



REQUEST FOR PROPOSALS

RFP # 26-827

Elk Bayou Nature Preserve Master Plan

Submittal: One (1) unbound original and four (4) copies must be received on or before:
2:00 p.m. on Monday, November 10, 2025

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

Address: 411 East Kern Avenue, Tulare, CA 93274

Mark envelope: Elk Bayou Nature Preserve Master Plan

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 Proposals document to Mr. Chris Orr, Community Services Director, in writing via e-mail at corr@tulare.ca.gov. Deadline to submit questions regarding this RFP is **5:00 p.m. on Wednesday, October 8, 2025**.

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

RFP # 26-827

NOTICE IS HEREBY GIVEN that proposals and separate, sealed cost proposals will be received at the City of Tulare City Clerk's Office, 411 E. Kern Avenue, Tulare, California until **2:00 p.m. on Monday, November 10, 2025**, for the provision of the following:

**REQUEST FOR PROPOSALS
Elk Bayou Nature Preserve Master Plan Master Plan**

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 Proposals (RFP) documentation and all addenda issued by the City, if any.

Request for Proposal documents may be inspected and obtained in the office of the Community Services Department, 830 S. Blackstone Street, Tulare, California 93274 or on the City's web site www.tulare.ca.gov. Please monitor the website for all information regarding this RFP. The City will send individual notifications of changes, updates, clarifications, and/or addenda only to those who submit questions in writing via email.

The City 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 RFP and will be afforded full opportunity to submit a Proposal 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 Proposal 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 Proposals submitted and to award the contract according to the Proposal which best serves the interests of said City.

Publication Dates: September 17, 2025

Table of Contents

RFP # 26-827	1
I. INTRODUCTION.....	5
A. Information	5
B. Background/Project Description.....	5
Minimum Qualifications	6
C. Purpose of Request and Process for Selection	6
D. Time of Performance.....	6
E. Schedule	6
F. Names - Definitions	7
II. SCOPE OF SERVICES – Request for Proposal	7
A. Project Administration	7
1. Consultant’s Responsibilities	7
2. City Responsibilities	7
3. Progress Reporting	8
4. Deliverables.....	8
B. Research and Analysis	8
1. Park Facility Inventory and Analysis	8
C. Recommendations	8
1. Compliance with Parks and Recreation Master Plan, General Plan and California Environmental Quality Act (CEQA).....	8
2. Draft Recommendations	8
3. Final Comprehensive Master Plan.....	8
III. PROPOSAL CONTENT AND FORMAT REQUIREMENTS.....	9
A. Cover letter.....	9
B. General Information	9
C. PROPOSALS	9
D. Ability to Provide Requested Services	10
E. Staff Qualifications and Related Experience.....	10
F. Compensation	10
G. Conflict of Interest	10
H. Requested Modification to Professional Services Agreement.....	11
IV. CONSULTING FIRM SELECTION PROCEDURE	11
A. Criteria	11
B. Weight of Criteria	12
C. Evaluation Procedure:	12
D. Background Check.....	12
E. Award of Contract	12

V.	GENERAL CONDITIONS	12
A.	Important Notice	12
B.	Contracting Agency	13
C.	Legal Responsibilities	13
D.	Permits and Licenses	13
E.	Insurance.....	13
VI.	CONTRACT REQUIREMENTS	15
A.	WITHDRAWAL OF PROPOSAL	15
B.	REJECTION OF PROPOSAL	15
C.	EVALUATION/EXECUTION OF AGREEMENT	16
D.	FEEs FOR SERVICE GUIDELINES	16
E.	ASSIGNMENT OF AGREEMENT.....	16
F.	TERMINATION OF AGREEMENT.....	16
G.	RIGHT TO REQUIRE PERFORMANCE	17
H.	ETHICS IN PUBLIC CONTRACTING	17
I.	INDEPENDENT CONTRACTOR.....	18
J.	EQUAL EMPLOYMENT OPPORTUNITY.....	18
K.	VENUE	18
L.	PROPRIETARY INFORMATION	18
M.	INCURRING COSTS	19
N.	PRE-AWARD AUDIT	19
	SAMPLE CONTRACT - <i>subject to changes</i>	20
I.	SERVICES TO BE PERFORMED BY THE CONSULTANT	20
II.	TIME OF PERFORMANCE	21
III.	COMPENSATION	21
IV.	AUTHORIZED REPRESENTATIVE	21
V.	TERMINATION	22
VI.	INTEREST OF OFFICIALS AND THE CONSULTANT	23
VII.	NO PERSONNEL AGENCY, COMMISSION, OR CONTINGENT FEE	24
IX.	SUBCONTRACTING	24
X.	INDEPENDENT CONTRACTOR	24
XI.	SPECIFICATIONS	24
XII.	DOCUMENTS/DATA	25
XIII.	INDEMNIFICATION AND INSURANCE	25
XIV.	NON-DISCRIMINATION	28
XV.	MISCELLANEOUS PROVISIONS	29
XVI.	ADDITIONAL MISCELLANEOUS PROVISIONS	30

