

CITY OF ATWATER, CA
REQUEST FOR PROPOSAL (RFP)

FOR

**Comprehensive User Fee Study, Development
Impact Fee Study, and Full Cost Allocation Plan**



PROPOSALS MAY BE MAILED OR DELIVERED
IN PERSON TO THE CITY OF ATWATER

Attn: 1160 Fifth Street, Atwater, CA 95301

RFP RELEASE DATE: July 29, 2024

PROPOSALS MUST BE RECEIVED BY
4:00 P.M. on August 30, 2024

CITY OF ATWATER

COMPREHENSIVE USER FEE SCHEDULE, DEVELOPMENT IMPACT FEE STUDY, AND FULL COST ALLOCATION PLAN REQUEST FOR PROPOSALS

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INTRODUCTION

The City of Atwater (City) is requesting sealed proposals for a Comprehensive User Fee Study, Development Impact Fee Study, and Full Cost Allocation Plan. All proposals must be received by the City, no later than 4:00 pm on August 30, 2024. Late proposals will not be considered. The original signed proposal and four (4) duplicates are to be submitted in sealed packages with the name of the Consultant and Proposal for Comprehensive User Fee Study, Development Impact Fee Study, and Full Cost Allocation Plan clearly marked on the outside of the package.

Proposal must be responsive to the City's request. The City shall determine the most responsive and qualified consultant providing the best service at the most reasonable cost. Cost alone shall not be the determinative factor.

The request for proposals does not obligate the City to award a contract or complete the project and the City reserves the right to cancel the solicitation if deemed in its best interest. There is no expressed or implied obligation for the City to reimburse respondents for any expenses incurred in preparing proposals in response to this Request for Proposals (RFP), including any expenses incurred due to participation in this RFP process.

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that consultant is ultimately selected. Submission of a proposal indicates acceptance by the consultant of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the subsequent contract between the City and the consultant selected.

The City wishes to negotiate a fixed price contract with a "not to exceed" dollar total based on a clearly defined scope of work.

BACKGROUND

The City of Atwater, with a population 31,970, is a city located on State Route 99 in Merced County.

The City is a general-law City that operates under a Council-Manager form of government, with a five-member City Council. The City Council appoints the City Manager and City Attorney. The City is divided into departments that provide a full range of municipal services, including police, fire, public works, community development, and administration. The Public Works Department consists of seven (7) Divisions: Water, Streets, Sewers, Storm Drains, Sanitation, Equipment Maintenance and Wastewater Treatment. Information regarding the City and its organization, such as governmental structure, services provided, the Current Operating and Capital Budgets, and Annual Financial Reports is available on the City website at <https://www.atwater.org>.

In June 2024, the City Council of the City of Atwater affirmed a strategy as part of the adoption

of the 2024/2025 FY budget to pursue the Comprehensive User Fee Study, Development Impact Fee Study, and Full Cost Allocation Plan. Keeping this strategy of financial sustainability in mind, the purpose of the requested study is to ensure the City utilizes overhead rates that accurately account for the true cost of providing various services, and to assess appropriate fees and rates that will allow the City to recover the actual costs incurred for fee and impact related services.

The last full Development Impact Fee Study was completed in 1993.

The City requests that proposers submit proposals for all three items (Comprehensive User Fee Study, Development Impact Fee Study, and Full Cost Allocation Plan), and break down the cost of each in the scope of services and budget.

OBJECTIVE

The objective of the RFP is to receive proposals for a Comprehensive User Fee Study, Development Impact Fee Study, and Full Cost Allocation Plan that includes reviewing and updating all fees and charges for services, recommending additional fees, with a goal for cost recovery.

Comprehensive User Fee Study

The City is seeking to evaluate all cost of services provided and examine whether a reasonable relationship exists between the cost of providing services and current service fees, while ensuring compliance with Proposition 26, Proposition 218, and other applicable statutory requirements. The City desires to undertake a comprehensive citywide review and evaluation of user fee and rate charges resulting in a cost-based user fee study. The Comprehensive User Fee Study will calculate the full 100% cost of providing certain City services and provide a recommended fee to be charged for each applicable service. The consultant shall recommend cost recovery strategies and identify best practices in establishing user fees. These strategies should take into consideration the complexities and demands of each department and program. The selected consultant will provide thorough analysis, development of fee models and recommendations including, identifying and recommending new fees and revenue sources. It is the City's goal to have a well-documented and legally defensible cost of service plan that will identify rates that will be used to recover billable costs for services and develop user fees that comply with Proposition 26, Proposition 218 and other applicable statutory requirements. A survey comparison of rates and fees with similar cities is required.

