



**CITY OF TULARE**  
**REQUEST FOR QUALIFICATIONS**  
**RFQ #21-724**

**On-Call Real Property, Right of Way, Appraisal, and  
Acquisition Consulting Services**

**Submittal:** One (1) unbound original and four (4) copies must be received on or before:  
**5:00 p.m. on November 20, 2020**

**Addressed to:** City of Tulare, c/o City Clerk

**Address:** 411 East Kern Avenue, Tulare, CA 93274

**Mark envelope:** **Statement of Qualifications for On-Call Real Property, Right of Way,  
Appraisal, and Acquisition Consulting Services**

*Responses received after the time and date stated above shall be returned unopened to the proposer.*

**INQUIRIES:**

Direct questions for clarification of this Request for Qualifications document to Mr. Nick Bartsch, Senior Project Manager, in writing via e-mail at [nbartsch@tulare.ca.gov](mailto:nbartsch@tulare.ca.gov). Deadline to submit questions regarding this RFQ is **5:00 p.m. on Friday, November 6, 2020**.



**CITY OF TULARE  
STATE OF CALIFORNIA  
REQUEST FOR QUALIFICATIONS**

**RFQ #21-724**

NOTICE IS HEREBY GIVEN that statements of qualifications will be received at the City of Tulare City Clerk's Office, 411 E. Kern Avenue, Tulare, California until **5:00 p.m. on Friday, November 20, 2020**, for the provision of the following:

**REQUEST FOR QUALIFICATIONS  
ON-CALL REAL PROPERTY, RIGHT OF WAY,  
APPRAISAL, AND ACQUISITION CONSULTING SERVICES**

Any submittal received after the hour stated above for any reason whatsoever, will not be considered for any purpose but will be returned, unopened to the proposer. The submission shall include the entire Request for Qualifications (RFQ) documentation and all addenda issued by the City, if any.

Request for Qualification documents may be inspected and obtained in the office of the Engineering Division, 411 East Kern Avenue, Tulare, California 93274 or by calling (559) 684-4207 or by FAX (559) 685-5631, or the City's web site <http://www.tulare.ca.gov/>. Please monitor the website for all information regarding this RFQ. The City will not be sending individual notifications of changes, updates, clarifications, and/or addenda.

The City also hereby affirmatively ensures that Minority Business Enterprises and Disadvantaged Business Enterprises (DBE), as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of contracts financed, in whole or in part, under an agreement as a result of this RFQ and will be afforded full opportunity to submit a Statement of Qualification in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, disability, gender or religion in any consideration leading to the award of contract. No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity leading to the award of a contract.

All persons responding to this invitation shall be aware that their SOQ is deemed a public record and may be subject to disclosure upon request. The right is reserved by the City of Tulare to reject any or all responses, to waive any irregularities or informalities not affected by law, to evaluate the SOQs submitted and to award the contract according to the Statement(s) of Qualifications which best serves the interests of said City.

Publication Dates:      October 20, 2020  
   October 27, 2020

## Table of Contents

RFQ #21-724 .....	1
I. INTRODUCTION .....	5
A. Information .....	5
B. Background .....	6
C. Minimum Qualifications .....	7
D. Purpose of Request and Process for Selection .....	7
E. Time of Performance .....	7
F. Schedule .....	7
G. Names - Definitions .....	7
II. SCOPE OF SERVICES – Request for Qualifications .....	8
A. Consultant’s Responsibilities .....	8
B. City Responsibilities .....	9
III. PROPOSAL CONTENT AND FORMAT REQUIREMENTS .....	10
A. General Information .....	10
B. Ability to Provide Requested Services .....	10
C. Staff Qualifications and Related Experience .....	11
D. Compensation .....	11
E. Conflict of Interest .....	11
IV. CONSULTING FIRM SELECTION PROCEDURE .....	12
A. Criteria .....	12
B. Weight of Criteria .....	13
C. Evaluation Procedure: .....	13
D. Background Check .....	13
E. Award of Contract .....	13
V. GENERAL CONDITIONS .....	14
A. Important Notice .....	14
B. Contracting Agency .....	14
C. Legal Responsibilities .....	14
D. Permits and Licenses .....	14
E. Insurance .....	14
VI. CONTRACT REQUIREMENTS .....	16
A. WITHDRAWAL OF STATEMENT OF QUALIFICATIONS .....	17
B. REJECTION OF STATEMENT OF QUALIFICATIONS .....	17
C. EVALUATION/EXECUTION OF AGREEMENT .....	17
D. FEE FOR SERVICES GUIDELINES .....	18
E. ASSIGNMENT OF AGREEMENT .....	18

F. TERMINATION OF AGREEMENT.....	18
G. RIGHT TO REQUIRE PERFORMANCE .....	19
H. ETHICS IN PUBLIC CONTRACTING.....	19
I. INDEPENDENT CONTRACTOR.....	19
J. EQUAL EMPLOYMENT OPPORTUNITY.....	20
K. VENUE .....	20
L. PROPRIETARY INFORMATION .....	20
M. INCURRING COSTS .....	20
N. PRE-AWARD AUDIT .....	20
VII. ATTACHMENTS.....	21
A. Clean Air and Water Pollution Control Certification .....	22
B. Lobbying Restrictions Certification.....	23
C. Debarment and Suspension Certification .....	24
D. Non-Collusion Affidavit.....	25
E. Workers' Compensation Insurance Certificate.....	26
F. Equal Employment Opportunity Compliance Certificate.....	27
<b>SAMPLE CONTRACT-subject to changes</b> .....	28
I. SERVICES TO BE PERFORMED BY THE CONSULTANT.....	28
II. TIME OF PERFORMANCE .....	29
III. COMPENSATION.....	29
IV. AUTHORIZED REPRESENTATIVE.....	29
V. TERMINATION.....	30
VI. INTEREST OF OFFICIALS AND THE CONSULTANT.....	31
VII. NO PERSONNEL AGENCY, COMMISSION, OR CONTINGENT FEE.....	31
VIII. SUBCONTRACTING.....	31
IX. INDEPENDENT CONTRACTOR .....	32
X. SPECIFICATIONS.....	32
XI. DOCUMENTS/DATA.....	32
XII. INDEMNIFICATION AND INSURANCE.....	33
XIII. NON-DISCRIMINATION.....	35
XIV. MISCELLANEOUS PROVISIONS.....	35
XV. ADDITIONAL MISCELLANEOUS PROVISIONS.....	36

# I. INTRODUCTION

## A. Information

The City of Tulare (City) is currently seeking to retain one (1) or more qualified Real Property, Right-of-Way, Appraisal, and Acquisition firms (Consultant) or Consultant teams to provide property acquisition consulting services in support of various Capital Improvement Projects in the City on an as-needed basis for up to a two-year period with options for up to three (3) consecutive 1-year extensions. Proposing firms and teams shall have professional real property, right-of-way, real property and right of way property appraisals, property negotiations, eminent domain, relocation assistance, and property acquisition experience related to Capital Improvement Projects (CIP) located in a Central Valley municipal setting interacting with multiple agencies / stakeholders within the municipality's boundaries. All services provided by selected consultant(s) shall be compliant with Federal, State, and local requirements and laws in force at the time the services are rendered.

