



## City of Atwater

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**Request for Qualifications for  
A Citywide Community Facilities District (CFD)**

Date Released: March 12, 2026

Proposals due prior to: 2:00 pm on April 2, 2026

Submit Proposals to: City of Atwater  
Attn: Janell Martin, Assistant City Clerk  
1160 Fifth Street  
Atwater, CA 95301

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## **INTRODUCTION**

The City of Atwater (“City”) is seeking Statements of Qualifications (SOQs) from experienced and qualified firms to provide professional services for the formation, implementation, annexation processing, and ongoing administration of a Citywide Community Facilities District (CFD) structured as a Maintenance CFD.

The purpose of this CFD is to ensure long-term fiscal sustainability by creating a legally sound financing mechanism to fund the maintenance, operation, and lifecycle replacement of public infrastructure and facilities associated with new development. The CFD will be structured with a citywide annexation area requiring all future development to annex into the district as a condition of approval.

The City seeks a firm with strong expertise in CFD formation, special tax consulting, annexation processes, rate and method of apportionment (RMA) development, and annual CFD administration.

This Request for Qualifications (RFQ) is intended to identify the most qualified firm based primarily on experience, technical expertise, staffing capacity, and demonstrated ability to provide effective CFD-related services. Cost will be considered but shall not be the sole or determinative factor in the City’s selection.

Issuance of this RFQ does not obligate the City to award a contract. The City reserves the right to cancel this solicitation or reject any or all submittals if it is determined to be in the City’s best interest. There is no expressed or implied obligation for the City to reimburse respondents for any expenses incurred in preparing or submitting qualifications in response to this RFQ.

Submission of qualifications indicates acceptance by the respondent of the conditions contained in this RFQ unless clearly and specifically noted in the submittal and subsequently agreed upon in a contract with the City.

## **BACKGROUND**

The City of Atwater has a population of approximately 32,000 and is located on State Route 99 in Merced County, within California’s San Joaquin Valley.

The City is a general-law city operating under a Council-Manager form of government, governed by a five-member City Council that appoints the City Manager and City Attorney. The City is a full-service municipality providing a comprehensive range of services, including police, fire, public works, community development, utilities, and administration.

Additional information regarding the City’s organization, services, operating and capital budgets, and annual financial reports is available on the City’s website at [www.atwater.org](http://www.atwater.org).

## **OBJECTIVE**

The objective of this RFQ is to secure a qualified consulting firm to form and administer a Citywide Maintenance CFD, including providing annexation processing, RMA development, and full annual administration. The selected consultant must ensure that new development pays its fair share of maintenance and service costs, protecting the City's General Fund and supporting long-term fiscal sustainability.

## **GENERAL INFORMATION AND SCHEDULE**

### **A. General**

Addenda to this RFQ, if issued, will be posted on the City of Atwater website at:  
<https://www.atwater.org/bids-rfps-rfqs/>

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

All questions or inquiries regarding this RFQ or the selection process are to be addressed, in writing only, (e-mail is acceptable) by Wednesday, March 25, 2026 at 5:00 PM to:

Gisela Peralta, Executive Assistant  
1160 Fifth Street  
Atwater, CA 95301 or  
Email: [gperalta@atwater.org](mailto:gperalta@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. All interested firms are required to submit Statements of Qualifications (SOQs) in accordance with the conditions and dates outlined in this Request for Qualifications (RFQ).

### **B. Submission**

SOQs shall be clear, concise, and responsive to the information requested. The SOQ shall not exceed twenty (20) pages total (8½" x 11"), minimum 12-point font, excluding required forms and attachments. Pages shall be numbered.

Each proposer shall submit one (1) electronic copy of the SOQ in PDF format via email (maximum file size 15 MB), labeled with the consultant's name. A separate electronic file containing the proposed fee schedule shall also be submitted.

SOQs must be received no later than 2:00 p.m. on Thursday, April 2, 2026. Late submittals will not be accepted.

**City of Atwater**  
**Attn: Janell Martin, Assistant City Clerk**  
**1160 Fifth Street**  
**Atwater, CA 95301**  
**Email: [jmartin@atwater.org](mailto:jmartin@atwater.org)**

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

### **C. Schedule**

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

- Issuance of RFQ: March 12, 2026
- Last day for Request for Information: March 25, 2026 at 5:00 PM
- Deadline for submittal of SOQ: April 2, 2026 at 2:00 PM
- SOQ review and evaluation: Week of April 6th, 2026
- Cost Negotiation, Award contract: Pending City Council Decision

### **I. SCOPE OF SERVICES**

The selected consultant will provide comprehensive support for the formation, implementation, financing, annexation, and administration of a Citywide Maintenance CFD. Services include:

#### **A. CFD Formation Services**

- Project initiation, data collection, and analysis of maintenance and service needs.
- Development of fiscal models and a defensible Rate and Method of Apportionment (RMA).
- Preparation of CFD formation documents including boundary maps, resolutions, notices, and ballots.
- Staff, stakeholder, and City Council presentations.

