



City of Atwater
Request for Qualifications (RFQ)
For
Water and Sewer Rate Study

Issued on:
September 18, 2023

Proposals Due:
Friday, October 6, 2023, at 2:00 PM

In the offices of the
City of Atwater
Office of the City Clerk
1160 Fifth Street
Atwater, CA 95301

Contact Person:
Justin Vinson
Public Works Director
jvinson@atwater.org
(209) 357-6370

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Section 1. Invitation

1.1 Introduction

The City of Atwater (“City”, “Owner”) Public Works Department is requesting professional services from qualified firms (Consultant) for the preparation of a water and sewer rate study. All firms must comply with all requirements of the Request for Qualifications (“RFQ”), all instructions enclosed.

The City is requesting proposals from qualified consultants, professional services to prepare a water and sewer rate study with a five-year rate schedule, consistent with industry accepted cost-of-service principles, satisfying future revenue requirements and meeting State law requirements for the Water and Sewer Rates Study Services

At completion of the evaluation process, the City of Atwater will select a Respondent to award, or enter into negotiations for award of, a Professional Services Agreement for a Water and Sewer Rate Study (see Attachment A, Sample Professional Services Agreement).

This RFQ is subject to revision after the date of issuance via written addenda. Any such addenda will be posted on the City’s web site (distributed directly only to directly invited potential Respondents). It is each Respondent’s responsibility to obtain all RFQ addenda prior to submitting its Proposal.

In no event will the City be liable for any costs incurred by any Respondent or any other party in developing or submitting a Proposal.

All questions regarding this RFQ shall be submitted in writing or via email to the City Contact (see Section 3.2) as early as possible but not later than 5:00 PM on Friday, September 29, 2023. The City will respond no later than 5:00 PM on Tuesday, October 2, 2023.

1.2 Background

The City of Atwater covers approximately 6.1 square miles in Merced County, California and is situated within the San Joaquin Valley. The City is approximately six miles northwest of the County of Merced, the county seat, 105 miles south of Sacramento and 65 miles north of Fresno. The City was incorporated on August 16, 1922, as a general law city.

The City of Atwater provides Water and Sewer services to a population of approximately 31,978 residents, which includes approximately 7,095 residential customers and 994 multi-family and commercial customers. The water and sewer rates are designed to collect revenues sufficient to provide reliable, high-quality water and wastewater/sewer services to cover the operational costs of the Water and Sewer Enterprise Fund. The City’s Water and Wastewater Fund relies entirely on customer revenues to provide services. No local, state, or federal taxes offset the cost of services.

The City Finance Department manages customers' account maintenance and billing for the Water and Wastewater

Enterprise Fund. And an administrative fee is charged to recover the associated costs for accounting, legal and other administrative costs.

1.3 RFQ Organization

This RFQ consists of five Sections and one Attachment:

- Section 1: Background
- Section 2: Project Overview
- Section 3: Proposal Requirements
- Section 4: Proposal Evaluation and Selection
- Section 5: Conditions for Respondents
- Attachment A: Sample Professional Services Agreement

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

Section 2. Project Overview

2.1 General Information

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/>

All interested firms are required to submit a proposal 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) not later than **September 29, 2023, at 5:00 pm** to:

City of Atwater
Attn: Justin Vinson, Public Works Director
Public Works Department
750 Bellevue Road
Atwater, CA 95301
Email: jvinson@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 Scope of Work

The City requests a proposal for a water and sewer rate study and shall include the following scope of work. The proposal shall include all services that can be expected for developing a five-year rate schedule for water and sewer services, conducting community outreach, preparing and participation in Proposition 218 protest hearings and presentation to City Council. The scope of work is as follows:

1. Develop water and sewer rate structures that will allow the City to meet its financial obligations and ensure long-term stability for the respective Enterprise Funds.
2. Identification and analysis of various direct costs as included in the adopted budget for each Enterprise Fund including all overhead costs, personnel, administrative and operational costs to ensure that all costs of service for each Enterprise Fund are being fully accounted for and are allocated among all customer classes in a fair and equitable manner, consistent with State law.
3. Assess current rate structure performance and cost-of-service allocations as a baseline for recommending changes. Include assessment of historical revenue, existing customer classifications, and cost of service distribution to existing classifications. Recommend changes that comply with Proposition 218 provisions and all federal, state, and local rules and regulations.
4. Assessment of current revenue, estimation of future revenue and ability to meet projected revenue requirements based on historical and current budgets, current operational expenses, future system requirements, expected operational changes and Capital Improvement Plan projects including expansion of the current wastewater treatment plant for an additional 2-million-gallon capacity. Inflation, debt service repayment, reserve balance level increases and other cash obligations should also be considered.
5. Analyze the effects of increased water conservation to the recommended rate structure and potential impacts on ability to fund operations and Capital Improvement Plan projects. Analysis of how all services being metered will impact on revenue and the costs of both Enterprise Funds should be included.
6. Develop and propose new five-year rate structures that include; all fixed costs for service, commodity costs, capital improvement and replacement costs, energy commodity costs, reserve fund appropriations and any proposed classification, tier structure, and alternative rate structures. Any proposed rate structure must be easy to understand and implement.
7. The Study shall include preparation of draft and final reports, presentations to City Council, up to three community workshops, preparation, and participation in Proposition 218 hearings.

2.3 Schedule

The City’s tentative schedule for the RFQ process, provided in this section, is subject to change depending on the needs of the City. The City proposes for all work to be completed within 16 weeks from issuance of Notice to Proceed. The final schedule will be negotiated with the awarded Proposer based on its individual estimate or required time and any changes to the scope of work. It is anticipated that work shall begin within one (1) week of an executed Agreement between the City and the awarded Proposer. No work shall begin without a written Notice to Proceed.

Activity/Milestone	Date
Issuance of RFQ	September 18, 2023
Requests for Information (RFIs) due by	September 29, 2023
Proposals due by	October 6, 2023
Proposal Review and Evaluation	October 9, 2023
Notice To Respondents	October 10, 2023
Negotiations	October 11-16,2023
City Council Award Contract	October 23, 2023
Contract Execution	October 27, 2023
Notice to Proceed Issued	October 30,2023
Work to commence no later than	November 6, 2023

Section 3. Proposal Requirements

3.1 Proposal Content

The proposals will be evaluated using a quality-based selection (QBS) method. The City of Atwater discourages overly lengthy proposals. The proposal must include the information outlined in this section. Failure to include the requested information in the requested format may result in a determination that the proposal is non-responsive. The following items must be included as part of the proposal:

1. Cover letter

The cover letter should present the Consultant understanding of the project, the key issues and tasks and the Consultant ability to address them; include the name, address, email, and phone number of person(s) to contact regarding this proposal.

2. Relevant Experience

Provide the name and background information for each member of the firm who will do the actual work and staff who will work with the City on a regular basis. If sub-consultants are proposed, do the same for

each sub-consultant.

Provide qualifications, including education and experience, of the proposed staff and other key personnel who will be assigned for the project from start to finish, including any sub-consultants. Expertise applicable to the work specified should be emphasized.

Provide at least five (5) references, within the past three years, from public agency clients for whom similar or comparable service have been performed. Include the name of the agency, mailing address, contact name and telephone number.

Also indicate the type of project, description of Consultant activities and, if the project came in, over or under budget. Provide an explanation if the project was over budget.

Consultant must demonstrate clear understanding of the Proposition 218 process and capability to prepare all required documentation.

3. Conflict of Interest

Provide the names of entities associated with the proposer who may have a conflict of interest with any activity of this project. Provide details and reasons. Proposers are subject to disqualification on the basis of conflict of interest as determined by the City.

4. Project Organization and Timeline

The proposal shall include a work plan which includes major activities and a schedule for the project, deliverables, and milestone dates. Describe how each task as outlined in the Scope of Work will be addressed, including data requirements and interaction with City staff.

5. Cost

Include a not-to-exceed, total amount for the proposed scope of work in a separate, closed envelope, labeled accordingly. Separate the costs for each task and item under the Scope of Work for the project.

6. Contract

The selected firm will be required to enter into a Professional Services Agreement with the City (see attached). All proposals must include a statement that the company has reviewed the Agreement and finds the terms acceptable. If your company has concerns with the Professional Services Agreement, please note the specific concerns in your proposal.

7. References

- a. Provide a list of three (3) client references that can attest to the technical experience of your firm on similar projects. City staff may not be used as a reference.

8. SEALED COST PROPOSAL (in separate sealed envelope)

- a. Cost proposal shall be provided in a sealed envelope. One (1) wet signed copies of the cost proposal shall be provided.
- b. Cost proposal shall be opened and reviewed only after an Offeror has been selected based on criteria set forth in this RFQ. Cost proposals shall be subject to discussion and negotiation.
- c. Cost proposal shall be Time and Materials Not to Exceed (T&M NTE) basis and amount and must include all costs, including the costs of materials, personnel hourly rates, and backup calculations for Not to Exceed amount.
- d. Cost proposal shall not be used as a basis for determining firm qualifications or scoring purposes.

