



Request for Proposals

Comprehensive Zoning Code Update

Due: 4:00 pm Friday, August 6, 2021

**Community & Economic Development Department
411 E. Kern Avenue, 1st Floor, Public Counter
Tulare, CA 93274**

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I. OVERVIEW

The City of Tulare, California is currently accepting proposals from qualified firms with expertise in zoning for leading a process resulting in the preparation of a new zoning code for the City. Proposals received via the request for proposals (RFP) process will be reviewed by a selection committee comprised of City staff in the City of Tulare.

II. BACKGROUND

About Tulare:

The City of Tulare is a charter city that incorporated in 1888. Located in the Central San Joaquin Valley along Highway 99, 45 miles south of Fresno and 60 miles north of Bakersfield. Our mid-state location benefits businesses needing same-day access to key California markets as well as residents seeking recreational opportunities in the beautiful Sierra Nevada Mountains to the east and the spectacular California coastline to the west. The City comprises 13,558 acres, or approximately 21 square miles, and, as of January 1, 2021, the City of Tulare's population was 69,246.

In general, Tulare has five existing predominant land use patterns. The Downtown District in and around downtown Tulare includes a mix of land uses at a small lot, walkable scale, comprised of smaller, independent commercial businesses, and residential/office development. The Prosperity Avenue corridor east of State Route 99 is a concentration of larger chain commercial development, and includes the Tulare Outlets. This area is the heart of most of the existing commercial activity in the city. The southern area of the city, south of Owens Avenue and centered around 'K' Street includes most of the City's industrial uses, with several dairy processing plants, warehousing, trucking, and ag support service establishments. Older arterial corridors such as 'J' Street, Tulare Avenue (State Route 137), and Inyo Avenue (State Route 137) include a mix of mostly service commercial uses, as well as some retail and residential mixed in. However, the majority of existing development in the city consists of residential development, mostly single-family residential of varying ages, with most of the recent growth occurring at the edges of the City's eastern and western limits. Recently there has been an increase in infill multi-family residential development, both market-rate as well as covenant-restricted affordable housing units.

Tulare is host to the world-famous World Ag Expo every February, attracting over 100,000 visitors from around the world for the seminars and presentations on the latest research and technology, including best practices and new equipment for all segments of the agriculture sector. Agriculture remains the lifeblood of the local economy and Tulare sits in the heart of some of the most productive farmland in the world. The strategic location makes Tulare very attractive to food processors and distributors because of the central location and abundant supply of locally grown products.

Los Angeles and the San Francisco Bay area are less than a 4 hour drive, and, in addition to being served by Freeway 99, Tulare is 40 minutes from Interstate 5, which connects California to Oregon and Washington.

The ports of Stockton, Sacramento, Los Angeles and San Francisco are all within 200 miles of Tulare and infrastructure and transportation systems are already in place to facilitate product movement. In addition, the main line of the Union Pacific Railroad runs through Tulare, offering rail access to major cities throughout the United States.

2035 General Plan:

On October 7, 2014, the Tulare City Council adopted the 2035 General Plan. While striving to maintain the character and prosperity that the City enjoys, the new General Plan lays out a blueprint for the City's future. The Tulare General Plan 2035 sets out a hierarchy of goals, policies, and implementation measures to guide future development in the city, encouraging infill development and providing guidance for the city's orderly expansion in a manner that is economically sustainable.

Current Zoning Code

The City's current zoning code is decades old and staff has been patching it through minor amendments in order to keep up with new State requirements. In addition, a lack of staff and resources since the adoption of the 2035 General Plan until recently has resulted in a zoning code that is not reflective and sometimes inconsistent with the policies in the 2035 General Plan. The City is looking for a comprehensive update of its current zoning code. The state of the current zoning code is not unusual for a typical city in that:

- It has not been comprehensively updated for many decades;
- It contains standards that are outdated, difficult to administer, and often hidden in many different sections;
- It is inconsistent with the City's new 2035 General Plan;
- Numerous amendments have been made that sometimes are not consistent with the rest of the code;
- There are inconsistencies between overlay districts and the underlying zoning requirements;
- The code does not reflect recent changes resulting from legal decisions and changes to state laws (i.e., *Reed v. Town of Gilbert*, SB 2, accessory dwelling units, etc.)
- The code lacks the ability to address modern development trends and patterns in City's corridors, mixed use overlay area, and Transit Priority Areas (TPAs).
- Some sections of the code lack specificity or clarity, making zoning enforcement often difficult; and
- It is not user-friendly and lacks graphics to improve readability.