Development Impact Fee Study

The City has several development impact fees, with a partial fee study most recently updated in FY 2003/04. The City's current development impact fees are available upon request. In addition, the City has several planning documents that may be helpful in developing the impact fee study:

- General Plan
- Atwater Municipal Code
- Previously adopted Master Plans
- Amendments to the City’s General Plan Land Use Map

The City’s impact fee program must comply with the Mitigation Fee Act (Act) (California Government Code Section 66000 et seq., also known as Assembly Bill 1600) and any amendments to the Act, such as AB 516 (Chapter 741, Statutes of 2023), and applicable court decisions, including *Sheetz v. County of El Dorado, California* (2024) 601 U.S. 267. The study shall provide sufficient information and the necessary findings to help the City determine the development impact fees based on the proposed infrastructure requirements to support the City’s General Plan growth projections and the City’s Capital Improvement Plan. The consultant is expected to work with City staff to determine other supporting infrastructure (i.e. equipment, vehicles, etc.) or other operational services that could rightfully be included in the fee program to ensure the costs of such supporting infrastructure are paid by development. The City would also like feedback from the consultant on recommended best practices to help ensure better collections and any adjustments to municipal code if necessary.

Full Cost Allocation Plan

The additional purpose of this project is to ensure that the City of Atwater has a basis of applying comprehensive overhead rates and is accurately accounting for the true cost of providing various services by department. A Cost Allocation Plan allocates all direct and indirect costs between funds, as appropriate. Additionally, best practices, accounting standards and 2 CFR part 225 make it necessary for the City to maintain a well-documented cost allocation plan to appropriately allocate general and administrative costs in its budget; properly identify overhead rates that can be used in the calculation of billable hourly rates for federal and state grants, user fees, and reimbursements from other governmental agencies.

PROJECT SCHEDULE

Below is the desired schedule for initiation of this project; however, dates may be subject to change and adjusted as necessary.

RFP Issued	July 29, 2024
Questions due	August 14, 2024
Responses to Questions Provided	August 26, 2024
Proposal Submittal Deadline	August 30, 2024
Oral Interviews (conducted at City discretion)	Sept. 11, 2024
Contract awarded by City Council	Sept. 23, 2024

SCOPE OF SERVICES

There is a separate scope of work for each of the studies. Project tasks shall include, but are not necessarily limited to, the following described below. If the consultant feels that additional tasks are warranted, it must be clearly identified in the proposal. Consultants responding to this RFP shall be prepared to deliver services and perform the work necessary to provide the services within six months after initiation of the project. The City would like to have the items completed by January 31, 2025 for presentation to the City Council in February 2025 and incorporation into the FY 2025/26 Operating and Capital Budget. The project consists of furnishing all labor, materials, supervision, and travel necessary to complete the tasks outlined below:

Comprehensive User Fee Study

Prepare a Comprehensive User Fee Study for the City, which may include the following elements (if the consultant believes that additional tasks are warranted, they must be clearly identified in the consultant's proposal):

1. Work and meet with City staff to refine the project scope, purpose, uses and goals of the City's Comprehensive User Fee Study to ensure that the study will be both accurate and appropriate to the City's needs. Review project schedules and answer any questions pertaining to the successful development of the study.
2. Meet with staff and conduct interviews as needed to gain an understanding of the City's processes and operations. Conduct a comprehensive review of the City's existing fees, rates and charges.
3. Identify the total cost of providing each City service at the appropriate activity level and in a manner consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, Proposition 26 and Proposition 218.
4. Compare service costs with existing recovery levels. This should include any service areas where the City is currently charging for services as well as areas where perhaps the City should charge, considering the City's practices, or the practices of similar or neighboring cities.
5. Recommend potential new fees and charges for services the City currently provides but does not have any fees and/or charges established. Recommendations should be based on practices by surrounding cities that may charge for similar services, industry best practices, or the consultant's professional opinion.
6. Recommend appropriate fees and charges based on the firm's analysis together with the appropriate subsidy percentage of those fees where full cost recovery may be unrealistic.
7. Prepare a report that identifies each fee service, its full cost, recommended and

current cost recovery levels. The report should also identify the direct cost, the indirect cost, and the overhead cost for each service.