3.2 Proposal Submittal

On behalf of the City, Justin Vinson, Public Works Director, will act as the sole point of contact for this RFQ and shall administer the RFQ process. All communications shall be submitted in writing, or by email, and shall specifically reference this RFQ. All questions or comments should be directed to the City Contact as follows:

Justin Vinson
Public Works Director
City of Atwater
750 Bellevue Road
Atwater, CA 95301
(209) 357-6370 Phone
jvinson@atwater.org

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

Interested firms are to submit a Proposal to the City as required by this RFQ. It is the intent of the City to award the contract to the Proposer that clearly demonstrates the ability to provide these services with high professional standards.

Proposals are to be clear, concise, and responsive to the information requested. The proposal may not exceed twenty (20) physical pages total (8-1/2"x 11"), regardless of double sided or single sided print. Proposal must be bound at one end with covers indicating the proposal title and firm name and must be organized in a way that clearly conveys all the required information as described in the Scoring Breakdown. A minimum font size of 12 points is required. The page limit does not apply to any forms required under this RFQ. Each page should be numbered.

Proposals must include: one (1) electronic copy (Adobe PDF format) on USB flash drive; one (1) original wet signed Proposal; three (3) copies of the signed Proposal; and one (1) sealed cost proposal as a separate attachment. The USB Flash drive contents shall not exceed 25 MB and should be labeled with the consultant's name in the file name. Electronic files for the cost proposal must be password protected. Proposals shall be presented in a sealed

envelope with the project name **“Water and Sewer Rate Study”** clearly marked on the outside of the envelope. The name of the Proposer submitting an offer should also be clearly marked on the outside of the envelope.

Proposals will be accepted until **2:00 PM on Friday, October 6, 2023**, at the following address:

**City of Atwater
Attn: Janell Martin
Office of the City Clerk
1160 Fifth Street
Atwater, CA 95301**

Proposals received after the deadline will be automatically rejected. Proposals will be received only at the address provided above. Fax, email, or verbal proposals will not be accepted.

A sample Professional Services Agreement (“Agreement”) is included as Attachment A and attached here to and incorporated herein by this reference for review by the Proposer. Please take time to thoroughly read and understand the entire Agreement as presented. If a proposer believes specific items in the Agreement are out of date, not applicable, or places an undue burden or cost on the Proposer or City, the Proposer must present these concerns in writing during the question-and-answer period. If City concurs, a revised Agreement will be issued in an addendum to this RFQ. Any exception to the Agreement made as a part of a Proposer’s proposal can be grounds for disqualification of the Proposal.

All work associated with this RFQ is subject to state and federal requirements and Proposers will be required to comply with all applicable federal, state, and local laws and regulations. Proposer’s attention is directed to the Agreement for more information.

All questions should be in writing to Justin Vinson, Public Works Director, at jvinson@atwater.org. Questions must reference the project name “Water and Sewer Rate Study” when requesting information.

All costs for the preparation of the submittals shall be borne by the Proposer, and submittals received shall become 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.

3.3 Disclaimers

This Request for Proposals does not commit the City of Atwater to award a contract or to pay any costs incurred in the preparation of a proposal in response to this Request. The City may at its own discretion request additional information from Proposers if it deems necessary and shall not affect the validity of the RFQ.

Section 4. Proposal Evaluation

4.1 Evaluation Criteria

The ideal consultant will have extensive experience in preparation of rate studies. Experience listed in the proposal should demonstrate the capability of managing similar projects.

The following criteria will be used as a basis for evaluating proposals:

1. UNDERSTANDING OF WORK TO BE DONE (25%)

- Demonstrate a clear understanding of the scope of work and items required to meet all requirements.
- Demonstrate an understanding of the area and identify potential key problem areas.
- Provide a work plan that demonstrates a clear understanding of how work will be completed and how potential key problem areas will be addressed.
- List scope of work in a schedule view with key start dates and timelines for key items of work. Schedule shall demonstrate a clear understanding of the required order of work to be completed.