Consultant services may include the following types of activities with services performed in a timely manner respective of the City's specific Project schedule:

- Property Owner Communication – the selected consultant(s) shall track and manage all communication with identified property owners in support of the City's acquisition and relocation services necessary to facilitate a specific CIP Project or real property acquisition. The Consultant may make the initial contact with affected property owner(s) and shall maintain contact throughout the acquisition process addressing any concerns raised by the City Attorney, City Engineer, or other real estate consultants working on behalf of the City.
- Conduct Appraisals and Produce Real Property Appraisal Reports – Appraisals shall be conducted by certified appraisers experienced in the public right-of-way and real property acquisition processes. A formal appraisal report signed by the appraiser and submitted for each property assigned should be expected along with City review and making edits as necessary to produce a final report. Appraisals may be for one or more parcels and may include full property and partial property acquisitions, temporary and permanent easements, borrow sites, and haul routes. Depending on project funding sources, appraisals shall conform to the standards prescribed by the Federal and State Uniform Relocation Assistance and Real Property Acquisition Policies Act, Federal Transit Administration or Federal Highway Administration procedures, and Caltrans Procedures.
- Eminent Domain Appraisal Expertise – Provide valuations under eminent domain statutes such as before and after measures of severance damages and benefits. Provide real property acquisition negotiations under eminent domain statutes and procedures including for acquisition of fee title, road and utility easements, and temporary construction easements.
- Property Acquisition Services – the qualified and duly licensed Acquisition Agent will prepare and present property owners with formal purchase offers / contracts, conveyance documents, statutory offer(s), settlement agreements, and relocation assistance as necessary. The selected Consultant(s) may negotiate on behalf of the City when acquiring real property, right-of-way, easements, or interest therein as necessary to facilitate a CIP or other City need. The Acquisition Agent shall review Preliminary Title Reports and may assist in clearing conflicting encumbrances.
- Develop and Implement Relocation Plan(s) – relocation plans shall be prepared in accordance with the California Relocation Assistance Act or 49CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The Consultant's relocation specialist shall work with assigned staff and other City real estate consultants, and follow the direction of the City Council and / or Board of Public Utilities to facilitate the successful relocation of displaced owners and tenants.
- Project Management and Coordination – the selected Consultant(s) shall assign a project manager to be the City's point of contact and responsible to oversee the work of the Consultant's team such as real property acquisition agents, right-of-way agents, appraisers, acquisition agents, and relocation specialists and shall coordinate these services with the City Engineer, City Attorney, assigned staff, and other real estate consultants including Licensed Surveyor(s) and City approved title company(ies) working on behalf of the City.

The above list is not intended to be exclusive; other services may be requested as the need arises. Selected firm(s) may employ the services of sub-consultants and contractors as it may deem appropriate for the performance of the project, provided that all sub-consultants and contractors are clearly identified in the Statement of Qualification (SOQ) and approved by the City or are identified with a specific task order and are approved by the City. At a minimum, Consultant Firms and Consultant Teams wishing to be considered shall provide all services noted in the RFQ. As part of the SOQ, Firms and Teams are encouraged to identify additional right of way acquisition related consulting services they believe will be of benefit to the City.

Statement of Qualifications (SOQs) shall be submitted by firms or joint ventures (Teams) that meet the minimum qualifications listed in Section IC, "MINIMUM QUALIFICATIONS", and have a capable and demonstrable background in the type of work described in Section I A, "Information" and Section II, "SCOPE OF SERVICES." In addition, all interested Consultants shall demonstrate that they have sufficient, readily available resources in the form of trained professional personnel, trained technical staff, support services, specialized sub-consultants and financial resources to carry out the work without delay or shortcomings.

Due to the as-needed nature of the work, no work (task order) is guaranteed once a Professional Services Agreement is fully executed. The scope of work will vary and will be requested by the City of the Consultant on a task order basis as the need arises.

Funding for these projects will vary, and may include Highway Safety Improvement Program (HSIP), State Transportation Improvement Program (STIP), Congestion Management and Air Quality (CMAQ), and local Measure 'R' funds. As background, Measure 'R' was approved by Tulare County voters in November 2006. Measure 'R' was supported locally and the transportation projects are for the benefit of the residents of Tulare County. Tulare County citizens will benefit from the contributions that local firms can make to Measure 'R' projects. Such benefits include strong local knowledge, established relationships with the community and close proximity to the project locations. All prospective Consultants submitting for this RFQ are strongly encouraged to include local firms as part of the consultant team. For local consultants, the SOQ should indicate the location of the office where the work will actually be performed on an assigned task order(s).

This Request for Qualifications is being issued by the City of Tulare Engineering Division. Unless otherwise directed, all communications regarding this Request for Qualifications should be directed to the Engineering Division at (559) 684-4207, or fax (559) 685-5631. However, to prevent misinterpretations, the Engineering Division would prefer that all questions be sent by e-mail to Mr. Nick Bartsch, Senior Project Manager, at [nbartsch@tulare.ca.gov](mailto:nbartsch@tulare.ca.gov).

Any revisions to the Request for Qualifications will be issued and distributed as addenda. Respondents are specifically directed not to contact any other City personnel for meetings, conferences or technical discussions related to this Request for Qualifications. Failure to adhere to this policy may be grounds for rejection of the SOQ.

The City of Tulare will not be liable for costs incurred by the consulting firms' incidentals to the preparation of SOQ's and if required for developing and carrying out interview presentations.

Submission of an SOQ indicates acceptance by the firm of the conditions contained in this RFQ unless clearly and specifically noted in the SOQ submitted and confirmed in the contract between the City of Tulare and the firm(s) selected.

**One (1) unbound original and four (4) copies of the SOQ are to be submitted to the Engineering Division, located at 411 East Kern Avenue, Tulare, CA 93274, on or before November 20, 2020, at 5:00 p.m.**

## **B. Background**

The City of Tulare is located at the intersection of California State Highways 99 and 137, in the southern San Joaquin Valley. The City's population is approximately 66,393, and the incorporated area covers approximately 20 square miles. The City's Engineering Division is responsible for overseeing various

publicly and privately funded public works projects and private development projects within the City limits. An experienced City Project Manager is assigned to each project assigned to a Consultant.

The City is seeking professional property acquisition consultant services to assist the City in facilitating Capital Improvement and Maintenance and Operations Projects. Specifically, the City wishes to obtain professional property acquisition services under an on-call services contract. Consultant(s) selected to enter into a contract will provide real estate acquisition and related services along with related administrative support services for various CIP projects on an as-needed basis.

**C. Minimum Qualifications**

- Six years minimum of professional and technical experience in right-of-way, property appraisal, property acquisition / negotiations, eminent domain, and relocation assistance services;
- Appraiser(s) shall per certified or licensed by the State to perform the requested services;
- Acquisition agents shall be considered professional meeting the highest standards of the field;
- Consultant(s) shall have an exemplary record of performance and record of integrity and ethics;
- Ability to comply with the required or proposed delivery schedule; and,
- Experience working with Caltrans, Union Pacific Railroad, Tulare County, local utility companies, and local irrigation districts is desirable.

**D. Purpose of Request and Process for Selection**

The City of Tulare has limited professional and technical staff knowledgeable of real estate transactions and with a robust Capital Improvement Project (CIP) budget the City needs assistance with professional real property, right-of-way, appraisal, and acquisition consulting services.

Based upon the criteria in the RFQ, the selection committee will select the most qualified firm(s) and attempt to negotiate an Agreement. If such negotiations are not successful, the City may negotiate with the next most qualified respondent(s).

**E. Time of Performance**

The term of this work shall commence on the Effective Date and expire upon completion of all obligations of the parties, unless earlier terminated by the parties. The initial contract shall be for a twelve (12) month period and shall, at the City’s option and upon mutually agreeable terms, be renewed thereafter for an additional twelve (12) month period. The City may at its option and upon mutually agreeable terms, further renew the contract by up to three successive 1-year terms.

**F. Schedule**

<u>Event</u>	<u>Date of Event</u>
RFQ for Real Property, Right-of-Way, Appraisal, and Acquisition Consulting Services Available .....	October 20, 2020
All questions must be received by 5:00 p.m. ....	November 6, 2020
SOQ due by 5:00 pm .....	November 20, 2020
Interviews of short-listed firms .....	TBD
City Council Awards Real Property, Right-of-Way, Appraisal, and Acquisition Consulting Services Contract.....	TBD
Agreement begins (or sooner) .....	January 4, 2021

**G. Assignment of Work**

Based on the availability of City Staff, the City will evaluate the need for supplemental consultant services. As the determination is made that assistance is required, the City will evaluate the list of selected and approved firms from this RFQ. Work will be assigned to the most qualified and experienced firm included on this list, relative to each specific project's scope of work. This evaluation and determination will be at the sole discretion of the City and shall not be disputed. In such a case that more than one firm are determined to have equal experience and qualifications, the City will make an effort to issue assignments on a rotational basis. A firm's performance will be taken into consideration as work is assigned on subsequent projects. Additionally, the logistics and availability of a firm's resources and personnel will be taken into account. As the scope of work is identified per project, the City will request the assigned firm to provide a cost proposal/estimate of fees for the work identified. This proposal shall be based on the previously agreed upon fee schedule. The City will review each proposal and, upon approval, will issue a work order accordingly. Should the assigned firm fail to submit an acceptable cost proposal within the requested timeframe, the City shall request a proposal from the next most qualified firm on the approved list of consultants selected from this RFQ.