8. Prepare a report that identifies the present fees, recommended fees, percentage change, cost recovery percentage, revenue impact and fee comparison with other Merced County cities or other California cities that are comparable to the City of Atwater. A survey comparison of rates and fees with similar cities is required.
9. Report on other matters that come to the Consultant's attention in the course of the evaluation that, in the Consultant's professional opinion, the City should consider.

Provide a computer-based model in Microsoft Excel for adjusting these fees and charges for the City's current and future needs and provide the City with an electronic copy of the final comprehensive study, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs. The requirements of the models should allow for:

- a. Additions, revisions, or removal of the direct and overhead costs so the comprehensive fee study can be easily adapted to a range of activities, both simple and complex.
 - b. The ability of the City to continuously update the model and fees from year to year as the organization changes.
 - c. The addition of hypothetical service area information for future service enhancements, and the ability to calculate the estimated costs of providing the service under consideration (i.e., ad-hoc analysis).
10. Prepare and deliver presentation to the City Council to facilitate their understanding of the plan and its implication for the City and make necessary adjustments as requested.
 11. Provide on-site training to enable staff to update fees on an annual basis.
 12. Prepare a final report and provide twenty bound copies, and a PDF file of the Comprehensive User Fee Study that can be made available to City Staff, Council and Committee members. Models, tables, and graphs should be provided in Excel. Any Comprehensive Fee Study revisions developed shall also be made available to the City in Excel and PDF formats, providing the ability to add, delete and/or update information as needed.
 13. Consult with City staff should it become necessary to defend the City's Comprehensive User Fees as a result of any legal or other challenges.

Development Impact Fee Study

1. Kick-off meeting between consultant and City staff to review objectives of study, agree to methodology, exchange information, timing and schedule for all tasks, and to determine information to be provided by City staff, to support a comprehensive Impact Fee study of each existing fee.
2. Consultant shall also propose new impact fees that the City is not currently collecting for consideration by the City. This shall include the necessary nexus study .
3. Impact Fees shall be calculated to provide for facilities, equipment, infrastructure, and services needed to support growth based on forecasts of new development over a 20-year period. The Impact Fees analysis shall consider existing fees, if any, and be compared to both (a) surrounding and (b) comparable cities to ensure reasonableness, consistency and feasibility.
4. The consultant shall prepare either an individual report for each Impact fee for a single compiled report for all Impact Fees that documents the fee study results, including a description of the overall assumptions, approach, and methodology, findings, supporting justification, recommended fee amount and the calculations that provide the legal nexus between the recommended Impact Fee and new development. The report shall comply with the Act, and applicable court decisions, including *Sheetz v. County of El Dorado, California* (2024) 601 U.S. 267
5. Review findings with City staff. Consultant to provide information supporting findings to date and proposed fees.
6. City Council meeting to present draft study. Discuss methodology, findings, formal presentation, answer questions about finding, and collect input for preparation of final report.
7. Final City Council meeting to follow up on first meeting and present final report.
8. Please consider an optional meeting in your proposal, as a separate line item cost, for a public meeting to present the draft study report. This would be a meeting to share findings with stakeholders, including developers and engineers. Consultant to facilitate meeting, provide exhibits and formal presentation, collect input and prepare meeting minutes capturing public input.
9. Prepare a final report submitted to the City containing supporting materials, methodology, findings, and recommendations. More specifically, consultant shall prepare a report that complies with the Act and contains, at a minimum, the following information:
 - a. Background Information (supporting materials)
 - b. The existing level of service for each public facility, the proposed new level of service, and why the new level of service is appropriate.

