



City of Atwater

Request for Qualifications for

California Government Relations and Lobbying Services

Date Released: November 17, 2021

Proposals due prior to: 4:00 pm on December 2, 2021

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

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ATTACHMENT A – SAMPLE CONTRACT AGREEMENT

I. INTRODUCTION

The City of Atwater was incorporated in 1922 as a general law city and is governed under the City Council and City Manager form of government. The City Council is comprised of five Council Members, elected by district, and one Mayor, who is elected at large, serving staggered four-year terms. The City is located on State Route 99 in Merced County, and it is 8 miles west-northwest of Merced and encompasses 6.57 square miles with cultural and ethnic diversity among its population of 31,800.

The City interacts with numerous government agencies and public utilities, including but not limited to the California Department of Parks and Recreation, the California State Water Resources Control Board, the California Department of Transportation, the California Department of Housing and Community Development, the Department of Justice, and the County of Merced.

The City is interested in contracting with several highly qualified firms that can engage decision-makers on legislative, quasi-legislative, and policy related actions. The City seeks the services of a government relations and lobbying firm that can serve as the conduit for communication with elected officials and other agencies. As a registered lobbyist with the Secretary of State, the consultant will be bound by the Political Reform Act and the regulations of the Fair Political Practices Commission, including compliance with lobbying reporting requirements by filing disclosure reports on behalf of the City.

The successful firm(s) will be expected to provide advice and counsel regarding advocacy and government relations strategy that will protect and advance the City's priorities and program funding.

All qualified firms interested in providing services as outlined in this RFQ are invited to submit their statement of qualifications (SOQ). SOQs submitted in response to this RFQ will be used as a basis for selecting the Consultant(s) for this service. The Consultant's qualifications will be evaluated and ranked according to the criteria provided in "Evaluation Criteria," section of this RFQ.

II. GENERAL INFORMATION AND SCHEDULE

A. General

Addenda to this RFQ, if issued, will be posted on the City of Atwater website at:
<http://www.atwater.org/index.html>

All interested firms are required to submit statements of qualification in accordance with the conditions and dates outlined in this Request for Qualifications (RFQ).

All questions or inquiries regarding this RFQ or the selection process are to be addressed, in writing only, (e-mail is acceptable) by 2:00 PM on November 24, 2021, to:

Greg Thompson, Community Development Director
City of Atwater
Community Development Department
750 Bellevue Road
Atwater, CA 95301 or
Email: cthurman@atwater.org

Questions received after this time will not be answered. Questions and responses will be posted on the website. It will be the submitter's responsibility to periodically review the website for responses to questions and to review any additional information that may be provided by the City.

B. Submission

SOQs are to be clear, concise and responsive to the information requested. The SOQ may not exceed twenty (20) physical pages total (8-1/2" x 11"), regardless of double-sided or single sided print. Minimum font size of 12 required. The page limit does not apply to any forms required under this RFQ. Each page should be numbered.

Proposals submitted shall include: Three (3) bound copies and one (1) copy of the fee rates (sealed separately).

Proposals submitted shall include: one (1) electronic copy (via email) of their SOQ. The SOQ shall not exceed 15 MB and should be labeled with the consultant's name in the file name. Submit one (1) copy of the fee schedule as a separate attachment.

SOQ will be accepted until **4:00 pm on December 2, 2021**. SOQs received after the deadline will be automatically rejected. SOQs will be received only at the address shown below and must be received by the time listed here.

City of Atwater
Attn: Lucy Armstrong, City Clerk
750 Bellevue Road
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All cost for preparation of the submittals shall be borne by the applicant, and submittals received shall become the property of the City, whether accepted or rejected. Incomplete submittals may be rejected as non-responsive. The City of Atwater reserves the right to reject any or all proposals submitted and the City reserves the right to waive any irregularities in the proposals.

All proposals and any other materials submitted and accepted in response to this RFQ will become property of the City of Atwater and will not be returned to the proposer.

C. Schedule

The City's tentative schedule for the RFQ process is as follows, subject to change, depending on the needs of the City.