## **H. Names - Definitions**

For this RFQ the Owner and City will be one and the same. For this RFQ the Real Property, Right-of-Way, Appraisal, and Acquisition Consultant; Consultant; Consultant Team and Proposer will be one and the same.

## **II. SCOPE OF SERVICES – Request for Qualifications**

### **A. Consultant's Responsibilities**

After full execution of a task order, the selected Consultant(s) shall meet with the City Engineer or the City Project Manager and other City staff as needed to obtain project specific requirements for all real property and right-of-way acquisition needs. The Consultant should expect that all aspects of real property and / or right-of-way acquisition including appraisals, acquisition, relocation assistance, and eminent domain proceedings will be to current City standards, policies, procedures, regulations, and methods. Lacking a City standard, policy, procedure, or regulation, the Consultant shall rely upon and use Caltrans Standards or industry standards/methodologies for preparation and negotiation of real property and or right-of-way related analysis, reports, appraisals, acquisition offers, relocation assistance, and eminent domain proceedings. Standards and methodologies used shall be approved by the City prior to performing any work on the project. When Federal Funds are identified as the funding mechanism for the project, the Consultant shall follow all Federal laws, rules, and guidelines governing property acquisition.

Exact tasks, deliverables, and schedules will be identified in a task order. The Consultant shall provide a complete budget for services identified in the task order based on the Consultant's submitted hourly rate sheet included as part of the Agreement. The task order budget shall be submitted with the work schedule as identified below.

If a specific task order is time sensitive, the City will provide the expected timeframe before assigning the task order. The Consultant, at no risk to assignment of future task orders, shall notify the City if the services cannot be provided that meet or exceed the specified timeframe. Consultants that accept time sensitive task orders and fail to meet the required schedule may be passed over for future assignments. The City will consider delays outside the Consultant's control when a schedule is not met.

The Consultant shall provide a working schedule indicating major milestones to complete the work identified in the task order once the scope and approach have been agreed to by the City and Consultant. The schedule will be required to be submitted no later than two weeks after both parties approve the project scope and approach/methodology. At a minimum, the schedule shall include meetings with property owners, tenants, and assigned City staff; appraisal report preparation; anticipated acquisition schedule; relocation assistance schedule; and submittals of documents with expected City review times included.

The Consultant shall hold additional meetings as necessary with property owners, tenants, and various City Departments as the project progress to insure project requirements and outcomes are understood and addressed in any reports or analysis submitted to the City for review and approval.

The Consultant may be requested to meet with various City Staff, the Board of Public Utility, City Council, and other stakeholders from time to time to provide recommendations and provide updates on the status of the project.

The Consultant should expect a draft, a final draft, and final signed submittal for reports and analyses prepared by the Consultant. The Consultant's schedule shall include the various submittals expected for each task order and provide sufficient time for the City to review and make comments. Unless agreed to otherwise, at a minimum, the City shall be allocated three weeks for initial reviews and two weeks for follow-up reviews.

As needed, the Consultant will perform field data collection necessary to complete the requirements of a specific task order. The Consultant is solely responsible for safety of its employees including any sub-consultant employees during any field operations. Field and office surveys and preparation of legal plats and / or descriptions will be provided by the City to the Consultant. The Consultant will contract with a City approved title company for all services needed related to property acquisition. Approximate fees for title company services shall be included in the Consultant's budget for each specific task order.

Consultant shall provide project management to a level commensurate with the task order executed including clearly defining lines of communication between the City and the Consultant/Consultant Team, coordination necessary for successful completion of the task order, timely invoicing for services render, and notification of tasks considered outside the executed task order.

The above list is not intended to be comprehensive; additional services may be identified through the preparation of a specific task order. Without penalty, the Consultant will be given the opportunity to excuse himself/herself from performing the task order if identified tasks are not part of the Consultant's expertise and cannot be address with the addition of sub-consultants or if the Consultant does not have available work force to complete the task order in the time frame identified.

## **B. City Responsibilities**

- Provide a "City Representative" who will represent the City and who will work with the Right-of-Way, Appraiser, and Acquisition Consultant / Consultant Team in carrying out the provisions of task orders assigned.
- Provide a project specific task order (including schedule) to be used to develop a budget fee for services and to assist Consultant with determining interest/ability to perform work.
- Provide available data pertinent to task order.
- Provide list of property owners, tenants, and other pertinent stakeholders expected to be affected by a specific task order.
- Provide plats, written legal descriptions, and / or exhibits showing properties included with task order.
- Provide the Consultant with City documents including policies, procedures, regulations and standards pertinent to the task order.
- Attend meetings with Consultant; conduct meeting where appropriate.
- Examine documents submitted to the City by the Right-of-Way, Appraisal, and Acquisition Consultant and timely render decisions pertaining thereto.
- Give reasonably prompt consideration to all matters submitted by the Right-of-Way, Appraisal, and Acquisition Consultant for approval to the end that there will be no substantial delays in the Consultant's progress of work.
- Provide necessary environmental processing including CEQA and NEPA based on tasks identified in task order or request the Consultant to include necessary environmental reviews as part of the Consultant's task order.
- Compensate the Right-of-Way, Appraiser, and Acquisition Consultant as provided in the contract agreement.

### III. PROPOSAL CONTENT AND FORMAT REQUIREMENTS

Respondents are requested to organize their SOQ into sections with tabs corresponding to the listed selection criteria as follows. Please answer the following questions in the same sequence as below. A screening committee will evaluate the completeness of the response to the RFQ.

#### A. General Information

- Firm name, address, telephone number and fax number.
- Firm Representative or other person to contact for clarification of any item contained in the SOQ. Include email address and telephone and fax numbers if different from above.
- Specify type of organization (individual, partnership or corporation) and if applicable indicate whether you are:
  - a. Small Business.
  - b. Disadvantaged Business.
  - c. Minority and/or Women-Owned Business.
- Provide your Federal Tax ID Number and City of Tulare Business Tax Certificate Number.
- Provide names of company's owners / officers.
- Personnel of the Proposer's Firm must be identified in the SOQ with their background and the firm must give assurances of continuity of its personnel. A contact person needs to be identified.
- Provide surety information for all sureties – General and Automobile Liability, E/O and Worker's Compensation.
- References and Referrals – Provide five (5) public agency references for similar assignments directly involving the real property / right-of-way agent, appraiser, acquisition agent, and relocation specialist. Past experience should be specific to services related to acquiring property in a municipal setting (City, County, State, Special District). The location where the services were rendered, the Consultant's fee for services, and reference (contact person) shall be included for each project listed.

The envelope enclosing the separate, sealed SOQ shall be plainly marked in the upper left-hand corner as follows:

**City of Tulare, c/o City Clerk**  
**Company's Name**  
**Company's Address**  
**RFQ for On-Call Real Property, Right-of-Way, Appraisal, and Acquisition Consultant Services**  
**Deadline for Submittal: 5:00 p.m. Friday, November 20, 2020**  
**City Hall - City Clerk's Office, 411 E. Kern Avenue, Tulare, CA 93274**

#### B. Ability to Provide Requested Services

- In this Section indicate which property acquisition services your firm can provide, a brief description of your level of experience in successfully providing these services, and a brief descriptions of past work providing the same services (at a minimum appraisals, property acquisitions, relocation assistance, and eminent domain) in a similar municipal setting. If

services will be provided outside your firm, provide the same information for each sub-consultant or contractor included with your team.

- Identify additional property acquisition services not noted in this RFQ that your firm feels would benefit the City with a brief statement of why the service is of importance to the City.

In addition, you are invited to include a maximum of two (2) pages of information not included, nor requested in this RFQ, if you feel it may be useful and applicable to this project.

## **C. Staff Qualifications and Related Experience**

### **1. Staff Qualifications and Experience**

This section should demonstrate the qualifications of all professional personnel to be assigned to this project by providing resumes/experience summaries describing their education, credentials, related experience of each individual employee or subcontractor proposed for assignment to the project and their proposed roles for this contract. Note: Real Property, Right-of-Way, Appraisal, and Acquisition Consultant may not substitute any member of the project team without prior written approval of the City.

