



City of Atwater

Requests for Qualifications for On-Call Construction Management and/or Project Management Services

Date Released: February 24, 2022

Proposals due prior to: 4:00 PM March 11, 2022

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

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SECTION 1. BACKGROUND

1.1 Introduction

By way of this Request for Qualifications (“RFQ”), the City of Atwater (“City”), through the Public Works/Community Development Department is seeking Statements of Qualifications (“Responses”) from interested project/construction management firms, partnerships, joint-ventures, corporations, associations, and/or individuals (“Firms”), to provide construction management services and/or project management planning services (“Services”). The City intends to pre-qualify a limited number of Construction Management firms and/or Project Management Firms (“Consultant”) that can provide comprehensive construction management and/or project management, and other professional services for various projects.

The City intends to select Firms that best meet the needs of the City to perform the project/construction management services as described in this RFQ. The criteria on which the City makes its determination will be based on proven ability and experience as described herein, and on the needs of the City.

The Firm(s) selected as a result of this process shall be responsible for the following general categories of work as determined by the City. These services can vary from any of the following categories: Strategic Consulting, Real Estate Consulting, Development Management, Financial Services, Project Management, and Project Delivery.

These services will be on-call requests for various projects within the City of Atwater through an On-Call Master Agreement. Separate task orders will be issued pursuant to such On-Call Master Agreement on a per-project basis. The City may execute master agreements with several firms per category. It is the submitter's responsibility to clearly communicate and identify which category is being proposed on. The contracts will be for a period of three years, with an option of two (2) one-year extensions including any amendments for each category.

On-Call Master Agreement for each Consultant will have a per-project cap of \$200,000 maximum over the 3-year term of the contract (this is not the aggregate amount over three years). Should a single project appear to have a cost higher than the maximum allowable cap per project/task order, the project will go out as a separate RFQ and/or RFP.

The on-call master agreement will allow the City to request services of the retained Consultant(s) on an individual project basis as the need arises. Prior to any work completed under the Master Agreement, the City will solicit a proposal for a specific scope of service from the retained consultant(s). Proposals will be evaluated based on scope, understanding and schedule. The successful proposal will be given a Task Order pursuant to the on-call master agreement executed by the Consultant and the City once the cost fee has been negotiated. Should the City fail to successfully negotiate an

acceptable maximum fee for services for a specific project with the Consultant involved, the City reserves the right to seek and retain said services through other means, other consultants, or contractors.

The On-Call Master Agreement with the selected consultant(s) will not limit the City's ability to seek other proposals for professional services that in the City's sole discretion are outside the scope, ability or availability of the currently retained on-call consultant(s). The purpose of the Master Agreement arrangement is for convenience of the City for the projects that are routine and general in nature. For specialized projects, the City may likely, and reserves all rights to, conduct a project specific RFQ and/or RFP.

1.2 RFQ Organization

This RFQ consists of six Sections and two Attachments:

- Section 1: Background
- Section 2: General Information and Schedule
- Section 3: Scope of Services
- Section 4: RFQ Submission Requirements
- Section 5: RFQ Evaluation and Selection
- Section 6: Conditions for Respondents
- Attachment A: Insurance Requirements (sample only, subject to change)
- Attachment B: Draft On-Call Master Professional Services Agreement (subject to change)

SECTION 2. GENERAL INFORMATION AND SCHEDULE

2.1 General

Each potential Respondent should provide the City of Atwater, within ten days of receipt of this RFQ, an acknowledgement that it has received the RFQ and is a potential Respondent. Such acknowledgement shall identify and provide full contact information for the Respondent Contact, who shall be the Respondent's single point of contact for the receipt of any future documents, notices and addenda associated with this RFQ. Such acknowledgement must be sent in writing and a copy electronically transmitted to the City of Atwater Contact.

Addenda to this RFQ , if issued will be posted on the City of Atwater website at:

<https://www.atwater.org/bids-RFQs-rfqs/>

Submittals may be made for one or more (or all) of the identified services above. Separate SOQ for each category is not required but should clearly represent the services being proposed on.

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

All questions or inquiries regarding the RFQ or the selection process are to be addressed, in writing only, (e-mail is acceptable) by March 3, 2022 at 4:00 pm to:

City of Atwater
Attn: Tina Thurman, Executive Assistant
Community Development Department
750 Bellevue Road
Atwater, CA 95301
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.

2.2 Submission

SOQ's 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.

Any additional category proposed, an additional 10 physical pages can be added to the total.