- c. Description of the overall methodology.
 - d. Supporting justification in accordance with Government Code section 66001(a).
 - e. Calculations that demonstrate the legal nexus between recommended fees and the impact created by new development. The study shall calculate a fee imposed on a housing development project proportionately to the square footage of proposed units of the development.
 - f. Relationship between the fee's use and the type of project on which it would be imposed.
 - g. Any additional matters that City staff should be made aware of, findings, and recommendations.
10. If the consultant feels that additional task are warranted, they must be clearly identified in the consultant's proposal under this option.
11. The City reserves the right to modify the scope of services before the contract is awarded.

Full Cost Allocation Plan

Prepare the City's Cost Allocation Plan, which may include the following elements (if the consultant believes that additional tasks are warranted, they must be clearly identified in the consultant's proposal):

1. Work and meet with the selected City staff to refine the project scope, purpose, uses and goals of the City's Cost Allocation Plan to ensure that the study will be both accurate and appropriate to the City's needs. Review project schedule and answer any questions pertaining to the successful development of the study.
2. Meet with staff and conduct interviews as needed to gain an understanding of the City's processes and operations. This includes where certain services and functions are performed together or shared through cooperation between different departments. Costs should be identified so they can be allocated to and tracked by appropriate department.
3. Identify the total cost of providing each City service at the appropriate activity level and in a manner consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, the State Controller's Office Guidelines for Cost Claiming and 2 CFR Part 225 standards.
4. Develop a Cost Allocation Model using the most recently adopted budget and/or actual data for calculation of the full costs of providing each City service. The requirements of the model should allow for:
 - a. Additions, revisions, or removal of direct and overhead costs so the cost allocation plan can be easily adapted to a range of activities, both simple and

complex.

- b. The ability of the City to continuously update the model and full cost allocation plan from year to year as organization and/or service model changes occur over time.
 - c. The addition of hypothetical service area information for future service enhancements, and the ability to calculate the estimated cost of provide the service under consideration (i.e., ad-hoc analysis).
5. Report on other matters that surface during the evaluation that the City should consider.
 6. Present the plan to the City's management group and make necessary adjustments as requested.
 7. Prepare and deliver presentation to the Council to facilitate their understanding of the plan and its implications to the City.
 8. Work with the Finance Department in developing service provisions, cost categories, and allocation criteria for current and future programs.
 9. Provide the City with an electronic copy of the final comprehensive review, including related schedules and cost documentation in a format such as Microsoft Word and Excel that can be edited and updated by City staff to accommodate changes in the organization or changes in cost.
 10. Prepare a final report and provide twenty bound copies, and a PDF file of the Cost Recovery Plan that can be made available to City staff, Council and Committees. Models, tables, and graphs should be provided in Excel. Any Cost Allocation Model revisions developed shall also be made available to the City in Excel and PDF formats, providing the ability to add, delete and/or update information as needed.
 11. Provide a computer-based model in Excel for adjusting these fees and charges for the City's current and future needs and provide the City with an electronic copy of the final Cost Allocation Plan and Cost Allocation Model, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs.
 12. Consult with City staff should the need arise to defend the cost allocation plan as a result of audits or other challenges.

GENERAL

The Consultant may recommend other tasks that it deems appropriate to achieve the objectives set forth in this RFP.

The successful respondent shall be required to retain all working papers and relating

supporting documents, including records of professional time spent, for a period of five years after delivery of the required reports, unless notified in writing by the City of the need to extend the retention period. The Consultant further agrees to allow City staff to review such documents upon written request at any time during the retention period.

City Requirements

The firm must comply with all relevant City requirements, such as providing proof of insurance for at least the minimum required amounts, and executing a City contract for consulting services.

Information about current insurance requirements is attached as part of the City's Standard Professional Services Agreement.

PROPOSAL FORMAT AND CONTENT

The Consultant shall be responsible for preparing an effective, clear, and concise proposal. The City is requesting four (4) bound paper copies of the proposal, which must contain at a minimum the following information:

1. Letter of Interest: Please include a letter expressing the Consultant's interest in being considered for the project. Include a statement regarding the consultant's availability to dedicate time, personnel, and resources to this effort. The letter of interest must include a commitment to the availability of the Consultants and all key project staff during the planning period and a proposed schedule designed to meet the City's needs for the project.
2. Project Understanding and Approach: Please include a statement demonstrating your understanding of the proposed project. Describe your approach to completing the project successfully; methodologies and technologies you would employ; key milestones and processes you would employ. Describe what information you would expect the City to supply.
3. Relevant Experience: Please include information describing the Consultant's experience. Please provide a minimum of five (5) specific examples of Consultant's relevant experience on User Fee studies, Development Impact Fee Studies, and Cost Allocation Plans. At a minimum, the Consultant should provide a list of the most recent projects for which the Consultant has performed similar services of similar size, scope, and complexity. Include the name, contact person, address, phone number and/or e-mail of each party for whom the service was provided, as well as a description of the service performed, the dollar amount of the contract, and the date of performance.
4. Project Manager/Key Staff: Please include information about the specific relevant experience and billing rates for the proposed Project Manager and all other

applicable staff. A Project Manager must be designated and must be the principal contact for the City. Information on the experience of the Project Manager (on similar projects) and at least two references for the Project Manager.

5. Proposed Scope of Services: Please provide a Proposed Scope of Services, which is based on the Scope of Work contained in this RFP; and discuss any ideas for modifying, clarifying, or improving the City's proposed scope of work. Provide a realistic working schedule with key deliverables, milestones and tasks.
6. Methodology - Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work. The methodology section shall include the following:
 - a. An Implementation Plan that describes the methods, including controls by which your firm or entity manages projects of the type sought in this option.
 - b. The methodology for soliciting and documenting views of internal and external stakeholders.
 - c. Any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
 - d. Project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion.
 - e. Description of specific tasks your firm or entity will require from City staff.
 - f. Provide any other information that would assist us in evaluating your qualifications.
7. Conflict of Interest Statement: The proposers shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract. Particular attention should be paid to compliance with Government Code section 1090.
8. Comments on or Requested Changes to Contract: The City's standard professional services agreement is attached to this Request for Proposals. The proposer shall identify any objections to and/or request changes to the standard contract language in this section.
9. Cost Proposal: Provide the following:
 - a. Total All-Inclusive Not To Exceed Maximum Price: The cost proposal should contain all pricing information relative to performing the scope of work as described in this request for proposals. The total all-inclusive maximum not to exceed price is to contain all direct and indirect costs including all out-of-pocket expenses. Provide a budget for each major milestone for the entire scope of services. The proposed budget should be inclusive of all meetings,

conference calls, site visits and deliverables. The budget should include a list of anticipated reimbursable expenses with rates charged for each.

Rates for Additional Professional Services: If it should become necessary for the City to request the successful firm to render any additional services to either supplement services requested in this RFP or to perform any additional work as a result of the specific recommendations included in any report issued resulting from this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the City and the firm. Any such additional work would be performed at the same rates submitted in the dollar cost bid unless otherwise noted in the proposal.

- b. Component Costs: Include separate schedules of all fees and expenses for each of the work tasks and deliverables described in this RFP. These schedules should include hourly rates and number of hours anticipated for each staff level; as well as out-of-pocket expenses such as transportation, meals, communications, and duplication costs. The total of these separate schedules should have a direct relationship to the total all-inclusive maximum price.
 - c. Rates for Additional Professional Services: If it should become necessary for the City to request the successful firm to render any additional services to either supplement services requested in this RFP or to perform any additional work as a result of the specific recommendations included in any report issued resulting from this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the City and the firm. Any such additional work would be performed at the same rates submitted in the dollar cost bid unless otherwise noted in the proposal.
 - d. Manner of Payment: Progress payment will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the consultant's proposal. Interim billings shall cover a period of not less than a calendar month.
10. References – Provide references from at least three municipal agencies for whom you have provided similar services, with similar composition of staffing as proposed for the City of Atwater update.

CRITERIA FOR SELECTION

An evaluation committee will evaluate each respondent's relevant experience and expertise. Proposals will be evaluated based on the information presented in the RFP.

A two-step analysis will be employed. First, staff will review all submittals to ensure that the minimum requirements of the RFP are met.

Secondly, an evaluation committee will review proposals for the following:

- Qualifications as they relate to this project (35%) in the order shown below:
 - Thoroughness and understanding of the tasks to be completed.
 - Background and experience in organizational analysis evaluation.
 - Staff expertise and overall experience of personnel assigned to the work.
 - Qualifications of proposed key personnel.
 - Communication Skills.
- Reputation for integrity and competence (30%)
 - Positive Reference Checks
- Proposed Fees and Charges for Service (25%)
- Ability to provide the required services in a timely manner within the City's standard professional service agreement. (10%)

The City reserves the right to interview any or all responding proposers and/or to award a contract without conducting interviews.