### **2. Related Experience**

Include descriptive information concerning the experience of the firm. Include information about previous projects which are similar in nature, delivery method, magnitude, complexity, budget variance, and other appropriate information. Substantial weight is given to a firm's ability to deliver projects on budget and within an approved timeframe. Please demonstrate the firm's ability to meet these goals.

## **D. Compensation**

**The Proposed Hourly Rate Fee Structure must be submitted under separate, sealed cover as a part of the RFQ submittal.**

- Firms shall submit their current fee schedule showing the hourly rates for the various professional, sub-profession, technical, field, and administrative staff anticipated to be used on assigned task orders based on the general description of work outline in this RFQ. The hourly rate sheet will be used to negotiate a fee for a specific task order when assigned. Firms shall submit a rate sheet that is valid for a period of two years from the date of the agreement.
- Rates for non-labor costs shall also be provided.
- If applicable, the proposer's fee schedule is to reflect any minimum call-out (trip) times (hours) and related fees for services. This fee should include all mileage as the City will not pay additional fees for mileage.
- The City will not provide reimbursement for Consultant expenses related to travel to and from the City of Tulare, lodging or meals. The cost of performing work in the City of Tulare shall be the responsibility of the Consultant.

## **E. Conflict of Interest**

- Disclose any financial, business or other relationship with the City or any member of the City staff that may have an impact on the outcome of the project.
- List current clients who may have a financial interest in the outcome of the project

## IV. CONSULTING FIRM SELECTION PROCEDURE

Selection of the successful respondents shall be generally based on the information provided by the proposer in response to the Request for Qualifications and any subsequent interviews that may be conducted.

The process for selection shall occur in the following sequence:

- Review SOQs
- Establish a “short list” of qualified firms.
- Interview “short listed” firms (at the option and discretion of the City).
- Identify best qualified firm(s)
- Recommend to contract award to City Council

Consultant selection shall be based on the information provided in the SOQs received in response to the RFQ. The City reserves the right to make the selection of a Consultant(s) based on any or all factors of value, whether quantitatively identifiable or not, including, but not limited to, the anticipated initiative and ability of the Proposer to perform the services set forth herein.

A project Selection Committee, as deemed necessary, will be formed to evaluate proposal qualifications, interview short-listed firms, and to make a contract award recommendation to the Tulare City Council. The Committee will review the proposals for format to ensure conformance with the requirements of the RFQ. This committee may consist of representatives of the Engineering Division, Public Works Department, Planning Department, members of the community, and may include a representative knowledgeable in property acquisition services from outside of the community. During interviews, if needed, the Proposer will be allowed to present such evidence as may be appropriate in order that the Committee can correctly analyze all materials and documentation submitted as a part of the SOQ.

Composition and creation of this committee is at the sole discretion of the City. Names of the Committee members will not be released prior to the time for interviews.

### A. Criteria

The Committee will address the following criteria in evaluation of proposals in order to gauge the ability of a consultant to perform the contract as specified. The same general criteria will be used to judge both the proposal and the presentation, should the City choose to conduct interviews with short-listed firms.

<b>Criteria</b>	<b>As Demonstrated By:</b>
• Type, Age, and Size of Organization	Number of years firm has been practicing property acquisition and related services Variety of services provided by firm Capacity of firm to provide services in a timely manner
• Number and Qualifications of Staff Assigned in SOQ	Adequacy of staff to perform the work in a timely manner Resumes showing capability and relevant experience of personnel assigned
• Knowledge and Expertise with FHWA and Caltrans Requirements	Background indicating a breadth of experience with these funding sources References
• Prior Experience with City of Tulare Right of Way Acquisition	Ability to work effectively with City staff, other public agencies and related parties Project work in the City of Tulare
• Prior Experience with Right-of-way	References

Acquisitions, Relocation Assistance, and Eminent Domain Proceedings

Resumes showing capability and relevant experience of and personnel assigned  
Demonstrated ability to deliver projects timely and on budget  
Experience with projects of similar scope

- Knowledge of local conditions

Relevant project work in the City of Tulare  
Location of responsible party's office located in Tulare County

## B. Weight of Criteria

<u>Criteria</u>	<u>Weight</u>
• Type, Age, and Size of Organization	5
• Number and Qualifications of Staff Assigned in SOQ	25
• Knowledge and Expertise with FHWA and Caltrans Requirements	20
• Prior Experience with City of Tulare Right of Way Acquisition	20
• Prior Experience with Right-of-way Acquisitions, Relocation Assistance, and Eminent Domain Proceedings	25
• Knowledge of local conditions	5

## C. Evaluation Procedure:

The Selection Committee will review the SOQs submitted and establish a list of finalists based on the pre-established review criteria. If deemed necessary to clarify qualifications, an oral interview with one or more of the firms submitting SOQs may be requested after written SOQs have been received and reviewed by the City. The City will schedule the time and place for the interview, if determined to be necessary. Each proposer should be prepared to clarify and elaborate on the details set forth in their SOQ.

The individual or composite rating and evaluation forms prepared by the Selection Committee will not be revealed. The Selection Committee will review the SOQs based on pre-established review criteria and determine the most qualified Proposer(s).

If during the evaluation process the City is unable to assure itself of the Proposer's ability to perform under the contract, if awarded, the City has the option of requesting from the Proposer any information that the City deems necessary to determine the Proposer's capabilities. If such information is required, the Proposer will be notified and will be permitted seven (7) working days to submit the requested information.

## D. Background Check

The City reserves the right to conduct a background inquiry of each Proposer which may include the collection of appropriate criminal history information, contractual and business associations and practices, employment histories and reputation in the business community. By submitting an SOQ to the City, the Proposer consents to such an inquiry and agrees to make available to the City such books and records as the City deems necessary to conduct the inquiry.

## E. Award of Contract

The City intends to identify one or more consulting firms with which to enter into Professional Services Agreement for on-call services. The City of Tulare reserves the right to reject any or all SOQs, to waive any informality in any SOQ, to sit and act as sole judge of the merit of each response submitted, to select a consultant, and to award in any manner which is more favorable to the City of Tulare. After the selection of successful firm(s), the City will negotiate contracts in substantial conformance to the sample professional services contract contained in Attachment 'A' reflecting the terms and conditions of the proposal plus the City's standard liability and insurance requirements. A Draft Agreement has been included in this RFQ to alert proposers to the provisions generally found in City contracts. The Draft Agreement may be altered

from the enclosed form at the discretion of the City and without notice to consultant prior to award of contract. The City does not guarantee that the Final Agreement will duplicate the enclosed Draft Agreement.

## **V. GENERAL CONDITIONS**

### **A. Important Notice**

The City of Tulare will not be responsible for oral interpretations given by any City employee, representative, or others. Proposers are cautioned that any statements made that materially change any portion of the RFQ documents shall not be relied upon unless subsequently ratified by a formal written addendum to the RFQ document. The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this Request for Qualifications, the City will attempt to notify all prospective Proposers who have secured same. However, it will be the responsibility of each Proposer, prior to submitting their SOQ, to contact the Engineering Division, located at 411 East Kern Avenue, Tulare, CA 93274, (559) 684-4207 to determine if addenda were issued and to make such addenda a part of the SOQ.

### **B. Contracting Agency**

The contract resulting from this Request for Qualifications will be administered by the City of Tulare Engineering Division of the Community Development Department.

### **C. Legal Responsibilities**

By submitting an SOQ, Consultant certifies that he or she will comply with all Federal laws and requirements, including but not limited to Equal Employment Opportunity, Disadvantaged Business Enterprise, Labor Protection and other laws and regulation applicable to contracts utilizing State and Federal Funds.

### **D. Permits and Licenses**

#### **1. Business License Certificate**

Possession of a City of Tulare Business License is not required to submit a proposal in response to this RFQ. *However, selected consultant(s) shall be required to possess, at his/her own expense, a valid and current City of Tulare Business License, prior to commencing work.* For fee information, contact the City of Tulare Finance Department at (559) 684-4225.

#### **2. Professional License/Certification**

Appraisers shall be licensed or certified in the State of California by the Department of Consumer Affairs, Bureau of Real Estate Appraisers. Acquisition specialist shall be a licensed broker or licensed real estate agent working under a licensed broker. Relocation specialists shall be certified as a Certified Relocation Professional.