- Issuance of RFQ: November 17, 2021
- Last day for Request for Information: November 24, 2021 by 2:00 PM
- Deadline for submittal of SOQ: December 2, 2021 by 4:00 PM
- SOQ review and evaluation: December 3, 2021
- Cost Negotiation, Award contract: December 14, 2021

III. SCOPE OF SERVICES

Under the direction of the City Manager, the position of the contracted Consultant(s) will administer functions pertaining to the needs of the City as requested, and compensated in accordance with the approved fee schedule to be attached as a part of a future agreement, including but not necessarily limited to the following:

- A. Work with City Council, the City Manager, and key staff to discuss goals, objectives, opportunities, and priorities
- B. Support a positive relationship with the Governor's office, State Legislature, State Water Resources Control Board, the California Department of Parks and Recreation, the California Department of Transportation, and/or other agencies
- C. Identify and monitor legislation and state regulatory processes, including pertinent administrative, legislative and regulatory matters that may impact the City
- D. Provide legislative and regulatory lobbying, as needed
- E. Engage key officials (executive, legislative and local government) and stakeholders to support the City's objectives to secure permits, grants, incentives, and favorable laws and regulations
- F. Pursue legislative, regulatory and/or policy directives to help address issues with transportation, utility, homelessness, drug and alcohol rehabilitation, and sober living groups
- G. Pursue greater public funding for the City.
- H. Coordinate meetings with State Legislators and agency department leaders to provide the City the opportunity to meet face-to-face with key decision-makers on pertinent City issues

- I. Assist with communications and messaging
- J. Lobby for the City's position on legislation and regulatory matters of interest

All responsive statements of qualifications will be evaluated and assigned a score by a team of raters. Successful firm(s) may be invited to participate in an interview to further discuss their firm's ability to provide the services require by the City. The City is seeking to execute a twelve (12) month contract (Attachment A) with two (2) options to extend the term of the agreement following the end of the initial term. Each option term shall be for a period of twelve (12) months, for a total maximum contract period of thirty-six (36) months.

IV. GENERAL REQUIREMENTS

The Consultant's personnel shall be capable, competent, and experienced in performing the types of work in this Contract with minimal instruction. Personnel skill level should match the specific job classifications, as set forth herein or in the Consultant's Cost Proposal and task complexity.

The proposed Consultant(s) shall be registered with the Secretary of State.

The Consultant's personnel shall be knowledgeable about, and comply with, all applicable Federal, State, and Local laws and regulations.

The Consultant is required to submit a written request and obtain the City's Contract Administrator's prior written approval for any substitutions, additions, alterations, or modifications to the consultant's originally proposed personnel and project organization, as depicted on the proposed consultant's organization chart or the consultant's cost proposals. The substitute personnel shall have the same job classification as set forth herein or in the consultant's cost proposal not to exceed the billing rate and meet or exceed the qualifications and experience level of the previously assigned personnel, at no additional cost to the City.

Unless otherwise specified, the consultant shall provide all materials and equipment to complete the required scope of work.

V. STATEMENT OF QUALIFICATIONS REQUIREMENTS

The City is seeking qualified consultants that demonstrate extensive knowledge and experience in dealing with municipalities and scope of services listed in this RFQ. To be considered, all submittals shall be responsive to the RFQ and must contain the following:

1. **Cover letter:** Shall be addressed to Greg Thompson, Community Development Director and must at a minimum, contain the following information:

- a) Brief summary of Consultant's profile, qualifications and capabilities which specifically addresses the organization's knowledge and experience under this RFQ.
 - b) Proposed subconsultants (if applicable)
 - c) Proposed Consultant's phone number and email address
 - d) Acknowledgement of receipt of all addenda (if applicable)
 - e) A statement attesting that all information submitted with the SOQ is true and correct
 - f) Signature of the official authorized to negotiate and contractually bind the firm with the City should an award of contract occurs.
2. **Qualifications and Experience:** The Consultant shall summarize the qualifications and relevant experience for the consultant firm, proposed any subconsultants. The following items should be included:
- a) Project Team – Identify the contact person with primary responsibility for this project, other key project personnel, including sub-consultants, and their individual areas of responsibility. Key personnel listed will be considered as committed to the project. A resume of all key personnel assigned to the project, including sub-consultants, shall be submitted.
 - b) Relevant Project Experience - Describe the team's experience in providing services as shown in the "Scope of Work" section above. Provide five (5) relevant projects in the past three (3) years specifically related to the scope of work. For each listed experience, provide client name, contact person, and current phone number and e-mail address. Reference projects should include a brief description of what the Consultant's firm/project manager provided on the project.
3. **Project Understanding and Approach:** Include a brief narrative description of the general approach the consultant would use to provide the requested services. The narrative must include the consultant's overall strategy for scheduling work, a schedule of milestones for meeting project deadlines, a description of quality control measures, and approach to working as part of a team with City staff.
4. **References:** Provide two or more references from municipal agencies that can supply information on the quality of your services during the past two (2) years.
5. **Conflict of Interest Statement:** Provide a statement of any recent, current or anticipated contractual obligations that relate to similar work within the City of Atwater which may have a potential to conflict with the Consultant's work on future on-call tasks with the City.
6. **Contract and Insurance Documentation:** The City's standard contract for on-call professional services is attached for review – See Attachment A. The City requires that the consultant provide and maintain policies of insurance according to the