A recommendation for consultant selection will be made to the City Council based on the "best value" evaluation of the proposals/qualifications, which will take into account the consultant's team's qualifications, reference checks, comparable experience and cost, as well as consultant's availability to undertake the project, complete the tasks timely and deliver a high-quality work product, and ability to comply with the City's standard professional service agreement.

All interested parties are encouraged to submit proposals to the RFP, as the award is not based solely on the lowest cost proposal submitted. Total cost will be taken into consideration, but the Consultant's capabilities, competence, and capacity will be considered as well. The City reserves the right to choose the overall best proposer according to the City's criteria. The City, and its designated representatives, shall be the sole judge of its own best interest, the proposal, and the resulting negotiated agreement. The City's decisions will be final.

The above factors, along with other factors that the City may deem appropriate, will be used to identify the proposal that represents the best value, which will be the basis for the contract

award. The decision of whether to award a contract and selection of a consultant will be in the sole discretion of the City Council.

PROPOSAL REQUIREMENTS

General Requirements

The City will not give verbal answers to clarifications regarding information in this RFP, or verbal instructions prior to the submission deadline. All clarifications shall be submitted in writing. A verbal statement regarding same by any person shall be non-binding. The City is not liable for any increased costs resulting from the Consultant accepting verbal directions. Any explanation desired by a Consultant must be requested of the City representative in writing no later than August 14, 2024 at 4:00 PM.

Inquiries concerning the Request for Proposals and the subject of the Request for Proposals must be made to:

Anna Nicholas
Finance Director
City of Atwater

750 Bellevue Road
Atwater, CA 95301

209-357-6347

anicholas@atwater.org

Submission of Proposal: Proposals submitted by facsimile or emails are not acceptable and will not be considered. The original signed proposal and four (4) duplicates are to be submitted in sealed packages with the name of the Consultant and RFP title clearly marked on the outside of the package. The Proposal shall be received by the City Clerk of the City of Atwater by 4:00 p.m. on August 30, 2024 for a proposal to be considered. The Proposal should address the items listed below and be addressed to the following:

City of Atwater
Janell Martin
Assistant City Clerk

1160 Fifth Street
Atwater, CA 95301

Format for Proposal

To facilitate the review of responses, all responses are required to adhere to the following requirements regarding their proposal. The City strongly encourages respondents to ensure that RFP submissions are succinct and clearly organized. If the proposal is not in this format or does not include all of the listed items, it may be deemed non-responsive. For ease of handling, all responses are to be provided in a standard 8 ½" x 11" portrait format with binding on the left- hand edge.

1. Title Page showing the request for proposals subject; the firm's name; the name, address and telephone number of the contact person; and the date of the proposal.
2. Table of Contents identifying the materials submitted by section and page number.
3. Detailed Proposal following the order set forth in the Proposal Content.
4. Provide a timeline for the Comprehensive User Fee Study, Development Impact Fee Study, and Full Cost Allocation Plan, indicating dates for completion of the final reports.

ATTACHMENT 1

CITY OF ATWATER **STANDARD** PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of June 10, 2024 by and between the City of Atwater, a public agency organized and operating under the laws of the State of California ("City"), and [***INSERT NAME***], a [***INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

- A. City is a public agency of the State of California and is in need of professional services for the following project:

_____ (hereinafter referred to as "the Project").

- B. Consultant is duly licensed and has the necessary qualifications to provide such services.
- C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A." **[Alternatively, Scope of Services can be included here and all subsequent exhibits renumbered accordingly.]**

2. Compensation.

- a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B." **[Alternatively, Schedule of Charges may be included here and all subsequent exhibits renumbered accordingly.]**
- b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$_____ **[Insert amount of compensation]**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt

of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. [Insert Term or Time of Performance].

[If engaging the Consultant for a particular term, use the following provision]

The term of this Agreement shall be from **[Insert start date]** to **[Insert end date]**, unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). **[If the City has specific milestones or timelines for performance, please input those requirements in the "Activity Schedule" attached as Exhibit C, otherwise delete Exhibit C.]** The Notice to Proceed shall set forth the date of commencement of work.