I. INTRODUCTION

A. Information

The City of Tulare ("City") is seeking sealed proposals to develop a Master Plan and associated environmental review documents for Elk Bayou Nature Preserve Master Plan.

The project deliverables shall conform to all applicable codes and regulations, and shall be coordinated with the Community Services Director, Assistant Community Services Director, Parks Manager, and City Engineer. Interested consulting firms are invited to submit statements of qualifications and sealed proposals for the work described in this RFP.

Consultants are urged to submit concise proposals appropriate to the scale of the project, and to include only items that are relevant to this specific project. The Fee Proposal shall be submitted in a separate sealed envelope marked "Fee Proposal – RFP # 26-827 - Elk Bayou Nature Preserve Master Plan".

The City of Tulare reserves the right to reject any or all responses received as a result of this solicitation; to extend the submission due date; to modify, amend, reissue or rewrite this document; and to procure any or all services by other means.

The City of Tulare will not be liable for costs incurred by the consulting firms' incidentals to the preparation of proposals or for developing and carrying out interview presentations, if needed.

Submission of a proposal indicates acceptance by the firm of the conditions contained in this Request for Proposals (RFP) and Sealed Fee Proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of Tulare and the firm selected.

This RFP is being issued by the City of Tulare, Community Services Department. Unless otherwise directed, all communications regarding this RFP should be directed to the Community Services Department at (559) 684-4315. However, to prevent misinterpretations, the Community Services Department would prefer that all questions be sent by e-mail to Mr. Chris Orr, Community Services Director, at corr@tulare.ca.gov.

Any revisions to the RFP 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 RFP. Failure to adhere to this policy may be grounds for rejection of a Proposal.

One (1) unbound original and four (4) copies of the Proposal are to be submitted to the City Clerk's Office, located at 411 East Kern Avenue, Tulare, CA 93274, on or before Monday, November 10, 2025, at 2:00 p.m.

B. Background/Project Description

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 72,000, and the incorporated area covers approximately 20 square miles.

Agriculture remains the lifeblood of the local economy and Tulare sits in the heart of some of the most productive farmland in the world. The strategic location makes Tulare very attractive to food processors and distributors because of the central location and abundant supply of locally grown products.

The main line of the Union Pacific Railroad runs through Tulare, offering rail access to major cities throughout the United States.

Elk Bayou Regional Park is owned by the City of Tulare and is located in south Tulare. It consists of nine parcels, is approximately 54 acres, and has a length of approximately one mile (Attachment A). It is bordered on the west by California State Highway 99 and approximately three quarters of the park is dissected on the east by Laspina Street. Northeast of the park is the Elk Bayou Soccer Complex (which

touches one corner of the park), the Tulare Golf Course, and the International Agri-Center. Hosfield Drive borders the entirety of the park on the south. On the north side of the park there are some commercial businesses and Mefford Field Airport (Attachment (B)).

The Bayou runs east to west and is surrounded by agriculture land, which could be acquired for future expansion of the park.

Elk Bayou Regional Park is subject to seasonal flooding (Attachment C).

The current amenities at the park include a parking lot, outdated group picnic pavilions, a non-operable restroom building, outdated playground area, backstop, and an outdated potable water system.

The goal of the project is to establish an outdoor recreation and nature preserve at the Elk Bayou by incorporating multi-use trails along both sides of the bayou along with foot bridges over the bayou to create a regional trail system that includes interpretative signage, habitat restoration, land acquisition, and redevelopment of the Elk Bayou Park. Other potential elements include kayak launch and exit points at Laspina Street and Hosfield Drive, picnic pavilions, and individual picnic tables.