Staff:

The City of Tulare's Community & Economic Development Department houses the Planning, Economic Development, and Housing & CDBG Services employees. The staff also works closely with the Engineering Department on development activities within the City. The City's principal planner has been assigned to the project and will be the Consultant's primary point of contact.

The City anticipates that members of the City's Planning Commission and City Council will play a significant role in the process by guiding and supporting the effort through a series of workshops, discussions, and public engagement opportunities.

III. SCOPE OF WORK

With assistance from City Staff, the selected Consultant will conduct a public process to develop a new Zoning Ordinance for the City of Tulare. The City anticipates that the Consultant will work with staff, the Planning Commission, Council and community to develop a "hybrid" zoning ordinance that incorporates a mix of form-based standards, performance based standards, incentives, and conventional zoning standards as appropriate depending on the area of the city.

Project Goals:

City staff have identified the following goals for the zoning code update effort:

- Implement 2035 General Plan policies
- Be consistent with State and federal law
- Be intuitive, graphic and user-friendly
- Create a transparent, predictable and consistent process
- Promote high quality design
- Respond to community concerns
- Promote infill, mixed-use, and transit-oriented development in TPAs and mixed-use overlay areas
- Standardize and simplify development review

Scope of Work:

The Consultant will develop a final work program in conjunction with City staff, but the scope of work should include the following:

- Background: The Consultant will review the key background materials and will join City staff on a tour of the community. At the end of this task, the Consultant will provide a summary of recommended changes to the zoning code. In addition, the Consultant shall prepare a proposed outline laying out the recommended format, content, and organization of the new zoning code. Staff will provide a summary of the key policies and development standards from the following background documents:
 - 2035 Tulare General Plan
 - Tulare Transit-Oriented Development (TOD) Plan
 - City of Tulare Housing Element 2015-2023
 - Existing Zoning Code
 - Development standards from other specific plans and planned development (PD) districts in the City.

The City contains a variety of land uses, which will require differing and specific regulations. The Consultant should anticipate participating in a tour of Tulare with staff. The Consultant will then work with staff to identify these areas, determine the appropriate zoning approach to these areas (e.g., form-based, performance-based, incentive-based, or conventional) and draft appropriate zoning regulations. Examples include Downtown Tulare, the identified TOD areas in the City, and mixed-use infill development standards and incentives along the city's transportation corridors.

- Public Outreach: The Consultant should incorporate a public outreach component designed to inform community stakeholders, the Planning Commission, Council, and the public on the new zoning code. It should include one (1) kickoff meeting and then five (5) workshops with the Planning Commission based on the phases for the project. For review and adoption of the new zoning code the Consultant should assume one (1) Planning Commission hearing, and two (2) Council hearings. The Consultant shall be responsible for preparing all presentation materials for the workshops and meetings. The City will establish a project website for the zoning code effort. The Consultant shall provide all outreach materials to the City for posting on the website.
- Draft Zoning Code: At a minimum, the comprehensive update of the City's zoning code should address the following topics:
 - Zoning Code Administration & Permits
 - Zoning Districts
 - Allowed Uses
 - Development Standards
 - Definitions/Glossary

While the new zoning code will be adopted in its entirety, the project will be done in several phases. The Consultant shall identify a budget per phase as well as an overall budget. As noted below, the project schedule should also identify the schedule for each individual phase.