2. EXPERIENCE WITH SIMILAR KINDS OF WORK (20%)

- Demonstrate that projects of a similar scope and nature have been completed in the near past.
- Demonstrate that projects were completed on time.
- If projects were not completed on time, provide justification. If projects were completed ahead of schedule, explain.
- Explain how projects listed or previously completed relate directly to situations on this project.

3. QUALITY OF STAFF FOR WORK TO BE DONE (15%)

- Provide outline of firm structure with regard to employees.
- List each task item to be completed and which staff members shall work on it. Staff assigned to tasks shall have previous experience working on similar projects or tasks.
- Provide similar information of subconsultants and prior work history with said subconsultants as well as firm management proposed for subconsultants.

4. CAPABILITY OF DEVELOPING INNOVATIVE OR ADVANCED TECHNIQUES (10%)

- Demonstrate ability to use advanced techniques to complete the work.
- Indicate how those techniques will affect the project either in cost, accuracy, and/or time.
- Demonstrate any previous experience with said techniques and how they affected cost, accuracy, and/or time of other previous projects.
- Provide similar information for subconsultants.
- List any potential issues with proposed advanced techniques and how firm plans to mitigate them if said issues arise. Indicate cost or time ramifications if advanced techniques are not successful.

5. FAMILIARITY WITH STATE AND FEDERAL PROCEDURES (10%)

- Provide evidence that staff and firm are familiar with working within state and federal procedures.
- Demonstrate experience completing environmental documentation for both NEPA (National Environmental Policy Act) and CEQA (California Environmental Quality Act) documentation.
- Demonstrate experience providing environmental documentation for both Caltrans and Federal Agencies in a timely manner.
- Demonstrate experience working with multiple local agencies on a single given project.

6. FINANCIAL RESPONSIBILITY (10%)

- Provide a work plan that provides evidence that Proposer is using cost effective methods to complete the work in a timely manner.
- Demonstrate ability based on previous projects to stay within proposed budget.
- Demonstrate previous experience with projects of similar financial size.

7. DEMONSTRATED TECHNICAL ABILITY (10%)

- Demonstrate ability using latest software and tools to complete projects.
- Demonstrate ability to meet design standards of local, state, and federal guidelines for all aspects of design and reports.
- Show experience designing and receiving approval of designs on Local and State Highways.
- Provide evidence that all members of staff and subconsultants have experience working with the latest software and tools.

4.2 Selection Process

The City of Atwater will review and evaluate the proposals and the top-ranked teams may be interviewed. After the evaluation process is complete, the City will notify Respondents of the rankings. The top-ranked consultant team will be contacted to begin contract negotiations. The project fee proposal envelope will be opened by the City to determine the level of effort and cost identified for the Scope of Services proposed. If negotiations with the top-ranked consultant are not successful, then the second-ranked consultant team will be invited to enter contract negotiations, and so on.

City staff will recommend awarding a Professional Services Agreement by the City Council to the selected consultant after negotiations are complete. After completing its evaluation, City reserves all right to not select any consultant for the Project, irrespective of its ranking, at City's discretion.

Section 5. Conditions for Respondents

5.1 Conflict of Interest

Each Respondent is responsible for determining whether or not its participation or the participation of other Project Team members in the Project 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 Respondent must investigate and manage any potential conflict of interest as part of considering whether to submit a Proposal 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 team responding to this RFQ.
- A Respondent is prohibited from including as a member of their 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 existence of such a conflict of interest is a basis for the City to disqualify a firm's participation in this RFQ process. If the City 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.

5.2 Confidentiality and Proprietary Information

All materials and information submitted to the City under this RFQ process becomes the exclusive property of the City 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:

- After issuance of the Respondent rankings, 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 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 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 document or written material marked as exempt by the proposer is not deemed binding on the City’s responsibilities and duties under applicable law.
- Any submission that contains language attempting to make overbroad 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.”

5.3 Rights of the Owner

In connection with this RFQ, including the receipt and evaluation of Proposals and award of the Professional Services Agreement, the City 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 Professional Services Agreement, without incurring any obligations or liabilities.
- Modify the Project schedule.
- Waive deficiencies, informalities and irregularities in a Proposal and accept and review a non-conforming Proposal.
- Suspend and terminate the procurement process or terminate evaluations of Proposals received.
- Permit corrections to data submitted with any Proposal.
- 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 a Proposal.
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the Proposals.

- Seek clarification from any Respondent to fully understand information provided in the Proposal and to help evaluate and rank the Respondents.
- Reject a Proposal containing exceptions, additions, qualifications, or conditions not called for in the RFQ or otherwise not acceptable to the City.
- Conduct an independent investigation of any information, including prior experience, included in a Proposal 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 Proposal.
- The City of Atwater reserves the right to negotiate with any qualified firm regardless of whether the firm responded to this RFQ.