An additional element the City is interested in considering is to design a high ropes or zipline adventure course throughout Elk Bayou Regional Park to be operated by a third-party vendor.

Minimum Qualifications

- The technical competence and resources to perform the work specific to this RFP.
- Experience in the preparation of a Master Plan similar in size and characteristics.

C. Purpose of Request and Process for Selection

The City of Tulare 2023 Parks and Recreation Master Plan evaluated the existing Elk Bayou Regional Park very low for functionality and overall condition.

The City of Tulare is requesting proposals from experienced consulting firms to develop a comprehensive Master Plan, preliminary cost information based on masterplan concepts, and associated environmental review documents for Elk Bayou Nature Preserve. The Master Plan will include a project description and site plan identifying appropriate uses for the park.

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

D. Time of Performance

The term of this work shall commence on the Effective Date and expire once all services have been rendered unless an extension is approved in writing by the City. It is anticipated that all items of work shall be completed, and deliverables provided to the City within one hundred eighty (180) days. The actual time of performance included in the Professional Services Agreement will be based on the schedule provided by the selected consultant and agreed to by the City.

E. Schedule

<u>Event</u>	<u>Date of Event</u>
RFP for Elk Bayou Nature Preserve Master Plan	
Request for proposals is released	September 17, 2025
All questions must be received by 5:00 p.m.	October 8, 2025
Proposals due by 2:00 pm	November 10, 2025
Interviews of short-listed firms	December 8-10, 2025
City Council Awards Elk Bayou Nature Preserve Master Plan	December 16, 2025
Agreement begins (or sooner)	January 12, 2025

F. Names - Definitions

For this RFP, the Owner and City will be one and the same. For this RFP, the Consulting Firm, Consultant, and Proposer shall be one and the same.

II. SCOPE OF SERVICES – Request for Proposal

A. Project Administration

1. Consultant's Responsibilities

- Prepare a legally defensible Initial Study and Mitigated Negative Declaration and all associated notices and findings in compliance with the CEQA necessary to analyze the environmental impacts of the project, define environmental commitments, and describe mitigation and monitoring responsibilities.
- Provide a Master Plan that includes a project description and site plan identifying appropriate uses for the park based on coordination with project partners. The Master Plan will include capital and operational improvement to Elk Bayou Nature Preserve consistent with the City of Tulare Parks and Recreation Master Plan and that proactively responds to current issues and interests, and short-and long-term planned growth in the area.
- Public Engagement & Information - The consultant will organize and conduct public participation meetings which will include:
 - Two meetings on site at Elk Bayou Regional Park
 - Two meetings during the weekend or after 7:00 PM, Monday through Friday
 - One meeting to be held at any reasonable time and day.
- The consultant will work with City staff to comply with public meeting notification requirements and will be responsible for preparing a public information program inclusive of producing materials to help inform the public about the Elk Bayou Nature Preserve Master Plan process, progress, key recommendations and findings.
- The Consultant shall provide a working schedule indicating major milestones to complete the work identified in the scope of services above.
- The Consultant will be required to perform field data collection necessary to complete the requirements of the Project. The Consultant is solely responsible for the safety of its employees including any sub-consultant employees during any field operations.
- The Consultant shall provide project management to a level commensurate with the Project including clearly defined lines of communication between the City and the Consultant, coordination necessary for successful completion of the Project, timely invoicing for services rendered, and notification of tasks outside the executed Agreement.

2. City Responsibilities

- Compensate the Consultant as provided in the Professional Services Agreement.
- Provide a "City Representative" who will represent the City and who will work with the Consultant in carrying out the provisions of the RFP.
- Provide access to City facilities as required.
- Provide available data pertinent to the Project.
- Provide the Consultant with City documents including policies, procedures, regulations and standards pertinent to the Project.
- Attend meetings with Consultant and conduct meetings where appropriate.
- Provide a list of stakeholders and other agency personnel involved with the Project.
- Examine documents submitted to the City by the Consultant and render decisions pertaining thereto in a timely manner.

- Give reasonably prompt consideration to all matters submitted by the Consultant for approval such that there will be no substantial delays in the Consultant's program of work.