1. Review Documents, Information, and Early Community Stakeholder and Staff Input
2. Legally Required Changes (updates due to updates in federal & state law)
3. Changes for Consistency with 2035 General Plan & TOD Plan
4. Revisions Recommended by staff and community stakeholders
5. Changes for Internal Consistency
6. Improvements for Readability, Simplicity, and User-friendly Experience
7. CEQA Document (expected IS- ND/MND)

The Consultant shall prepare an Administrative Draft, a Public Review Draft, a Revised Public Review Draft incorporating changes resulting from the hearing process and other outreach, and a Final Draft of the code for presentation at the Planning Commission and City Council hearings. The Public Review Drafts and Final Draft will be fully formatted and will contain a range of graphics, diagrams, tables, and charts that complement and supplement the code. The process of going from Administrative Draft to Public Review Draft and to Final Draft will need to occur in close coordination with the City's Project Manager, and will require frequent meetings and/or conference calls. Once the Final Draft has been approved by the City Council, the Consultant shall provide a final version that includes any changes approved by Council.

- Zoning Map Revisions: The Consultant shall work with City staff to identify areas that will require map changes. Staff anticipates that zoning map changes may be required in areas where the General Plan designation was updated, but the zoning designation has not, as well as applying overlays, and addressing any inconsistencies. Please note that City staff may require assistance in including any necessary changes in GIS to prepare the final map for Council adoption.
- Environmental Review/CEQA Documentation: The Consultant shall prepare the necessary CEQA document necessary for adoption of the zoning code. The Consultant should be able to tier off of the recently completed 2035 General Plan EIR and prepare either a letter of consistency or addendum. If higher level of CEQA review is recommended, please provide a justification for that level of review. Consultants may partner with an environmental sub-consultant if they do not have the expertise in-house, or partner with City staff, although the scope and cost of the proposal should clearly reflect this.
- Integration of the New Code into User-Friendly Formats: The Consultant shall work with City staff as well as its information technology vendors to ensure the new code is easily accessible to the public, interactive, and searchable. The City uses American Legal Publishing Corporation for its web platform for the zoning code. The City is also currently migrating its zoning, plans, entitlement and permitting process to a GIS-based platform. This task would include formatting the code to make it web-ready. In addition, the Consultant will work with City staff to prepare a simple user-guide/handbook for the public that explains how to use the new zoning code. The handbook should be easy to understand with graphics and examples that demonstrate how the public can navigate the code and find answers to frequently requested information (e.g., residential setbacks, fence requirements, commercial building signage, accessory structure standards, development standards, etc.). This should be provided in PDF format that is internally hyperlinked for easy navigation within the handbook.
- Project Schedule: The Consultant shall provide the City with an anticipated schedule for the work broken down by phase with a goal of completion by fall 2022 (12-15 months approximately).
- Deliverables: The Consultant shall provide the complete zoning code in both paper format (5 copies) and electronic format (Word, PDF) for each draft:

- Administrative Draft (Internal – staff review only);
- Public Review Draft (Public document); and
- Revised Public Review Draft (Public document incorporating comments from meetings)
- Final Draft for final City Council hearings.

Once Council has approved the final draft, the Consultant shall update the zoning code to include Council-directed changes and then shall provide staff with paper copies (5 copies) and electronic versions of the final zoning code (e.g., Word, PDF and the original files from any other programs used such as Adobe In-Design, Trimble SketchUp, etc.).

For the environmental review, the Consultant shall prepare an initial draft and final version of the CEQA document. Two (2) hard copies and an electronic version shall be provided for each draft.

IV. SCHEDULE

The following identifies the schedule for the RFP and consultant selection process:

July 1, 2021	RFP Issued
July 12, 2021	Consultant Questions Due
July 19, 2021	City Responses Posted
August 6, 2021	Proposals Due at 4:00 pm
August 25 - 27, 2021	Consultant Interviews (Top Three)
September 3, 2021	Consultant Selection
October 19, 2021	City Council Contract Approval

It is anticipated that award of the formal contract with the City of Tulare will occur on October 19, 2021. Following a written notice-to-proceed, to be issued by the City, the Consultant's work shall begin no later than seven (7) days after City Council approval and shall be completed in accordance with the agreed upon schedule.