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. Clearly mark the service category if proposing on multiple categories.

SOQ will be accepted until 4:00 pm on March 11, 2022. SOQs received after the deadline will be automatically rejected. SOQs will be received only at the email address shown below and must be received by the time listed here.

The SOQ submittal and fee shall be emailed to: cthurman@atwater.org

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.

2.3 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	February 24, 2022
Last Day for Request for Information	March 3, 2022 by 4:00 pm
Deadline for submittal of SOQ	March 11, 2022 by 4:00 pm
SOQ review and evaluation	March 14-16, 2022
Award Contract	March 28, 2022

SECTION 3: SCOPE OF SERVICES

Consultants shall provide professional services in the following categories:

- Project Management Services
- Construction Management Services

Consultants shall provide professional services to the City of Atwater on an as needed basis (on-call). The examples of the types of projects that may require professional services under this On-Call Master Agreement includes but are not limited to: Strategic Consulting, Real Estate Consulting, Development Management, Financial Services, Project Management, Project Delivery, Right of Way Acquisitions, and Staff Augmentation.

The successful consultants will assist the City in the following proposed scope of services, but would not be limited to the following:

The successful firms shall agree to contract with the City of Atwater to provide the following services:

3.1 Scope of Services – Construction Management

Provide Construction Management Services to the City. Such services shall be performed consistent with the standard of care for professionals performing similar scopes of services. The Consultant shall, at a minimum, undertake the scope of services reasonably necessary and customarily provided by Construction Management Consultant Firms conducting business in the Merced County area to ensure that all of the City's goals, standards, policies and procedures are adhered to over the course of the assignment.

Construction Phase duties may include:

- Ensure that contract is properly constructed and executed and issue notice to proceed.
- Proactively manage change on the project.
- Review and approve contractor's change order requests for entitlement and cost.
- Manage project contingencies and allowances.
- Monitor project budget to ensure compliance with the City's project budget.
- Monitor construction schedule and report variances.
- Monitor progress of design team to ensure submittal of required documents and retrieve verification.
- Ensure that project is properly maintained in tracking software.
- Review invoices for reasonableness, correctness, and appropriate charges.
- Provide daily status reports in prescribed format.
- Attend weekly program meetings.
- Participate in and maintain minutes of critical construction phase meetings.
- Maintain project documentation in compliance with program standards.
- Facilitate the functioning of an integrated project delivery team.
- Additional tasks associated with successful project management.

Closeout phase duties may include:

- Assist with final punch list and final inspections.
- Assist in review and transfer of the final warranty/guarantee.
- Monitor progress of design team in submitting required closeout documentation and retrieve verification. Work with parties to ensure timely close out of projects or assist City is retaining certification for open applications.
- Assist in review and transfer of all required maintenance and operation manuals.
- Assistance with and/or coordinate moving activities with vendors, staff, others as needed to ensure smooth transition into occupancy.
- Coordinate and ensure that required training on systems and materials takes place.
- Coordinate and monitor completion of commissioning process.
- Review final invoices.
- Review closeout documents.
- Reconcile expenditures and budget.
- Assist in the finalization of any outstanding contracts and claims.
- Ensure that all contract deliverables have been completed and submitted to the City.
- Additional tasks associated with successful project management.

3.2 Scope of Services – Project Management Services

The City is looking for a consultant to work as an extension of staff in the City's Community Development Department. The consultant shall work alongside staff in

facilities planning, project and program development, including performing a variety of tasks from analysis of Real Estate, Property Acquisition and Disposition, project planning, scoping, budget development administrative and regulatory approvals through close out, and other related tasks. Tasks may include a variety of planning, design management, oversight of construction and renovation work at facilities within the City's boundaries.

The consultants will work as an extension of City staff to manage and develop processes, procedures and develop projects that are aligned with the goals of the City to ensure the continued progress of activities in any of the phases of planning/pre-design, design, construction, close-out, review, approval and certification, and other program related activities for various projects, Scheduled Maintenance, Energy Efficiency Projects, Facility Modification Requests, Special Projects, Feasibility Studies, or other Capital Facilities project needs. They will be required to operate and comply within established protocols, policies and procedures including budget, accounting, contracting, and project management.