#### **3. Permits**

Selected consultant(s) shall be required to obtain and maintain at his/her own expense, any and all permits, licenses and certifications issued by any federal, state or local governmental agency, pertaining to, and necessary for providing the services required in this Request for Proposals.

### **E. Insurance**

#### **1. Insurance**

With respect to performance of work under an agreement as a result of responding to this RFQ, Consultant shall maintain, and shall require all of its Sub-consultants to maintain, insurance as described below:

- i) **Workers' compensation insurance:** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers
- ii) **General liability insurance:** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Consultant's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies.
- iii) **Professional liability insurance:** Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of two million dollars (\$2,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- iv) **Auto liability insurance:** Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident.

The insuring provisions, insofar as they may be judged to be against public policy shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of the insuring provisions herein may be within public policy and enforceable. The City's Risk Manager is hereby authorized to reduce the requirements set forth above in the event they determine that such reduction is in the City's best interest.

## **2. Additional Insured**

The General Liability and Auto Liability policy is to contain or be endorsed to name the City, its officers, appointed and elected officials, agents and employees as Additional Insured as respects the liability arising out of the activities performed in connection with this contract. The coverage shall (a) be primary with respect to any insurance or self-insurance programs maintained by the City; (b) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; and (c) contain Standard Cross-liability provisions. Such additional insured endorsements maintained by the Consultant and its Sub-consultants shall not be required to provide coverage for City for the active negligence of City. Original endorsements, signed by a person authorized to bind coverage on its behalf, shall be furnished to the City by the successful proposer.

## **3. Indemnification**

- a) When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal Consultant's fees and costs but only to the extent the Consultant (and its SubConsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its SubConsultants) and the City in the performance of professional services under this agreement.
- b) Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal Consultant's fees and

costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.

#### **4. Deductibles and Self-Insured Retention**

Any deductibles or self-insured retention must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officials, employees, agents and Consultants; or the vendor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

**The successful Proposer shall maintain the insurance for the life of the Professional Services Agreement (Agreement). Said insurance shall contain a provision that coverage afforded under the policies will not be canceled unless and until thirty (30) days prior written notice has been given to the City.**

**Endorsements are to be received and approved by the City before work commences. Should Consultant cease to have insurance as required during any time, all work by Consultant pursuant to the Agreement shall cease until insurance acceptable to the City is provided.**

Original insurance certificates and endorsements are to be mailed or delivered to:

City of Tulare  
Engineering Division  
411 East Kern Avenue  
Tulare, CA 93274

In addition to any other remedies the City may have if the Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the contract; or
2. Order Consultant to stop work under the contract and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; or
3. Terminate the contract.

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 the Consultant's failure to maintain or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which the Consultant may be held responsible for payments of damages to persons or property resulting from the Consultant's or its Sub-consultant's performance of the work covered under the contract.

## **VI. CONTRACT REQUIREMENTS**

A Sample Contract / Professional Services Agreement (Agreement) is included in the Attachments to this RFQ to be reviewed by the Consultant. An agreement between the City and each selected Consultant

will be required to be fully executed prior to a task order being assigned. As part of the Agreement, the Consultant's hourly rate schedule will be attached.

Any requested changes, modifications, and edits to the Sample Contract (Agreement) by a Consultant submitting an SOQ shall be clearly identified in the submitted SOQ. The included Agreement has been approved by the City for use in securing professional services and therefore is not expected to be modified at the Consultant's request. Comments provided by Consultants related to the Agreement will be reviewed with efforts made to obtain acceptance by both parties. However, the City will not modify language that puts the City in an inferior position than authorized or specified in the sample agreement.

## **A. WITHDRAWAL OF STATEMENT OF QUALIFICATIONS**

Any SOQ may be withdrawn at any time prior to the time fixed in the public notice for the receipt of SOQs, only by written request for the withdrawal of the SOQ filed with the Engineering Division. The request shall be executed by the Proposer or his duly authorized representative. The withdrawal of an SOQ does not prejudice the right of the Proposer to file a new SOQ. No SOQ may be withdrawn after the time fixed in the public notice for the receipt of SOQs.

## **B. REJECTION OF STATEMENT OF QUALIFICATIONS**

Failure to meet the requirements of the RFQ may be cause for rejection of the SOQ. The City may reject the SOQ if it is deemed incomplete, contains irregularities of any kind or is offered conditionally. The City reserves the right to reject any and all SOQs without cause.

The SOQ is to be prepared in such a way as to provide a straightforward, concise delineation of the information requested. SOQs which contain false or misleading statements, or which do not support an attribute or condition claimed by the Proposer may be cause for rejection of the SOQ. If, in the opinion of the City, such information was intended to mislead the City in its evaluation of the SOQ, it will be cause for rejection of the SOQ.

## **C. EVALUATION/EXECUTION OF AGREEMENT**

Evaluation and selection of SOQs will be based on the information called for in this RFQ and as identified in Section IV. Consulting Firm Selection Procedure. Brochures or other promotional presentations beyond that sufficient to submit a complete and effective SOQ are not desired. Elaborate artwork, expensive paper or binders, and expensive visuals are not necessary.

Execution of the Agreement, if authorized, will be made within ninety (90) calendar days from the RFQ closing date. Proposer agrees and so stipulates in submitting this SOQ, as though stated therein, and in any subsequent execution of Professional Services Agreement (Agreement) that:

1. Agreement, should it be executed, shall be interpreted, construed, and given effect in all respects according to the laws of the State of California.
2. Should Proposer be offered to execute an Agreement, Proposer shall not assign the Agreement, or any part thereof, or any moneys due or to become due there under, without prior consent of the City.
3. Proposer shall hold the City harmless from liability of any nature or kind, including cost and expenses for infringement or use of any copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
4. Proposer warrants that no gratuities, in the form of gifts, entertainment, or otherwise, were offered or given by the proposer, to any officer or employee of the City with a view toward securing the Agreement or securing favorable treatment with respect to any determination concerning the performance of the contract (Agreement). For breach or violation of this warranty, the City shall have the right to terminate the Agreement, either in whole or in part. The rights and remedies of the City

provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

#### **D. FEE FOR SERVICES GUIDELINES**

Consultant shall provide a fee schedule that it warrants will be applicable for a period of two years from the date SOQ is submitted. Any anticipated hourly rate adjustments during the life of the initial 2-year agreement should be reflected in the submitted schedule. Proposed fees schedule shall be submitted under separate, sealed cover identified in the same fashion as the SOQ.

#### **E. ASSIGNMENT OF AGREEMENT**

No assignment by the Consultant of the Agreement or any part hereof, or of funds to be received there under, will be binding upon the City unless such assignment had prior written approval and consent of the City. In the event the City gives such consent, the terms and conditions of the Agreement shall apply to, and bind the party or parties to whom such work is assigned, sublet or transferred.

#### **F. TERMINATION OF AGREEMENT**

The nature of this Agreement requires that the City and the selected Consultant(s) must work closely as a mutually supporting team without conflict. Also, the City needs to be able to terminate this Agreement at any time the City may feel this working relationship has been impaired or should the City no longer have complete confidence and satisfaction in the quality and performance of services by the Consultant(s). Therefore:

1. This Agreement may be terminated for convenience, without cause by the City, in whole or in part, by giving the Consultant(s) thirty (30) days written notice of the intent to terminate whenever the City determines that termination is in the best interest of the City. Should the Agreement be terminated for convenience, the Consultant(s) shall be paid for all authorized services provided, including reasonable charges for de-mobilization. However, the Consultant(s) shall not be paid any anticipated profit or fees for services not provided.
2. If the Consultant(s) shall fail to provide services or perform satisfactorily the work required by the terms and conditions of the Agreement, or materially breaches any of its obligations under this Agreement the City may terminate the Agreement, in whole or in part.
3. Any assignment, subletting or transfer of the interest of the Consultant, either in whole or in part, without the written consent of the City shall be cause for the City to immediately terminate the Agreement for default.
4. Notwithstanding any other provisions of this Agreement, this Agreement may be terminated by the City upon a single violation of this Agreement.

After receipt of a notice of termination, except as otherwise directed, the Consultant(s) shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders for services, except as necessary for completion of such portion of the services not terminated; and settle all outstanding liabilities and claims.

In the event the City terminates this Agreement with or without cause, the CITY may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.