The notice to proceed issued by the City will specify the work including phases to be completed, a schedule for the work, the basis for payment, and the limits of compensation. The Consultant shall not begin work nor incur any costs associated with any task identified herein without an explicit written notice to proceed.

V. COMPENSATION

The City will negotiate a contract with the selected Consultant based on the following assumptions and conditions:

- All services rendered as described in the Scope of Work, including all labor, equipment, materials, and expenses, the Consultant shall be compensated on a time and expenses basis by task or phase for work completed.
- Not-to-Exceed amount for services is estimated to be between \$250,000 and \$300,000. This amount should be broken down by phase. The funding for this contract is from the Local Early Action Planning (LEAP) Grant awarded to the City in February 2021 by the California Department of Housing and Community Development (HCD), the statewide housing policy and planning agency. The City and Consultant will be bound by the requirements of that grant.

VI. PROPOSAL REQUIREMENTS

Submittals

Interested firms are invited to submit an electronic copy (PDF format) of their proposal to manaya@tulare.ca.gov and three (3) hard copies of their proposals to the following address:

City of Tulare
Community & Economic Development Department
411 E. Kern Avenue
Tulare, CA 93277
ATTN: Mario Anaya, AICP, Principal Planner

Proposals will be accepted until Friday, August 6, 2021 at 4:00 PM (PST).

Contents of the Proposal:

At a minimum, the proposal should contain the information outlined herein. Additional information that the applicant deems relevant to the selection process may be included; however, concise and focused submittals are strongly encouraged. By submitting a proposal, and unless otherwise stated, it is understood that the Consultant has reviewed the relevant information, and that based on that review, the Consultant has developed an informed understanding of the projected scope of work and has satisfied itself with the applicable conditions and requirements expressed in those documents.

- Consultant Background: In two pages or less, provide a brief overview of the Consultant assuming contract responsibilities. All proposed sub-consultants must be identified.

- Project Team: Provide an organizational chart that identifies the individuals and sub-consultants, if applicable, assigned to and responsible for the key elements of the work scope and their relationship to those elements. Indicate the number of hours each member has been budgeted and will be assigned to the project. Specifically, identify the personnel assigned to the following duties: project lead, project management, researcher, writing/preparation, graphics, and administration. It is the City's intent to have the proposed project team committed to this project as a contract provision (see Standard Agreement in Attachment 1).
- Individual Qualifications and Experience: Provide resumes for each key staff member. Provide up to three examples of recent projects completed (or ongoing) by the proposed project team (staff members, sub-consultants, and public agencies). For each relevant project: 1) indicate the Consultant's role and the staff members who were responsible for the cited project work; 2) provide a brief description of the contract scope of work; 3) state the contract amount and completion date; and 4) include the name, title and phone number of a client reference.
- Statement of Understanding and Scope of Work: Proposals should provide a statement of your understanding of the project by highlighting the primary issues and outlining your approach toward addressing those issues. Any recommendations regarding improvements to the process, in order to more effectively meet the City's stated objectives, should be emphasized in your proposal, as a clear means of demonstrating an understanding of the project requirements.
- Schedule: Proposals should present an overall project schedule showing milestones, deliverable dates, and the duration of each phase.

Fee Proposal:

Firms are requested to provide a fee proposal that presents the estimated fee. The fee proposal should reflect the scope of work, term, and compensation conditions cited above.

Sufficient information should be provided to justify the proposed fee and to serve as a basis for negotiating a contract. The fee proposal should identify personnel, estimated number of hours, and rate; type of equipment, hours, and rate; and any outside costs for each identified work element.

Any Contract resulting from this solicitation will specify a maximum, not-to-exceed fee amount which is estimated to be between \$250,000 and \$300,000. Except in the unusual situation wherein the Consultant encounters circumstances that could not be reasonably anticipated, the City will not authorize payment beyond this amount. In consideration of this, any assumptions and/or the need for any contingencies must be clearly spelled out in the Fee Proposal and used as a basis to compute a "not-to-exceed" figure for the project. This figure should be sufficient to provide for any reasonably anticipated circumstances that may be encountered during project execution and completion.