Planning, Preconstruction and Design Management Services may include the following and other duties and tasks as required:

- Gain familiarity with project needs, budget, and timing.
- Confirm scope and program requirements.
- Real Estate Consulting, analysis of potential real estate, property acquisition and disposition, negotiations.
- Conduct meetings with site staff and design team to refine detailed scope and program, including compliance with City educational specifications and Material and Construction Standards.
- Review proposals received from design consultants for scope and reasonableness to provide recommendations to the City.
- Review proposals received from firms for preconstruction phase for scope and reasonableness to provide recommendations to the City.
- Review level of effort and associated costs for reasonableness and appropriate quantity.
- Interact with design consultant as needed to obtain appropriate scope and level of effort.
- Interact with construction consultant as needed to obtain appropriate scope and level of effort.
- Set up a decision-making framework to ensure timely City decisions.
- Ensure that project is properly set up in tracking software which may include initial project schedule and budget.
- Review invoices for reasonableness, correctness, and appropriate charges.
- Provide monthly status reports in prescribed format.
- Attend project meetings., as needed.
- Participate in and maintain minutes of critical pre-design phase meetings.
- Participate in the site acquisition process and/or environmental due

- diligence site planning as determined by the City.
- Interpret and apply California Environmental Quality Act (CEQA) guidelines. Assist with filing CEQA documents with appropriate State and County agencies; obtain land use and property data from County records.
- Participate in other meetings as required.
- Coordinate and communicate effectively with various consultants, agencies, regulatory agencies, other City employees, and/or others as needed.
- Additional tasks associated with successful project management.
- Develop proper scopes of work, schedules, and budgets to manage other vendors or consultants.

Design Phase duties may include:

- Monitor design phase schedule and progress throughout all phases.
- Space Efficiency Studies
- Space Planning
- Review design phase submittals and recommend approval.
- Monitor project budget to ensure compliance with the City's project budget.
- Monitor progress of design team to ensure submittal of required documents and retrieve verification.
- Ensure that project is properly maintained in tracking software.
- Review invoices for reasonableness, correctness, and appropriate charges.
- Provide weekly status reports in prescribed format.
- Attend weekly program meetings.
- Participate in and maintain minutes of critical design phase meetings.
- Participate in other meetings as required.
- Assist in bidding preparation and award process.
- Participate in pre-bid meetings.
- Facilitate the functioning of an integrated project delivery team.
- Additional tasks associated with successful project management.

Other duties may include:

- Provide administrative support as required, such as City Council agenda reports.
- Staff Augmentation
- Provide weekly project updates.
- Update, maintain and provide timely budgets and schedules.
- On-going review and/or processing of invoices to ensure timely payment as required.
- Review of contracts to ensure proper execution of scope of services related to the project as required.
- Provide specialized technical support as required.
- Assist the City's construction program, ensuring compliance with legal and contractual requirements and City policies and

- objectives.
- Miscellaneous duties related to effective and successful project management as required.
 - Assist in the development and tracking of requests from the City.
 - Provide estimating services as required.
 - Provide scheduling services as required.

Planning duties may include:

- Assist City in the development and maintenance of City standards, overseeing the process, identifying items to standardize, work with colleges to facilitate development of standards.
- Refine, develop, coordinate, and establish a system of management for the implementation of a comprehensive City-wide Systems Condition Index management plan coordinated with the existing plans and reports. The goal is to have a comprehensive strategy for planning on-going routine maintenance projects at various sites that can be institutionally followed and coordinated, including a plan for assessing, developing, and managing Scheduled Maintenance projects. Work to identify the process and implement such by working with the City to understand and facilitate the execution of the plan.
- Assist in contract development and standardization of forms and templates for the City to use, including any Request for Qualifications or Proposals that may still be needed to further develop projects.
- Preparation, distribution, tracking, reviewing, and awarding of any RFQ and/or RFP needed
- Management and development of energy and sustainable projects to comply with State requirements and City's sustainability plan goals.
- Assist the City with securing funding for various projects.
- Assist with the preparation of reports for various agencies and coordination of applications needed on behalf of the City or other documentation that may be needed.
- Assist to resolve complaints and/or seek to resolve and mitigate issues that may arise on projects on behalf of the City with a variety of entities, consultants, contractors, or others that may be needed occasionally on projects.

Move Services duties may include:

- Aiding in all aspects of planning, scheduling, coordinating and execution of the physical relocation of staff, including, furniture and equipment or other physical assets.
- Interacting with building users, project managers, City employees,

other users, and project team members involved with moves and necessary relocations to implement construction projects or related to other capital facility projects.