Except with respect to defaults of Sub-consultants, the Consultant shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the Consultant. Such causes include, but are not limited to, acts of God or of the public enemy, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather; but in the event the failure to perform is caused by the default of a Sub-consultant, the Consultant shall not be liable for failure to perform, unless the services to be furnished by the Sub-consultant were obtainable from other

sources in sufficient time and within budgeted resources to permit the Consultant to meet the required delivery schedule or other performance requirements.

Should the Agreement be terminated with or without cause, the Consultant shall provide the City with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by the Consultant pursuant to this Agreement.

Upon termination, with or without cause, Consultant will be compensated for the services satisfactorily completed to the date of the termination according to compensation provisions contained herein. In no event shall the total compensation paid Consultant exceed the total compensation agreed to herein.

If, after notice of termination of this Agreement, as provided for in this article, it is determined for any reason that the Consultant was not in default under the provisions of this article, then the rights and obligations of the parties shall be the same as if the Agreement were terminated without cause.

Termination of this Agreement shall not terminate any obligation to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination activities.

## **G. RIGHT TO REQUIRE PERFORMANCE**

The failure of the City at any time to require performance by the selected Consultant(s) of any provisions hereof shall in no way affect the right of the City thereafter to enforce the same. Nor shall waiver by the City of any breach of any provision hereof be taken or held to be waiver of any succeeding breach of such provision or as a waiver of any provision itself.

## **H. ETHICS IN PUBLIC CONTRACTING**

Each Proposer, by submitting a SOQ, certifies that it is not a party to any collusive action or any action that may be in violation of the Sherman Antitrust Act by submitting a SOQ, the Proposer certifies that its SOQ was made without fraud; that it has not offered or received any kickbacks or inducements from any other Proposer in connection with the request for qualifications; and that it has not conferred on any public employee, public member or public official having responsibility for this procurement transaction, any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value. The Proposer further certifies that no relationship exists between itself and the City or another person or organization that interferes with fair competition or constitutes a conflict of interest with respect to a contract (Agreement) with the City of Tulare.

Prior to the execution of any Agreement, the potential Consultant may be required to certify in writing to the Engineering Division that no relationship exists between the Proposer and any City employee, officer, official or agent that interferes with fair competition or is a conflict of interest with respect to a contract with the City of Tulare.

More than one SOQ from an individual, firm, partnership, corporation or association under the same or different names may be rejected. Reasonable grounds for believing that a Proposer has interest in more than one SOQ for the work solicited may result in rejection of all SOQs in which the proposer is believed to have an interest.

## **I. INDEPENDENT CONTRACTOR**

In the performance of the services herein provided, 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.

## **J. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of the Agreement, Consultant agrees to the following:

1. Proposer shall comply with all the requirements, when applicable, of the California Fair Employment Practice Commission and provisions of, when applicable, all Federal, State of California, County of Tulare and City of Tulare laws and ordinances related to employment practices.
2. Proposer shall not discriminate against any employee or applicant for employment on the basis of race, religion, color, gender, age, handicap, national origin or ancestry, except when such a condition is a bona fide occupational qualification reasonably necessary for the normal operations of the proposer. Selected Consultants and their Sub-consultants agree to post in conspicuous places, visible to the employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
3. Proposer, in all solicitations or advertisements for employees, placed by, or on behalf of the proposer, shall state that proposer is an Equal Opportunity Employer.

## **K. VENUE**

Any executed Agreement resulting from this solicitation shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any litigation arising out of the Agreement will be vested in Tulare County, California.

## **L. PROPRIETARY INFORMATION**

The SOQs received shall become the property of the City of Tulare and are subject to public disclosure. Fee schedules and information submitted by proposers will be made available to proposers after City Council has authorized execution of an Agreement. Proposers are to indicate any restrictions on the use of data contained in their responses. Those parts of a SOQ which are defined by the Proposer as business or trade secrets, as that term is defined in California Government Code, Section 6254.7, and are reasonably marked as "Trade Secrets", "Confidential" or "Proprietary" shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most, or all, of their SOQ as exempt from disclosure may be deemed non-responsive.

## **M. INCURRING COSTS**

The City of Tulare is not liable for any cost incurred by proposers in responding to this Request for Qualifications.

## **N. PRE-AWARD AUDIT**

Consultant and sub-consultant agreements in excess of \$1,000,000 shall require a pre-award audit as outlined in Caltrans Local Assistance Procedures Manual.

## VII. ATTACHMENTS

**A. Clean Air and Water Pollution Control Certification**

**CLEAN AIR AND WATER POLLUTION CONTROL CERTIFICATION**

**(AIR: 42 U.S.C. § 7401 et seq.,**

**WATER: 33 U.S.C. § 1251 et seq; 49 CFR, Part 18, Section 18.36)**

**To Accompany Statement of Qualification**

PROPOSER agrees that any facility to be used in the performance of the contract, or to benefit from the contract, is not listed on the Environmental Protection Agency List of Violating Facilities.

PROPOSER also agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. relating to the inspection, monitoring, entry, reports and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued there under.

PROPOSER agrees that as a condition for award of the contract, the PROPOSER will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of, or benefit from, the contract is under consideration to be listed on the EPA List of Violating Facilities.

Company:

\_\_\_\_\_

Business Address:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Name of Signing Official:

\_\_\_\_\_

Title of Signing Official:

\_\_\_\_\_

Date:

\_\_\_\_\_

Company Seal:

**B. Lobbying Restrictions Certification**

**LOBBYING RESTRICTIONS CERTIFICATION  
(FOR AWARDS OF \$100,000 OR MORE)  
(31 U.S.C. § 1352; 24 CFR Part 87 as amended by 2 U.S.C § 1601, et seq.)**

**To Accompany Statement of Qualification**

The undersigned certifies, to the best of his knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer of employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification to be included in the award documents for all sub awards at all tiers (including SUBBIDDERS, sub grants, and contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction (if the award is \$100,000 or more) imposed by Section 1352, Title 31, U.S. Code, as amended by 2 U.S.C. 1601, et seq.. Any persons who fail to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Company: \_\_\_\_\_

Business Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signing Official: \_\_\_\_\_

Title of Signing Official: \_\_\_\_\_

Date: \_\_\_\_\_

Company Seal:

### C. Debarment and Suspension Certification

RFQ for On-Call Real Property, Right-of-Way, Appraisal, and Acquisition Consulting Services

DEBARMENT AND SUSPENSION CERTIFICATION  
TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The Proposer\_\_\_\_, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgement rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space:

( ) No Exceptions

Exceptions will not necessarily result in denial of award, but will be considered in determining Proposer's responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action:

**Note: Providing false information may result in criminal prosecution or administrative sanctions.**

The above certification is part of the SOQ/Contract. Signing the SOQ/Contract on the signature portion thereof shall also constitute signature of the Certification.

By my signature on this proposal, I certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Title 23 United States Code, Section 112 Non-Collusion Affidavit and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Company (Proposer): \_\_\_\_\_

Business Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Signing Official: \_\_\_\_\_

Title of Signing Official: \_\_\_\_\_

**D. Non-Collusion Affidavit**

**NON-COLLUSION AFFIDAVIT**

To Accompany Statement of Qualification

TO: THE CITY OF TULARE

The undersigned, in submitting a Statement of Qualifications for performing the following work by contract, being duly sworn, deposes and says:

That he/she has not, either directly or indirectly, entered into any agreement, participate in any collusion, or otherwise taken any action in restraint of free competition in connection with such contract.

Work to be Done:

RFQ for On-Call Real Property, Right-of-Way, Appraisal, and Acquisition Consulting Services

Proposer's Name: \_\_\_\_\_

Signature of Proposer: \_\_\_\_\_

Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

Place of Residence: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ Notary Public in and for

the County of \_\_\_\_\_, State of California.

My commission expires: \_\_\_\_\_.