Inquiries:

All requests for clarifications or interpretations shall be made in writing and shall be emailed to the project manager for the update, Mario Anaya, manaya@tulare.ca.gov. Inquiries shall contain the firm's name, contact person, and email address and be titled "Zoning Code Update – RFP." Deadline for inquiries is Monday, July 12, 2021 at 4:00 pm (PST). City staff will post responses to all inquiries in the form of an addendum with the RFP documents at <https://www.tulare.ca.gov/government/departments/community-economic-development/planning> on or before Monday, July 19, 2021 by 4:00 pm (PST).

VII. SELECTION CRITERIA AND PROCESS

The selection committee shall select finalists from the complete proposals received before the deadline. The City may ask finalists to present their proposals in person before final selection. The selection committee shall score finalists on a 100-point scale based on criteria that include:

- Relevant Experience of Firm (25 pts)
- Relevant Experience of Project Team (25 pts)
- Understanding of the Issues (25 pts)
- Public Outreach Process (15 pts)
- Clarity of Presentation (10 pts)

Please note that if the Consultant does not have in-house expertise to prepare the CEQA document necessary for the adoption of the new zoning code and map, the Consultant may select a sub-consultant to perform that work. However, the City reserves the right to accept or reject that sub-consultant based on their qualifications and experience. The Consultant may also partner with City staff to prepare the CEQA documentation, although the scope and cost of the proposal should clearly reflect this.

VIII. RESOURCES

The following documents are available for viewing and download at the locations listed below.

2035 Tulare General Plan

<https://www.tulare.ca.gov/home/showpublisheddocument/2393/635907185852000000>

Tulare Transit-Oriented Development (TOD) Plan

<https://www.tulare.ca.gov/home/showpublisheddocument/731/635713493595600000>

Final Environmental Impact Report for 2035 General Plan, TOD Plan, and Climate Action Plan

<https://www.tulare.ca.gov/home/showpublisheddocument/266/635666815900430000>

Existing Zoning Code (Title 10 is Zoning Code)

https://codelibrary.amlegal.com/codes/tulare/latest/tulare_ca/0-0-0-10050

Existing Zoning Map

<https://www.tulare.ca.gov/business/zoning-map>

2035 Tulare General Plan Map

<https://www.tulare.ca.gov/home/showpublisheddocument/604/635702261116100000>

IX. CONTRACT CONDITIONS

The selected Consultant will be required to sign a standard City agreement and maintain required insurance coverage as indicated in Attachment 1. Unless indicated otherwise, submission of a proposal indicates that the proposer accepts the terms of the standard agreement.

Attachment 1
Sample City of Tulare Professional Services
Agreement for Consulting Services



CITY OF TULARE
PROFESSIONAL SERVICES AGREEMENT
HOUSING CONSULTING SERVICES

This Professional Services Agreement (“Agreement”) entered into this _____ day of _____, 2021, by and between _____ (“CONSULTANT”), and the **City of Tulare** (“CITY”).

WITNESSETH

WHEREAS, the CITY is authorized and empowered to employ consultants and specialists in the performance of its duties and functions; and

WHEREAS, the CITY has the desire to secure certain technical and professional services to assist in the preparation and completion of the items of work described in the Zoning Code Update Consulting Services Proposal attached hereto as Exhibit “A”, and hereinafter referred to as the "PROJECT"; and

WHEREAS, the CONSULTANT represents it is qualified and willing to provide such services pursuant to terms and conditions of this Agreement:

NOW, THEREFORE, BE IT AGREED, by and between the CONSULTANT and the CITY as follows:

1. SERVICES TO BE PERFORMED BY THE CONSULTANT

A. Authorized Scope of Work

The CITY agrees to pay for services described in Exhibit "A" – Zoning Code Update Consulting Services Proposal - attached hereto and incorporated herein by this reference.

B. Additional Services

Incidental work related to the PROJECT and not provided for in Exhibit "A" may be needed during the performance of this Agreement. The rate for such additional service shall be “on call” services and based upon an hourly rate as set forth on CONSULTANT’S 2021 compensation rates. Such additional services shall not be performed by CONSULTANT without the express written consent of CITY.