- Development of a Move Plan for each relocation or move that is anticipated as per the City.
- Coordinate the details and planning aspects of the move from original locations to the complete set-up at the destination.
- Manage and oversee movers on the day of the scheduled moves as necessary.
- Assemble and Manage Project Team to outline Project Requirements (Kickoff meeting).
- Develop a detailed implementation schedule, project budget and communications plan.
- Coordinate with the Furniture Supplier insuring space efficiency.
- Make recommendations with respect to existing furnishings, relocation and installation of equipment, and move phase consolidation.
- Provide inventory of said furnishings.
- Assess and determine the amount of moving supplies (i.e. boxes) needed for the move.
- Work with Purchasing and other City personnel to coordinate asset management of furniture and equipment in keeping with the City's policies and procedures.
- Coordinate and supervise all aspects of interior workshop set-up, tear down, move/relocation, equipment and furniture requests as needed.
- Work and coordinate with equipment installers.
- Schedule and facilitate pre-move meetings with various stakeholders.
- Work and assist City Purchasing and other City personnel with the procurement process of actual moving services (i.e. supplies and transportation) to ensure proper and adequate resources are provided to ensure a smooth move.
- Implementation of Move Plan.
- Move administration including pre-move conferencing, approvals of vendor contractor plans, pricing and schedules, facilitation of team and project staff meetings.
- Project coordination and communication (signage, Department Coordination, project notes, request tracking, etc.).
- Hold meetings (with frequency to be determined with various stakeholders).
- Track project expenditures against budget; review and verify contractor vendor requests for payment.

SECTION 4. STATEMENT OF QUALIFICATIONS REQUIREMENTS

The City is seeking qualified consultants that demonstrate extensive knowledge and experience in dealing with municipalities in each of the category 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 in each category the Consultant is submitting for.
 - b) Proposed subconsultants (if applicable)
 - c) Proposed Project manager, 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 and any subconsultants. The following items should be included:
 - a) Service Team – Listing of the proposed personnel, their related experience and expertise relevant to scope of services. The proposed relationships among all key personnel and subconsultants should be identified. Include short bio of key individuals and sub-consultants. Resumes of key staff can be added as an Appendix but not required.

Proposed Point of Contact and identified key staff shall remain throughout the contract unless approved otherwise by the City.
 - b) Relevant Experience - Provide five (5) relevant projects within the last 3 years similar to the scope of services as outlined in this RFQ that has been completed by the Consultant or Consultant's assigned Project Manager. 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, year of when services were completed, and key personnel assigned to the specified task.

3. **Scope 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 on-call contract professional services – See Attachment B. The City requires that the consultant provide and maintain policies of insurance according to the contract.-See Attachment A. 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 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 the Master Agreement.

Cost shall be in a format as included in Attachment A, or equivalent and contain all of the cost components including direct, indirect, other direct and fee.

For future specific project proposals, Consultants shall submit Exhibit 10-H1 which is based on actual cost-plus fixed fee or Lump sum (rates listed in 10-H2 under the SOQ submittal will be used as the basis for future proposals under the On-Call Master Agreement).

SECTION 5. EVALUATION AND CRITERIA

It is the City's intent to select several firms in each category that have sufficient expertise to handle the variety of projects the City manages. Emphasis should be placed upon providing information regarding project approach/delivery, similar projects your firm has recently performed, experience of the project team and qualifications of your key staff. The proposal may include additional information, as deemed appropriate, subject to the overall length restriction established in this RFQ.

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 RFQ requirements.	10
Technical competence and expertise as demonstrated by the proposer's expressed project understanding, proposed project approach, delivery and methodology.	30
Project Team - expertise, capabilities and technical competence as demonstrated by the team's background and experience, including any proposed subconsultants.	35
Relevant project experience performed by the Project Team; references from agencies	25
Interview (optional)	20