## F. Equal Employment Opportunity Compliance Certificate

### EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE CERTIFICATE

#### Equal Opportunity Clause

Unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Executive Orders 28925, 11114 or Section 204 of Executive Order 11246 of September 24, 1965, during the performance of each contract with the City of Tulare, the consultant agrees as follows:

1. The consultant will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin or political affiliation. The consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, gender, national origin or political affiliation. 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. The consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The consultant will, in all solicitations or advertisements for employees, placed by or on behalf of the consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, national origin or political affiliation.
3. The consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or the workers' representative of the consultants' commitments under Section 202 of Executive order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevancy orders of the Secretary of Labor.
5. The consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the consultant's non-compliance with the non-discrimination clauses of this subcontract or with any of such rules, regulations or orders, this subcontract may be canceled, terminated or suspended, in whole, or in part and the consultant may be declared ineligible for further government contracts in accordance with the procedures authorized in accordance with Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or otherwise provided by law.
7. The consultant will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subconsultant or vendor. The consultant will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event the consultant becomes involved in, or is threatened with litigation with a subconsultant or vendor as a result of such direction by the contracting agency, the consultant may request the United States to enter into such litigation to protect the interest of the United States.

#### Certification on Non-Segregated Facilities

*The consultant hereby certifies that it does not or will not maintain segregated facilities nor permit its employees to work at locations where facilities are segregated on the basis of race, color, religion, gender, national origin or political affiliation.*

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

# SAMPLE CONTRACT-subject to changes

## PROFESSIONAL SERVICES AGREEMENT

### PROJECT NAME

This Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Tulare, hereinafter referred to as the "CITY", and \_\_\_\_\_ hereinafter referred to as the "CONSULTANT".

### W I T N E S S E I H

**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 that will be described in project specific Task Orders; and

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

**NOW, THEREFORE**, CITY and CONSULTANT agree as follows:

### **I. SERVICES TO BE PERFORMED BY THE CONSULTANT**

- A. The work to be performed by the CONSULTANT under this AGREEMENT includes professional services under Article III for various City Public Works PROJECTS (Task Orders), including but not limited to, comprehensive professional real property, right-of-way, appraisal, and acquisition services, and related administrative support services. Work shall be done in accordance with all federal and State requirements regarding property acquisition and applicable City of Tulare Standards, Specifications and Guidelines.
- B. The CONSULTANT agrees to provide professional services that are necessary for each PROJECT (Task Order) when expressly authorized in writing by the City Engineer, or Project Manager, or other designated City of Tulare Official. Such work by the CONSULTANT shall not begin until the CONSULTANT has received a written Notice to Proceed from the City Engineer, Project Manager or other designated Manager (CONTRACT ADMINISTRATOR) authorizing the necessary service, agreed upon fee and schedule, and scope of work for each Task Order. .

## II. TIME OF PERFORMANCE

The CONSULTANT shall commence performance of this Agreement within ten (10) days following City's issuance of Notice to Proceed and shall complete the work within the timeframes outlined in Exhibit "A", unless otherwise extended in writing by CITY, in its sole discretion.

If the CONSULTANT fails to complete the PROJECT within the time specified, plus any extensions of time which may be granted, the CITY shall determine the percent of each work item completed and shall pay the CONSULTANT on that basis.

CONSULTANT shall not be responsible for delays which are due to causes beyond the CONSULTANT's reasonable control. In the case of any such delay, the time of completion shall be extended accordingly in writing signed by both parties.

## III. COMPENSATION

- A. Compensation: For services performed pursuant to this Agreement, the CITY agrees to pay and the CONSULTANT agrees to accept, as payment in full for each PROJECT (Task Order) a sum computed at the hourly and cost rates shown in Exhibit A: Schedule of Fees for Professional Services. The computed amount shall constitute complete compensation, including document production and out-of-pocket expenses for all services for the work and PROJECT identified in the Task Order.
- B. Hourly and Cost Rates: The CONSULTANT agrees that the hourly and cost rates contained in Exhibit A shall be used for the duration of the contract or for a maximum of two (2) years from the date when the AGREEMENT is fully executed.
- C. Payment of Compensation: The CONSULTANT shall be compensated according to the progress payment schedule set forth in each Task Order upon completion of percentage of each noted phase. The CONSULTANT shall be paid no later than thirty (30) days following submission of a written, verified billing to the CITY. Said billing shall include the percentage of each task completed to date and since the date of the preceding billing, if any.

## IV. AUTHORIZED REPRESENTATIVE

- A. CITY: The \_\_\_\_\_ 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.
- B. CONSULTANT: \_\_\_\_\_ shall represent and act as principle for CONSULTANT in all matters pertaining to the services to be rendered by it under this Agreement.

## V. TERMINATION

The right to terminate this Agreement, with or without cause, may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

- A. Termination By Either Party Without Cause: The CITY or CONSULTANT may terminate this Agreement at any time by giving written notice to the other of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.
- B. Termination of Agreement for Cause: The CITY may by written notice to the CONSULTANT specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination, terminate the whole or any part of this Agreement in any of the following circumstances:
1. If the CONSULTANT fails to perform the services called for by this Agreement within time(s) specified herein or any extension thereof; or
  2. If the CONSULTANT fails to make progress under this Agreement as to endanger performance of this Agreement in accordance with its terms, and does not correct such failure within a period of ten (10) days (or longer period as the CITY may authorize in writing) after receipt of notice from the CITY specifying such failure.
- C. Post-Termination:
1. In the event the CITY terminates this Agreement with or without cause, the CITY may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.
  2. Except with respect to defaults of sub consultants, the CONSULTANT shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the CONSULTANT. Such causes include, but are not limited to, acts of God or of the public enemy, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather; but in the event the failure to perform is caused by the default of a sub consultant, the CONSULTANT shall not be liable for failure to perform, unless the services to be furnished by the sub consultant were obtainable from other sources in sufficient time and within budgeted resources to permit the CONSULTANT to meet the required delivery schedule or other performance requirements.
  3. Should the Agreement be terminated with or without cause, the CONSULTANT shall provide the CITY with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by the CONSULTANT pursuant to this Agreement.
  4. Upon termination, with or without cause, CONSULTANT will be compensated for the services satisfactorily completed to the date of termination according to compensation provisions contained herein. In no event, shall the total compensation paid CONSULTANT exceed the total compensation agreed to herein.

5. If, after notice of termination of this Agreement, as provided for in this article, it is determined for any reason that the CONSULTANT was not in default under the provisions of this article, then the rights and obligations of the parties shall be the same as if the Agreement was terminated without cause.
6. Termination of this Agreement shall not terminate any obligation to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination activities.

## **VI. INTEREST OF OFFICIALS AND THE CONSULTANT**

- A. No officer, member, or employee of the CITY who exercises any functions or responsibilities in the review or approval of this Agreement shall:
  1. Participate in any decision relating to this Agreement which effects his personal interest or the interest of any corporation, partnership, or association in which he has, directly or indirectly, any interest; or
  2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his tenure or for one year thereafter.
- B. The CONSULTANT hereby covenants that he has, at the time of the execution of this Agreement, no interest, and that he 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 any such interest shall be employed.

## **VII. NO PERSONNEL AGENCY, COMMISSION, OR CONTINGENT FEE**

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 bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the CITY shall have the right to annul 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.

## **VIII. SUBCONTRACTING**

- A. The CONSULTANT shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of the CITY.
- B. In no event shall the CONSULTANT subcontract work in excess of 50% of the contract amount,

excluding specialized services. Specialized services are those items not ordinarily furnished by a consultant performing the particular type of project.

- C. All subcontracts exceeding \$25,000 shall contain all provisions required of the prime contract.

## **IX. 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.

## **X. 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.

## **XI. DOCUMENTS/DATA**

- A. 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.

Documents, including drawings and specifications, prepared by CONSULTANT pursuant to this Agreement, are not intended or represented to be suitable for reuse by CITY or others on extensions of the PROJECT or on any other project. Any use of the completed documents for other projects and any use of incomplete documents without the specific written authorization from CONSULTANT will be at CITY's sole risk and without liability to CONSULTANT. Further, any and all liability arising out of changes made to CONSULTANT's deliverables under this Agreement by CITY or persons other than CONSULTANT is waived as against CONSULTANT, and the CITY assumes full responsibility for such changes unless the CITY has given CONSULTANT prior notice and has received from CONSULTANT written consent for such changes.

- B. 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 or hold in confidence and 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.

- D. Copyrights: The CONSULTANT shall be free to copyright material developed under this Agreement with the provision that the CITY (and any funding agency) 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.
- E. Patent Rights: Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall apply to this agreement.