2. COMPENSATION

A. Total Compensation

CONSULTANT agrees to perform the services as described in Exhibit “B” – Fee Proposal & Compensation Rates - for a not-to-exceed fee of \$_____. Any additional services other than those provided for in Exhibit “A” would be performed on an “on-call” basis and these additional services will be billed on an hourly rate based upon CONSULTANT’S 2021 compensation rates.

B. Invoicing & Payment

As sole compensation for the performance of the services, the City will pay Consultant a consulting rate for each service classified as provided for in Exhibit “B” attached hereto. Any expenses incurred by Consultant in performing the services will be the sole responsibility of Consultant unless other arrangements are made before such expenses are incurred. Consultant will invoice the City on a monthly basis. The City will pay each such invoice no later than thirty (30) days after its receipt.

3. AUTHORIZED REPRESENTATIVE

The Community & Economic Development Director, Traci Myers, or her Designee shall represent the CITY in all matters pertaining to the services to be rendered under this Agreement, except where approval of the City Council of the City of Tulare is specifically required.

4. TERMINATION

The CITY or the CONSULTANT may terminate this Agreement at any time by giving written notice of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In such event, all finished and unfinished documents and other materials shall, at the option of the CITY, become its property. If this Agreement is terminated by the CITY as provided for herein, the CONSULTANT shall be paid for the tasks (as set forth in Exhibit "B") satisfactorily completed prior to the date of termination, and in the amounts set forth herein, including CONSULTANT'S reasonable costs associated with the termination itself if termination effectuated by CITY, less deduction, if any, to the CITY for damages suffered as a result of the CONSULTANT'S failure to comply with the terms of this Agreement, if such is the case or cause of termination.

5. INTEREST OF OFFICIALS AND THE CONSULTANT

- A. No officer, member, or employee of the CITY or another public official of the governing body of the locality or localities in which the work, pursuant to this Agreement is being carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the aforesaid work shall:
 - 1. Participate in any decision relating to this Agreement which effects his or her personal interest or the interest of any corporation, partnership, or association in which he or she has, directly or indirectly, any interest; or
 - 2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his or her tenure or for one year thereafter.
- B. The CONSULTANT hereby covenants that they have, at the time of the execution of this Agreement, no interest, and that they shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The CONSULTANT further covenants that in the performance of this work, no person having such interest shall be employed.

The CONSULTANT warrants, by execution of this Agreement, that no personnel agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting *bonafide* established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warrant, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from this Agreement without liability, or, in its discretion, to deduct from this Agreement price or

consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

6. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties. The CONSULTANT shall not assign, delegate or transfer the rights and duties under this Agreement or any part thereof, without the prior written consent of the CITY.

7. INDEPENDENT CONTRACTOR

In the performance of the services herein provided for, the CONSULTANT shall be, and is, an independent contractor and is not an agent or employee of the CITY. The CONSULTANT has and shall retain the right to exercise full control and supervision of all persons assisting the CONSULTANT in the performance of said services hereunder. The CONSULTANT shall be solely responsible for all matters relating to the payment of its employees including compliance with social security and income tax withholding and all other regulations governing such matters.

8. SPECIFICATIONS

All specifications, manuals, standards, etc., either attached to this Agreement or incorporated by reference, are binding as to the performance of the work specified in this Agreement unless they are changed by written amendment to this Agreement modified in writing to incorporate such changes.

9. PUBLICATION

No report, information, or other data given or prepared or assembled by the CONSULTANT pursuant to this Agreement, shall be made available to any individual or organization by the CONSULTANT without the prior written approval of the CITY. Notwithstanding the foregoing, however, the CONSULTANT shall not be required to protect to hold in confidence any confidential information which (1) is or becomes available to the public with the prior written consent of the CITY; (2) must be disclosed to comply with law; or (3) must be disclosed in connection with any legal proceedings.

10. COPYRIGHTS

The CONSULTANT shall be free to copyright material developed under this Agreement with the provision that the CITY be given a nonexclusive and irrevocable license to

reproduce, publish or otherwise use, and to authorize others to use the material for government or public purposes.