5.4 Obligation to Keep Project Team Intact

Respondents are advised that all firms and Key Personnel identified in the Proposal shall remain on the Project Team for the duration of the procurement process and execution of the Project. If extraordinary circumstances require a change, it must be submitted in writing to the City 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 firm'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.

5.5 Addenda

If any revisions to the RFQ or procurement process become necessary or desirable (at the City's sole discretion), the City may issue written addenda. **The City will transmit addenda directly to firms directly invited to respond to this RFQ.** The City will post all addenda on the City's website at <https://www.atwater.org/bids-rfps-rfqs/> and through any third-party sites or services where the RFQ was initially advertised. **It is Respondent's responsibility to obtain all addenda prior to submitting its Proposal.**

5.6 Protests

The following procedures shall apply whenever any interested party desires to dispute the selection of a firm for negotiations and/or award of a Professional Services Agreement or any other aspect of the RFQ process.

A Respondent has no right to dispute any determination based upon a late or incomplete Proposal submittal. There is no right to dispute the RFQ process requirements and/or specifications after Proposal submittal. The protest by the interested party shall be undertaken at the interested party's expense.

The interested party initiates a protest by delivering to the City a written notice requesting a hearing and setting forth the grounds for the protest as well as all the facts relevant to the protest. The protesting party must deliver the written notice to the same location that the Proposals were required to be delivered. The protesting party must deliver such written notice within 7 calendar days following the date of the City's transmittal of Respondent Rankings or other transmittal indicating the intention of the City to not award to the protesting party. **The protesting party waives its right to dispute the City's decision if it fails to deliver the notice within 7 calendar days following the date of such written communication by City.**

Protests that do not follow these procedures shall not be considered and shall fail to exhaust administrative remedies with the City. These protest procedures constitute the sole administrative remedy available to any party under this procurement. Upon exhaustion of this remedy no additional recourse is available with the City of Atwater.

Upon receipt of the protest, the City Manager, or his/her designee, will attempt to resolve the protest and/or render a decision with respect to the merits of the protest, within a reasonable time. The decision of the City Manager, or his/her designee, constitutes the protesting party's entire administrative remedy. The City Manager may, at his/her discretion, convene a protest hearing.

A protest shall be disallowed and not considered when, in the judgment of the City Manager, or his/her designee, it has been submitted: (1) in a form that deviates from the one prescribed; or (2) in an untimely manner or other procedural irregularity or deviation.

In the event that a protesting party does not appear at any protest hearing as scheduled by the City Manager, the protest will be deemed forfeited by the protesting party and disallowed.

Attachment A

SAMPLE PROFESSIONAL SERVICES AGREEMENT

(subject to change at City's discretion later; any exceptions or changes must be noted with submittal or forfeited)

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

THIS AGREEMENT for professional services is made by and between the City of Atwater, a California municipal corporation (“City”) and [REDACTED], a [REDACTED], (“Professional”) as of [REDACTED], 20XX (the “Effective Date”). City and Professional shall be referred to herein separately as a “Party” and collectively as “Parties”.

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on [REDACTED], the date of completion specified in Exhibit A. Professional shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Professional to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Professional shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Professional is engaged in the geographical area in which Professional practices its profession. Professional shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Professional’s profession.
- 1.3 **Assignment of Personnel.** Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Professional shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons. All personnel, including those reassigned at City’s request, shall be supervised by Professional. Professional is prohibited from subcontracting this Agreement, or any part of it, unless such subcontracting is expressly approved by City in writing.
- 1.4 **Time.** Professional shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Professional’s obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Professional a sum not to exceed [REDACTED], notwithstanding any contrary indications that may be contained in Professional’s

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

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

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

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

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Professional.

- 2.3 Final Payment.** City shall pay the last ten percent (10%) of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** City shall pay for the services to be rendered by Professional pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Professional in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Professional submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees.** Fees for work performed by Professional on an hourly basis shall not exceed the amounts shown on the fee schedule set forth in Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses, if any, are set forth in Exhibit B, and shall not exceed [REDACTED] (\$ [REDACTED]). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Professional is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Professional terminates this Agreement pursuant to Section 8, the City shall compensate the Professional for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Professional shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Professional is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator, as defined in Section 11.9.