3. Progress Reporting

- The Consultant and the City Representative shall hold progress meetings as often as necessary, but in no case less than once every two weeks (teleconferencing is acceptable) until the final plan is approved by the City Council.
- The Consultant shall supply the City Representative with at least one (4) copy of all completed or partially completed reports, studies, forecasts, maps or plans as deemed necessary by the City Representative at least three (3) working days before each progress meeting.
- The City Representative shall schedule the meetings, as necessary, at key times during the development of the Master Plan.

4. Deliverables

The Consultant shall be responsible for providing master copies in a full color, editable digital format for each report throughout the Elk Bayou Nature Preserve Master Plan project. File formats for public posting must be compatible with the City's website.

B. Research and Analysis

1. Park Facility Inventory and Analysis

The Consultant will develop an inventory and analysis of the existing facilities at Elk Bayou Regional Park. The analysis should consider the capacity of each amenity found within the system (playgrounds, ball fields, trails, natural areas, special facilities, utilities etc.) as well as functionality, accessibility, condition, comfort, convenience and useful life.

C. Recommendations

1. Compliance with Parks and Recreation Master Plan, General Plan and California Environmental Quality Act (CEQA)

The Consultant will be required to ensure that the Elk Bayou Nature Preserve Master Plan complies with the Parks and Recreation Master Plan City of Tulare Active Transportation Plan, and the City's General Plan. The Consultant shall be required to complete all CEQA related requirements for necessary environmental review and clearance prior to final review by the Parks & Recreation Committee and the City Council.

2. Draft Recommendations

The Consultant shall prepare draft recommendations and a conceptual Layout plan with two (2) alternative optional designs with colored renderings for review by the public, the project team, the Parks & Recreation Committee and the City Council. The Consultant shall attend a Parks & Recreation Committee meeting and City Council meeting to present the draft report and shall provide all materials for review during the meeting. The Consultant shall be responsible for completing all updates and modifications that result from the review of the draft Elk Bayou Nature Preserve Master Plan by the Parks & Recreation Committee and City Council.

3. Final Comprehensive Master Plan

The Consultant shall prepare a draft Comprehensive Elk Bayou Nature Preserve Master Plan document for review and editing by the project team, and for public review. Based on the recommended revisions, the Consultant will provide a final Elk Bayou Nature Preserve Master Plan including models and display material for any recommended future facilities, acquisitions or

development. The Consultant will also be required to assist with preparing the associated draft staff reports and to attend City Council meetings to present plan findings and recommendations.

The Comprehensive Elk Bayou Nature Preserve Master Plan must include Supporting charts, graphs, maps and other data as needed to support the plan and its presentation.

III. PROPOSAL CONTENT AND FORMAT REQUIREMENTS

Respondents are requested to organize their Proposal 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 RFP.

A. Cover letter

- A cover letter highlighting the qualifications and experience as they relate to this RFP.

B. General Information

- Firm name, address, and telephone number.
- Firm Representative or other person to contact for clarification of any item contained in the proposal. 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 Proposal with their background and the firm must give assurances of continuity of its personnel. A Project Manager to serve as the primary point of contact needs to be identified.
- Provide surety information for all sureties – General and Automobile Liability, E/O and Worker's Compensation.
- References and Referrals – Provide four (4) public agency references for similar assignments directly involving the Project Manager. Past experience should be specific to preparing construction documents (plans specifications and estimates) for a domestic wastewater treatment plant and related public works projects; bidding assistance, and construction support for this type of project. The location, Consultant's fee and reference (agency name, contact person with email address and telephone number(s)) shall be included for each project listed.

The envelope enclosing the separate, sealed Proposal 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

RFP for Elk Bayou Nature Preserve Master Plan

Deadline for Submittal: 2:00 p.m. Monday, November 10, 2025

City Hall - City Clerk's Office, 411 E. Kern Avenue, Tulare, CA 93274

C. PROPOSALS

Proposals shall include a brief description of the Project Description/Scope of Services as you understand it and present a proposed work plan. Include any additional services you feel are necessary to complete the work not identified in the RFP. The proposal should include a section for the tasks the Consultant is expected or proposes to provide to complete the Project.

Prepare and include a Time of Completion Schedule and Cost Proposal based on your firm's Proposal/Scope of Work. Refer to the Compensation Section (Section F) for requirements related to providing a Cost Proposal.