## **XII. INDEMNIFICATION AND INSURANCE**

- A. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal Consultant's fees and costs but only to the extent the Consultant (and its SubConsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its SubConsultants) and the City in the performance of professional services under this agreement.
- B. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal Consultant's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.
- C. Without limiting 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:
  - 1. Workers' compensation insurance: Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers
  - 2. General liability insurance: Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Consultant's general liability policies shall be primary and shall not seek

contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies.

3. Professional liability insurance: Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of two million dollars (\$2,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
  4. Auto liability insurance: Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident.
- D. CITY'S Risk Manager is hereby authorized to reduce the requirements set forth above in the event he/she determines that such reduction is in the CITY'S best interest.
- E. Each insurance policy required by this Agreement shall contain the following clause:

"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 Clerk, City of Tulare, 411 East Kern Avenue, Tulare, CA 93274."

In addition, the commercial general liability and comprehensive automobile liability policies required by this Agreement shall contain the following clauses:

"It is agreed that any insurance maintained by the City of Tulare shall apply in excess of and not contribute with insurance provided by this policy."

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

- F. Prior to commencing any work under this Agreement, CONSULTANT shall deliver to CITY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Within thirty (30) days of the execution date of this Agreement, CONSULTANT shall provide to 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 CITY, it shall be CONSULTANT's responsibility to see that CITY receives documentation acceptable to CITY which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. CITY has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

- G. In addition to any other remedies 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, 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; or
  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; or
  3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies 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 subconsultant's performance of the work covered under this Agreement.

### **XIII. NON-DISCRIMINATION**

CONSULTANT and all subconsultants shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement.

### **XIV. MISCELLANEOUS PROVISIONS**

- A. Asbestos and Hazardous Materials: In providing its services hereunder, CONSULTANT shall not be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or hazardous material if such is present in connection with the PROJECT. In the event the CITY becomes aware of the presence of asbestos or hazardous material at the jobsite, CITY shall be responsible for complying with all applicable federal and state rules and regulations, and shall immediately notify CONSULTANT, who shall then be entitled to cease any of its services that may be affected by such presence, without liability to CONSULTANT arising there from.
- B. Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.
- C. Prohibition of Assignment: Neither the CITY nor CONSULTANT shall assign, delegate or transfer their rights and duties in this Agreement without the written consent of the other party.
- D. Dispute/Governing Law: Any dispute not resolvable by informal arbitration between the parties to this Agreement shall be adjudicated in a Court of Law under the laws of the State of California.

- E. Notices: Notice shall be sufficient hereunder if personally served upon the City Clerk 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:

CITY OF TULARE:  
411 East Kern Avenue  
Tulare, CA 93274  
Attention: City Clerk

CONSULTANT:  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

- F. Jurisdiction/Venue/Waiver Of Removal: This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Tulare County, California. The CONSULTANT hereby expressly waives any right to remove any action to a county other than Tulare County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
- G. Integration/Modification: This Agreement and each of the exhibits referenced herein, which are incorporated by reference, 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.
- H. Conflict With Law: 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.
- I. Attorney's Fees: In the event either party commences any action, arbitration or legal proceedings for the enforcement of this Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recovery of its attorney's fees and court costs incurred in the action brought thereon.
- J. Construction: This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654 that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.
- K. Authority: Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the party to which its signature represents.
- L. Headings: Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions there under.

## **XV. ADDITIONAL MISCELLANEOUS PROVISIONS**

- A. Record Retention: The City, State, or their duly authorized representatives shall have access to any documents, books, papers, and records of the consultant (which are directly pertinent to the

project) for the purpose of making an audit, examination, excerpts, and transcripts. The consultant shall maintain all required records for at least three (3) years after final payment on the project and all pending matters are closed. This also applies to all subcontracts in excess of \$25,000.

- B. Cost Principals: Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. Administrative requirements are set forth in 49 CFR, Part 18 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. This also applies to all subcontracts in excess of \$25,000.
- C. Changes in Work: If changes in scope, character, or complexity become desirable or necessary as work progresses, adjustments to the agreement may be made in writing signed by the CITY and CONSULTANT. In special cases, where it is essential that extra work be performed immediately, execution of the supplemental agreement covering the changes will be accomplished as soon as possible. This agreement shall provide for the preparation and submittal of contract change orders when applicable. There shall be no charge to the City when the change order is required to correct errors or omissions by the Service Provider
- D. General Compliance with Laws and Wage Rates: CONSULTANT shall be required to comply with all federal, state, and local laws and ordinances applicable to the work. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.
- E. Compliance with the Copland “Anti-Kickback” Act (18 USC 874): CONSULTANT is prohibited from inducing, by any means, any person involved in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled (all suspected or reported violations shall be reported to the City).
- F. Consultant’s Endorsement: The responsible CONSULTANT shall sign plans, specifications, and estimates and engineering data furnished by him/her and where appropriate, indicate his/her California engineering registration number.
- G. Clean Air and Water: Applicable to Contracts in Excess of \$100,000.
  - a. Definition. “Facility” means an building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by the Consultant or and subconsultant, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the United States Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.
  - b. In compliance with regulations issued by the EPA, 2 C.F.R, part 1532, pursuant to the Clean Air Act, as amended (42 U.S.C. §. 7401 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.); and Executive Order 11738, the Consultant agrees to:

1. Not utilize any facility in the performance of this contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to 2 C.F.R. part 1532 for the duration of time that the facility remains on the list;
2. Promptly notify the Owner if a facility the Consultant intends to use in the performance of this contract is on the EPA List of Violating Facilities of the Consultant knows that it has been recommended to be placed on the List;
3. Comply with all requirements of the Clean Air Act and the Federal Water Pollution Control Act, including the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution control Act, and all applicable clean air and clean water standards.

H. Equal Employment Opportunity:

The Consultant shall be required to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

- a. The Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. chapter 60, the following equal opportunity clause:

During the performance of this contract, the Consultant agrees as follows:

1. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex 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. The Consultant agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Consultant's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and pursuant to rules, regulations, and orders of the Secretary of Labor and will permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.
7. The Consultant will include the portion of the sentence immediately preceding paragraph 17(a) (1) and the provisions of paragraphs 17(a)(1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. The Consultant will take such action with respect to any subcontract or purchase order as EDA or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with or by a subconsultant or vendor as a result of such direction by the Secretary of Labor, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
8. The Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally-assisted construction work. Provided, however, that if the Recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the Contract.
9. The Recipient agrees that it will assist and cooperate actively with the Secretary of Labor in obtaining the compliance of consultants and subconsultants with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist in securing compliance.
10. The Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon consultants and subconsultants by the Secretary of Labor pursuant to Part II, Subpart D of the Executive order.

b. Exemptions to Above Equal Opportunity Clause (41 C.F.R. chapter 60):

1. Contracts and subcontracts not exceeding \$10,000 (other than Government bills of lading) are exempt. The amount of the Contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.
2. Except in the case of subconsultants for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

3. Contracts and subcontracts not exceeding \$10,000 for standard commercial supplies or raw materials are exempt.

I. Monthly Reporting: The Contractor/Consultant shall submit a report on a monthly basis to the City covering the general progress of the job and describing any problems or factors being experienced.

J. Federal Non-Discrimination Statutes:

The Service Provider must comply with all Federal statutes relating to non-discrimination. These include but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (P.L.88-352) which prohibits discrimination on the basis of race, color, or national origin;
2. Section 112 of PL 92-45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex;
3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C.794) which prohibits discrimination on the basis of handicaps;
4. The Age Discrimination Act of 1975, as amended (42 U.S.C.6101-6107) which prohibits discrimination because of age;
5. The Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse;
6. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L.91-616), as amended, relating to non-discrimination on the basis of alcohol abuse or alcoholism;
7. Sections 523 and 527 of the Public Health Service Act of 1912 (42U.S.C. 290 dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et. seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing;
9. Any other non-discrimination provisions in the specific statute(s) under which the application for Federal assistance is being made; and
10. The requirements of any other non-discrimination statute(s) which may apply.

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

CITY OF TULARE:

CONSULTANT:

\_\_\_\_\_  
City Manager

Attest:

---

City Clerk

Approved as to Form:

---

City Attorney

Attachments:

Exhibit "A": Scope of Work

Exhibit "B": Project Fees

Exhibit "C": Schedule of Fees for Professional Services

Exhibit "D": Progress Payment Schedule