contract. If upon review, the Consultant has concerns with the standard contract, they may submit a red-lined copy indicating their concerns within their proposal. The City shall review any requested changes and if deemed appropriate, will approve the requested changes. If the City does not deem the changes appropriate, this will be relayed back to the Proposer. Where applicable, an award of contract will not be recommended if changes are not agreeable to both parties.

7. **Fees:** Proposers shall provide a fee schedule to include hourly rates and titles of staff proposed. This information will not be used as a determining factor as to which firm we will enter into an agreement with. It will be used as a basis of compensation for future work under the Agreement.

VI. EVALUATION AND CRITERIA

A committee will review and evaluate the SOQ submitted based on the following criteria and maximum points allotted. The Committee will “short-list” the most qualified firms, utilizing the selection criteria listed below. In the event that the Selection Committee requires an interview, it is mandatory that all principals of the firm and the designated City Engineer attend.

A committee will review and evaluate the SOQ submitted based on the following criteria and maximum points allotted.

Criteria	POINTS
Consultants understanding of the City’s needs under this RFQ and overall responsiveness to the requirements.	10
Consultant Team - expertise, capabilities and technical competence of key personnel, familiarity with state and federal procedures, local experience on comparable services/municipal agencies.	35
Relevant experience performed by the Consultant Team; details about comparable services completed by the firm, as well as local experience; ability to provide the required services; references from agencies	30
Technical competence and expertise as demonstrated by the proposer’s expressed subject matter understanding, proposed approach, delivery and methodology.	25
Interview (optional)	20

ATTACHMENT A – SAMPLE CONTRACT AGREEMENT

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

THIS AGREEMENT for on-call 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, and more specifically described in individual Task Orders shall which be appended to this Agreement as an exhibit (collectively, the “Services”). The first such Task Order shall be identified as Task Order No. 1 and attached as “Exhibit T-1”. Subsequent Task Orders shall be identified and appended accordingly. 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 Effective Date noted above and shall end on [REDACTED]. 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 for the full performance of its Services on a time and materials basis at the compensation rates specified on Exhibit B; provided, however, that total compensation for the full performance by Professional of Services under a particular Task Order shall not exceed the amount stated therein, and in no case, shall the total compensation under any particular Task Order exceed \$200,000, without prior authorization from the City Manager or her designee. 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 _____ (\$_____). 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 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

- 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, for up to two, one-year renewals. Any such extension shall require a written approval by the City Manager, or her designee. Any extension beyond two years 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.

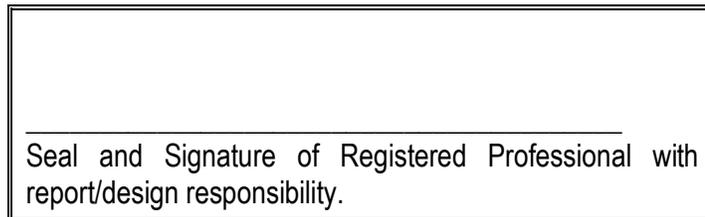
11.9 **Contract Administration.** This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

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.



11.12 **Integration.** This Agreement, and the exhibits listed below, represents the entire and integrated agreement between City and Professional and supersedes all prior negotiations, representations, or agreements, either written or oral.

- Exhibit A Scope of Work
- Exhibit B Fee Schedule
- Exhibit C Public Works Requirements
- Exhibit D Federal Provisions and Forms

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