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

City may furnish, at its sole discretion, physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Professional's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that

may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

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

4.1 Workers' Compensation. Professional shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Professional. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per accident. In the alternative, Professional may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Professional, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

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

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

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Professional, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount

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

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

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

- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Professional, including the insured’s general supervision of Professional; products and completed operations of Professional; premises owned, occupied, or used by Professional; and automobiles owned, leased, or used by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

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

- d. Any failure of Professional to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.3 Professional Liability Insurance.

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

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

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Professional must purchase an extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work under this Agreement, whichever is later.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

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

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

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

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

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

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

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

4.5 Remedies. In addition to any other remedies the City may have if Professional fails to provide or maintain any insurance policies, or policy endorsements, to the extent and within the time herein required, the City may, at its sole option, exercise any of the following

remedies, which are alternatives to other remedies the City may have and are not the exclusive remedy for Professional's breach:

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

Section 5. INDEMNIFICATION AND PROFESSIONAL'S RESPONSIBILITIES.

5.1 General Requirement. Professional shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Professional or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Professional shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Professional or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Professional to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Professional from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Professional acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.2 PERS Indemnification. In the event that Professional or any employee, agent, or subcontractor of Professional providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Professional shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Professional or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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

Section 6. STATUS OF PROFESSIONAL.

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

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

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Professional and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Professional's failure to comply with any law(s)

or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Professional, and any subcontractors, shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Professional represents and warrants to City that Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Professional represents and warrants to City that Professional and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Professional and any subcontractors shall obtain and maintain valid Business Licenses from City during the term of this Agreement.
- 7.5 Nondiscrimination and Equal Opportunity.** Professional shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Professional under this Agreement. Professional shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Professional thereby.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

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

provided to Professional or prepared by or for Professional or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Section 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Professional understands and agrees that, if City grants such an extension, City shall have no obligation to provide Professional with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Professional for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 Assignment and Subcontracting.** City and Professional recognize and agree that this Agreement contemplates personal performance by Professional and is based upon a determination of Professional's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Professional. Professional may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Professional shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Professional shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Professional.** If Professional materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement. City shall not in any manner be liable for Professional's actual or projected lost profits had Professional completed the services required by this Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Professional pursuant to this Agreement;
 - 8.6.3** Retain a different professional to complete the work described in Exhibit A not finished by Professional; or
 - 8.6.4** Charge Professional the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that

City would have paid Professional pursuant to Section 2 if Professional had completed the work.

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

Section 10. KEEPING AND STATUS OF RECORDS.

- 10.1 Records Created as Part of Professional's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Professional prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Professional hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Professional agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 10.2 Professional's Books and Records.** Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Professional to this Agreement.
- 10.3 Inspection and Audit of Records.** Any records or documents that Section 10.2 of this Agreement requires Professional to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of the City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 11. MISCELLANEOUS PROVISIONS.

- 11.1 **Attorneys' Fees and Costs.** If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs, in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 11.2 **Venue.** In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Merced or in the United States District Court, Eastern District of California.
- 11.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 11.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 11.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 11.6 **Use of Recycled Products.** Professional shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 11.7 **Conflict of Interest.** Professional may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Professional in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code section 81000 et seq.

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

Professional hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Professional was an employee, agent, appointee, or official of the City in the previous twelve months, Professional warrants that it did not participate in any manner in the forming of this Agreement. Professional understands that, if this Agreement is made in violation of Government Code section 1090 et seq., the entire Agreement is void and Professional will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement

of expenses, and Professional will be required to reimburse the City for any sums paid to the Professional. Professional understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

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

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

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

[REDACTED]
[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.

[REDACTED]

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

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

- 11.13 **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 11.14 **Time is of the Essence**. Time is of the essence in this Agreement for each covenant and term of a condition herein.
- 11.15 **Authority**. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into the Agreement have been fully complied with.
- 11.16 **Drafting and Ambiguities**. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.
- 11.17 **Headings**. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.
- 11.18 **IRS Form W-9**. Professional shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

[signatures on the following page]

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

CITY

PROFESSIONAL

Lori Waterman, City Manager

[NAME, TITLE]

Attest:

Korey Billings, City Clerk

Approved as to Form:

Frank Splendorio, City Attorney

EXHIBIT A
SCOPE OF WORK

SAMPLE

EXHIBIT B
FEE SCHEDULE

SAMPLE

SAMPLE