[If engaging the Consultant to perform a discrete task with a specified deadline, use the following provision]

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). Consultant shall complete the services required hereunder within **[Insert number of calendar days for performance of the services – if more detail is required attach "Activity Schedule" as Exhibit C, otherwise delete Exhibit C.]** The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but

are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; pandemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

- b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

- a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.
- b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.
- c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care; Performance of Employees

- a. Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.
- b. Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

9. Assignment and Subcontracting

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void

and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates and subcontractors as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance

Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

- (i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.
- (ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:
 - (1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.
- (iii) Commercial General Liability Insurance must include coverage for the following:
 - (1) Bodily Injury and Property Damage
 - (2) Personal Injury/Advertising Injury
 - (3) Premises/Operations Liability
 - (4) Products/Completed Operations Liability
 - (5) Aggregate Limits that Apply per Project
 - (6) Explosion, Collapse and Underground (UCX) exclusion deleted
 - (7) Contractual Liability with respect to this Agreement
 - (8) Property Damage
 - (9) Independent Contractors Coverage

- (iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.
- (v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.
- (vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

- (i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.
- (ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).
- (iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.
- (iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

- (i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.
- (ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall

require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

- (i) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

- (i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

- (ii) Defense costs shall be payable in addition to the limits.

- (iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

- i. Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or

equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

- (i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.
- (ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.
- (iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.
- (iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.
- (v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

- (i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

- (i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.
- (ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.
- (iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- (iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements

Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

- a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not

be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

- b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

- a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.
- c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from

such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Safety.

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

15. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in at the Superior Court of California for the County of Merced.

17. Termination or Abandonment

- a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant

shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

- b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

18. Ownership of Documents and Confidential Information.

- a. All deliverables and other documents generated by Consultant in the performance of the Services, including all work papers, work-in-progress, designs, drawings, documents, data, computations, specifications, studies and reports prepared by Consultant as a part of the Services or authorized Additional Services ("Consultant Work Product") shall belong to and be subject to the sole ownership and use of City.
- b. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, drawings and specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.
- c. During the course of the performance of this Agreement, Consultant may receive written or verbal information from City, its representatives or agents, not in the public domain. Such information may include City's know how, trade secrets, and other proprietary and confidential information and Consultant agrees to treat such information as confidential information belonging to City. Consultant agrees that neither it, nor its officers, employees, representatives, agents, successors, or assigns, will disclose such information to any third party or use the same in any manner without the prior written consent of City. Moreover, Consultant agrees to safeguard such proprietary and confidential information from unauthorized disclosure and/or use using the same degree of care it uses to protect its own proprietary and confidential information, but not less than a reasonable standard of care. In the event that disclosure of such information is sought pursuant to any law or regulation, Consultant shall promptly notify City of such fact to allow City to assert whatever exclusions or exemptions may be available to it under applicable law or regulation.

19. Organization

Consultant shall assign [REDACTED] as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

1160 Fifth Street
Atwater, CA 95301
Attn: City Manager

CityManager@atwater.org

CONSULTANT:

***INSERT NAME, ADDRESS &
CONTACT PERSON***]

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However,

Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

31. Federal Requirements

[INCLUDE THIS SECTION ONLY IF APPLICABLE; DELETE OTHERWISE AND DELETE ASSOCIATED EXHIBIT. YOU MAY ALSO NEED TO INCLUDE SOME INFORMATION IN THE RFP DUE TO FEDERAL FUNDING GUIDELINES. CONSULT LEGAL COUNSEL IF NECESSARY**]**

When funding for the services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF ATWATER
AND [***INSERT CONSULTANT NAME***]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ATWATER

CONSULTANT

By: _____
Christopher Hoem, City Manager

By: _____

Date: _____

Date: _____

ATTEST:

By: _____
Kory J. Billings, City Clerk

APPROVED AS TO FORM:

By: _____
Frank Splendorio, City Attorney

EXHIBIT A
Scope of Services

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

EXHIBIT C
Activity Schedule

EXHIBIT D

Federal Requirements

[DELETE EXHIBIT IF NOT APPLICABLE]