D. Ability to Provide Requested Services

- In this Section, provide a brief description of your firm's level of experience in successfully providing these services, and brief descriptions of past municipal work providing the same services.
- Identify additional services not noted in this RFP that your firm feels would benefit the City with a brief statement of why the service should be 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 RFP, if you feel it may be useful and applicable to this project.

E. 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 agreement by providing resumes/experience summaries describing their education, credentials, related experience of each individual employee or subcontractor proposed for assignment to the agreement and their proposed roles for a task order.

2. Related Experience

Include descriptive information concerning the experience of the firm. Include information about previous municipal 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 task orders on budget and within an approved timeframe. Please demonstrate the firm's ability to meet these goals.

F. Compensation

Include a Cost Proposal in a separate sealed envelope for the work identified in the Scope of Services in Section II above. The envelope shall be labeled per the requirements of Section B above with the addition of adding "**Cost Proposal**" to the upper left corner. The Cost Proposal shall be broken down into three categories: design engineering services (preparation of plans, specifications and estimates), bidding assistance, and construction support.

It is expected that for the design and bidding assistance phases the Consultant will be compensated for based on a lump sum fee submitted with the RFP and approved by the City and that for construction support services the Consultant will be compensated for on a time and material fee basis based on the hourly rates provided in the Cost Proposal.

G. 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.

H. Requested Modification to Professional Services Agreement

- Disclose any modifications to the attached Professional Consulting Services Agreement (Attachment 1) your firm would like considered. Disclosure of Professional Service Agreement modifications is not a guarantee the City will make any modification to the Agreement. The included Agreement has been reviewed and approved for use by the City Attorney's office and as such will only be modified upon approval of the City Attorney.

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 Proposal and any subsequent interviews that may be conducted.

The process for selection shall occur in the following sequence:

- Review Proposals
- 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 award of Professional Services Agreement to City Council

Consultant selection shall be based on the information provided in the Proposals received in response to the RFP. The City reserves the right to make the selection of a Consultant 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 proposals, 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 RFP. This committee may consist of representatives of the Community Services Department, Engineering Services Department, Internal Services Department, members of the community, and may include a representative knowledgeable in Parks and Recreation facility management 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 Proposal.

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.

Criteria	As Demonstrated By:
• Merit of Proposal/Presentation • Knowledge and expertise	Proposal thoroughness and meeting RFP requirements Capability of personnel, firm qualifications and experience Adequacy of staff to perform the work
• Record of past performance	References Ability to work effectively with City staff, other public agencies and related parties Demonstrated ability to deliver projects timely and on budget Experience with projects of similar scope
• Knowledge of local conditions	Project work in the City of Tulare City of Tulare Demographics
• Local Preference	Office performing work as identified in the Proposal has a zip code within Tulare County

B. Weight of Criteria

Criteria	Weight
• Merit of Proposal/Presentation	15
• Knowledge and Expertise	30
• Past Performance, References	30
• Knowledge of Local Conditions	20
• Local Preference	5

C. Evaluation Procedure:

The Selection Committee will review the Proposals 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 Proposals may be requested after written Proposals 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 Proposal.

The individual or composite rating and evaluation forms prepared by the Selection Committee will not be revealed. The Selection Committee will review the Proposals 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 a Proposal 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 Proposals, to waive any informality in any Proposal, to sit in 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 Exhibit '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 RFP 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 RFP documents shall not be relied upon unless subsequently ratified by a formal written amendment to the RFP

document. The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given.

B. Contracting Agency

The contract resulting from this Request for Proposals will be administered by the City of Tulare Community Services Department.

C. Legal Responsibilities

By submitting a Proposal, 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 RFP. *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

Firms to provide professional services under an Agreement as the result of responding to this RFP shall be certified by the American Institute of Certified Planners (AICP), are to be licensed in accordance with the California Business and Professions Code and shall be licensed to perform work in the State of California.

3. Permits

The selected Consultant 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 Proposal.