SECTION 6. CONDITIONS FOR RESPONDENTS

6.1 Confidentiality and Proprietary Information

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

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

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

6.2 Confidentiality and Proprietary Information

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

- The City of Atwater has a substantial interest in not disclosing submissions during the evaluation process. For this reason, The City of Atwater will not disclose any part of the submissions before it issues the Final Notice of Determination. After issuance of the Final Notice of Determination, all submissions will be subject to public disclosure to the extent such information constitutes a public record under the California Public Records Act.
- There are a limited number of exceptions to the disclosure requirements under the Public Records Act, such as for trade secret information. The City of Atwater is not in a position to determine what information in a submission, if any, may be subject to one of these exceptions. Accordingly, if a firm believes that any specific portion of its submission is exempt from disclosure under the Public Records Act, the Firm must mark the portion of the submission as such and state the specific provision in the Act that provides the exemption and the factual basis for claiming the exemption. For example, if a firm believes a submission contains trade secret information, the firm must plainly mark the information as “Trade Secret” and refer to the appropriate section of the Public Records Act which provides the exemption for such information and the factual basis for claiming the exemption.
- If a request is made for information in a submission that a Firm has properly marked as exempt from disclosure under the Public Records Act (e.g. information that the Firm has marked as “Confidential”, “Trade Secret” or “Proprietary”), The City of Atwater will provide the Firm with reasonable notice of the request and the opportunity to seek protection from disclosure by a court of competent jurisdiction. It will be the Firm’s sole responsibility to seek such protection from a court. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.
- Any submission that contains language attempting to make all or significant portions of the submission exempt from disclosure or that fails to provide the exemption information required above will be considered a public record in its entirety. Therefore, do not mark your entire submission as “confidential,” “trade secret,” or “proprietary.”

6.3 Rights of the City of Atwater

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

- Cancel, withdraw, postpone, or extend this RFQ, in whole or in part, at any time prior to the execution of the Contract, without incurring any obligations or liabilities.
- Modify the procurement schedule.

- Waive deficiencies, informalities and irregularities in an RFQ and accept and review a non-conforming RFQ.
- Suspend and terminate the procurement process or terminate evaluations of RFQs received.
- Permit corrections to data submitted with any RFQ.
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Respondents to seek an improved understanding of any information contained in an RFQ.
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the RFQs.
- Seek clarification from any Respondent to fully understand information provided in the RFQ and to help evaluate and rank the Respondents.
- Reject an RFQ containing exceptions, additions, qualifications or conditions not called for in the RFQ or otherwise not acceptable to the City of Atwater.
- Conduct an independent investigation of any information, including prior experience, included in an RFQ by contacting project references, accessing public information, contacting independent parties, or any other means.
- Request additional information from a Respondent during the evaluation of its RFQ.

6.4 Obligation to Keep Project Team Intact

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

6.5 Addenda

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

Attachment A Insurance Requirements

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

1. Workers' Compensation

Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with bodily injury limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) on a per accident and by disease basis. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Contractor shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in **Exhibit D**. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement, and such waiver of subrogation shall be so stated on Insurance Services Office ("ISO") endorsement form CG 24 04. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Contractor shall notify City within fourteen (14) days of

notification from Contractor's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

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

2. Commercial General and Automobile Liability Insurance

2.1 General requirements

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

2.2 Minimum scope of coverage

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

2.3 Additional requirements

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

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

limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

- b. The City shall be listed and named as an additional insured on Insurance Service Office (“ISO”) endorsement form CG 20 10 11 85 if commercially available, or CG 20 10 (all other editions other than 11 85), as follows: “The City of Atwater, its elected officials, officers, agents, and employees”.
- c. The Certificate of Insurance must list the “City of Atwater listed as ADDITIONAL INSURED” in the field entitled “Description of Operations”:
- d. The Certificate of Insurance must list the “City of Atwater” in the field entitled “Certificate Holder”:
- e. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- f. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- g. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- h. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Contractor shall notify City within fourteen (14) days of notification from Contractor’s insurer if such coverage is suspended, voided or reduced in coverage or in limits.

3. All Policies Requirements

3.1 Acceptability of insurers

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

3.2 Verification of coverage

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

3.3 Subcontractors

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

3.4 Deductibles and Self-Insured Retentions

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

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

3.5 Waiver of Subrogation

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

3.6 Notice of Reduction in Coverage

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

4. Remedies

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

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

withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or

- Terminate this Agreement

Attachment C

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 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, 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 [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]
[REDACTED]
[REDACTED]

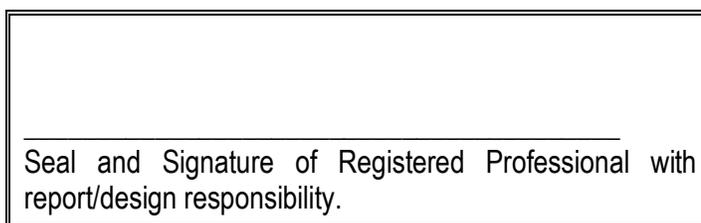
Email Address (for Insurance Update Requests)

[REDACTED]

Any written notice to City shall be sent to:

[REDACTED]
[REDACTED]
[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, 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