11. INDEMNIFICATION AND INSURANCE

- A. As respects acts, errors or omissions in the performance of professional services, CONSULTANT agrees to indemnify and hold harmless the CITY, its officers, employees, and the CITY'S designated volunteers from and against any and all claims, demands, defense costs, liability or consequential damages of any kind or nature arising directly out of CONSULTANT'S negligent acts, errors or omissions in the performance of his/her professional services under the terms of this contract.

As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONSULTANT agrees to indemnify, defend (at the CITY's option), and hold harmless CITY, its employees, agents, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature caused in whole or in part by any negligent act or omission of the CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

- B. Without limiting the CITY's right to indemnification, it is agreed that CONSULTANT shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:
- i. Workers' Compensation Insurance with statutory limits, and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per accident.
 - ii. Commercial General Liability Insurance, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Broad Form Property Damage (if applicable), Independent Contractors' Liability (if applicable), in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form.
 - iii. Professional Liability Insurance coverage, including contractual liability, in an amount not less than One Million Dollars (\$1,000,000), and CONSULTANT shall maintain such coverage for at least four (4) years

from the termination of this Agreement; and during this four (4) year period, CONSULTANT shall use CONSULTANT'S best efforts to ensure that there is no change of the retroactive date on this insurance coverage.

- iv. Comprehensive Auto Liability coverage, including (as applicable) owned, non-owned and hired autos in an amount of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, written on an occurrence form.

- C. Each insurance policy required by this Agreement shall contain the following clauses:

“This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the City Manager.

“It is agreed that any insurance maintained by the CITY shall apply in excess of and not contribute with insurance provided by this policy.”

Each insurance policy required by this Agreement, excepting policies for workers' compensation and professional liability, shall contain the following clause:

“The City, its officers, agents, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured, performed under contract with the City.”

- D. Upon CITY's request or immediately prior to initiation of any work under this contract, (whichever comes first), CONSULTANT shall deliver to the CITY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Also, within thirty (30) days of CITY'S request, CONSULTANT shall provide to the CITY endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by the CITY, it shall be CONSULTANT'S responsibility to see that the CITY receives documentation acceptable to the CITY which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. Also, the CITY has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.
- E. In addition to any other remedies, the CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, the CITY may, at its sole option:
 - 1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

2. Order CONSULTANT to stop work under this Agreement and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.
3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies the CITY may have and is not the exclusive remedy for CONSULTANT'S failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT'S or its subcontractor's performance of the work covered under this Agreement.

12. OWNERSHIP OF DOCUMENTS

All original papers and documents, produced as a result of this Agreement, shall become the property of the CITY. In addition, CITY shall be provided with access and use of any other papers and documents consistent with the purpose and scope of services covered by this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of the CITY.

13. NOTICES

Notice shall be sufficient hereunder if personally served upon the City Manager of the CITY or an officer or principal of the CONSULTANT, or if sent via the United States Postal Service, postage prepaid, addressed as follows:

Consultant	City of Tulare
Consultant Name.	Roxanne Yoder
Officer or Principal	Deputy City Clerk
Address	411 E. Kern Avenue
Address Line 2	Tulare, CA 93274
City, State Zip Code	

14. JURISDICTION & CHOICE OF LAW

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued in the State of California, Tulare County Superior Court. If any part of this Agreement is found

to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.

15. INTEGRATION

This Agreement represents the entire understanding of the CITY and the CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the CITY and the CONSULTANT.

16. MISCELLANEOUS PROVISIONS

- A. CONSULTANT covenants that they presently have no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with performance of service required hereunder.
- B. CONSULTANT will not discriminate against any employee, or applicant for employment, because of race, color, religion, sex, marital status, or national origin. CONSULTANT will take action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, marital status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- C. For the purposes of this agreement electronic signature facsimile shall be deemed the same as an original signature, and may be executed in multiple parts.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

CONSULTANT

By: _____
Officer / Principal

CITY OF TULARE

By: _____
City Manager

APPROVED AS TO FORM

By: _____
City Attorney