#### **B. Annexation Services**

- Establish annexation procedures for integration with City entitlement processes.
- Review development applications and determine applicable special taxes.
- Prepare annexation resolutions, ballots, disclosures, and related materials.

### **C. Annual CFD Administration**

- Annual special tax levy and County roll submissions.
- Fund monitoring, delinquency management, and statutory reporting.
- Updating parcel records, prepayment processing, and compliance reporting.

### **D. Optional Services**

- Updates to CFD policies, public outreach materials, GIS mapping, and staff training.

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

## **II. GENERAL REQUIREMENTS**

The selected consultant must meet the following requirements:

- Personnel must be qualified, experienced, and capable of performing the services described.
- Consultant must comply with all applicable federal, state, and local laws, including the Mello-Roos Act.
- Any proposed staff changes must be approved by the City at no additional cost.
- Consultant must provide all equipment and software necessary to complete the work.
- Consultant must be properly licensed in California.
- Consultant must maintain a high standard of professional care and avoid conflicts of interest.

## **III. STATEMENT OF QUALIFICATIONS REQUIREMENTS**

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

1. **Cover letter:** Shall be addressed to Christopher Hoem, City Manager and must, at a minimum, contain the following information:
  - a) Brief summary of Consultant's profile, qualifications and capabilities which specifically addresses the organization's knowledge and experience under this RFQ.
  - b) Proposed subconsultants (if applicable)

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- c) Proposed Consultant's phone number and email address
  - d) Acknowledgement of receipt of all addenda (if applicable)
  - e) A statement attesting that all information submitted with the SOQ is true and correct
  - f) Signature of the official authorized to negotiate and contractually bind the firm with the City should an award of contract occur.
2. **Qualifications and Experience:** The Consultant shall summarize the qualifications and relevant experience for the consultant firm, proposed any subconsultants. The following items should be included:
- a) Project Team – Identify the contact person with primary responsibility for this project, other key project personnel, including sub-consultants, and their individual areas of responsibility. Key personnel listed will be considered as committed to the project. A resume of all key personnel assigned to the project, including sub-consultants, shall be submitted.
  - b) Relevant Project Experience - Describe the team's experience providing State and/or Federal legislative advocacy services for municipalities or public agencies. Provide five (5) representative projects completed within the past five (5) years that are relevant to the Scope of Services. For each project, include the client name, contact person, phone number, email address, and a brief description of the services provided.
3. **Project Understanding and Approach:** The consultant shall provide a narrative describing the firm's approach to delivering comprehensive Community Facilities District (CFD) formation, administration, and implementation services, including coordination with City staff and elected officials, methods for conducting project and financial analyses, development of CFD structures and special tax strategies, and practices for accurate and compliant district administration. The narrative should also address the firm's monitoring and reporting procedures, communication methods, responsiveness to City needs, and the firm's ability to adjust services based on City direction, evolving development conditions, or changing policy and funding priorities.
4. **References:** Provide two or more references from municipal agencies that can supply information on the quality of your services during the past two (2) years.
5. **Conflict of Interest Statement:** Provide a statement of any recent, current or anticipated contractual obligations which may have a potential to conflict with the Consultant's work with the City.
6. **Contract and Insurance Documentation:** The City's standard contract for professional services is attached for review – See Attachment A. The City requires that the consultant provide and maintain policies of insurance according to the contract. If upon review, the Consultant has concerns with the standard contract,

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

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

#### IV. EVALUATION AND CRITERIA

A Selection Committee will review and evaluate the SOQ submitted based on the following criteria and maximum points allotted. The committee will “short-list” the most qualified firms, utilizing the selection criteria listed below. In the event that the Selection Committee requires an interview, key personnel proposed for the project shall attend.

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

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

**ATTACHMENT A – SAMPLE CONTRACT AGREEMENT**

**CITY OF ATWATER**  
**DRAFT PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of \_\_\_\_\_ 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

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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:

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(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).

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- (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 (omissions)	\$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

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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

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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.

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- 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

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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:

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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

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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: \_\_\_\_\_

By: \_\_\_\_\_

Christopher Hoem, City Manager  
\_\_\_\_\_

\_\_\_\_\_,

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]**