability of a response.
2. This RFP does not commit the City to pay any costs incurred in the submission of the response or in making any necessary studies or analysis in preparation of submission of the response.
3. The City reserves the right without limitation to:
 - a. Execute an agreement with one or more vendors based solely on the response to this RFP and any approved additions.
 - b. Enter into an agreement with another vendor in the event that the originally selected vendor defaults or fails to execute an agreement with the City.
 - c. Enter into negotiations with one or more vendors.
 - d. Extend, modify, and/or re-issue the RFP.
 - e. Take action regarding the RFP as may be deemed to be in the best interest of the City.
4. The City reserves the right to verify any information provided during the RFP process. The City may contact references listed or any other person known to have contracted with vendor.

5. An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and of the vendor.

Section 20: Attachments

Following are attachments to this RFP:

Attachment: City's Professional Services Agreement

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF ATWATER AND [REDACTED] (PROFESSIONAL)**

THIS AGREEMENT for professional services is made by and between the City of Atwater, a California municipal corporation ("City") and [REDACTED], a [REDACTED], ("Professional") as of [REDACTED], 20XX (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 [REDACTED], 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, first-class 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 [REDACTED], 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 amount 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 described in Exhibit A, if applicable.

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 [REDACTED] (\$ [REDACTED]). 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 ONE MILLION DOLLARS (\$1,000,000) 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 subrogation 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 [REDACTED] 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 [REDACTED] ("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:

[Redacted]

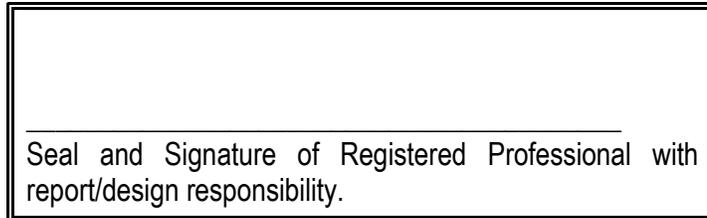
Email Address (for Insurance Update Requests)

[Redacted]

Any written notice to City shall be sent to:

[Redacted]

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.



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]

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

CITY

PROFESSIONAL

Lori Waterman, City Manager

[NAME, TITLE]

Attest:

Lucy Armstrong, City Clerk

Approved as to Form:

Frank Splendorio, City Attorney

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
FEE SCHEDULE