E. Insurance

1. Insurance

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

- i) **Commercial General Liability and Property Damage.** The Consultant shall maintain insurance for protection against all claims arising from injury to person or persons not in the employment of the Consultant and against all claims resulting from damage to any property due to any act or omission of the Consultant, his agents, or employees in the operation of the work or the execution of this contract. Such insurance shall include products/completed operations liability, owners and Consultant's protective, blanket contractual liability, personal injury liability, and broad form property damage coverage. The minimum shall be as follows:

Bodily Injury (Injury or Accidental Death) and Property Damage (Per occurrence)	\$2,000,000 Combined Single Limit and \$4,000,000 aggregate.
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- ii) **Commercial Automobile Public Liability and Property Damage.** The Consultant shall maintain Automobile Public Liability and Property Damage Insurance for protection against all claims arising from the use of vehicles, owned, hired and non-owned, or any other vehicle in the prosecution of the work included in this contract. Such insurance shall cover the use of automobiles and trucks on and off the site of the project. The minimum amounts of Automobile Public Liability and Property Damage Insurance shall be as follows:

Bodily Injury (Injury or Accidental Death) and Property Damage (Per occurrence)	\$1,000,000 Combined Single Limit.
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- iii) **Professional Liability (Errors and Omissions).** The consultant shall maintain Professional Liability Insurance for protection against all claims arising out of professional error or omission with a limit of not less than \$2,000,000.
- iv) **Workers' Compensation Insurance.** The Consultant shall maintain Workers' Compensation Insurance with statutory limits and Employers Liability Insurance with limits of not less than \$1,000,000 per accident. Such insurance shall comply with all applicable state laws. Consultant shall provide the City with a Certificate of Insurance showing proof of insurance acceptable to City. Certificates containing wording that releases the insurance company from liability for non-notification of cancellation of the insurance policy are not acceptable. Policies are to be endorsed to include a waiver of subrogation against the City, its officers, official's agents and employees. Consultant and its employees are independent Consultants and not employees of the City of Tulare. Consultant and/or its insurers are responsible for payment of any liability arising out of Worker's Compensation, unemployment or employee benefits offered to its employees.

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

Refer to the indemnification section of the attached Sample Professional Services Agreement for specific language to be included with the Agreement.

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.

Separate endorsements are required, naming the City as additional insured, for liability insurance and providing a waiver of subrogation for Worker's Compensation Insurance.

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
Community Services Department
830 S. Blackstone Street
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 Exhibits to this RFP 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 hour rate schedule will be attached.

Any requested changes, modifications, and edits to the Agreement by a Consultant submitting a Proposal shall be clearly identified in the submitted Proposal. 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 or lessor position than authorized or specified in the sample agreement.

A. WITHDRAWAL OF PROPOSAL

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

B. REJECTION OF PROPOSAL

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

The Proposal is to be prepared in such a way as to provide a straightforward, concise delineation of the information requested. Proposals 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 Proposal. If, in the opinion

of the City, such information was intended to mislead the City in its evaluation of the Proposal, it will be cause for rejection of the Proposal.

C. EVALUATION/EXECUTION OF AGREEMENT

Evaluation and selection of Proposals will be based on the information called for in this RFP and as identified in Section IV. Consulting Firm Selection Procedure. Brochures or other promotional presentations beyond that sufficient to submit a complete and effective Proposal 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 RFP closing date. Proposer agrees and so stipulates in submitting this Proposal, 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. FEES FOR SERVICE GUIDELINES

Proposed fees schedule shall be submitted under separate, sealed cover identified in the fashion as noted in this RFP.

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 Proposal, 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 Proposal, the Proposer certifies that its Proposal 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 Proposal; 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 Proposal 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 Proposal for the work solicited may result in rejection of all Proposals 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 Proposals.

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.

SAMPLE CONTRACT - *subject to* *changes*

PROFESSIONAL SERVICES AGREEMENT

Elk Bayou Nature Preserve Master Plan

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 T 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 described as "Scope of Work" in Exhibit "A", and hereinafter referred to as the "PROJECT"; 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. Authorized Scope of Work: The CONSULTANT agrees to perform all work necessary to complete in a manner satisfactory to the CITY those tasks described in Exhibit "A" - Scope of Work, for the cost identified in Exhibit "B" - Project Fee.
- B. Additional Services: Incidental work related to the PROJECT and not provided for in Exhibit "A" may be needed during the performance of this Agreement. The CONSULTANT agrees to provide any and all additional services at the rates identified in attached Exhibit "C" - Schedule of Fees for Professional Services. Such additional services shall not be performed by CONSULTANT without the written consent of CITY.

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. Total Compensation: For services performed pursuant to this Agreement, the CITY agrees to pay and the CONSULTANT agrees to accept, as payment in full, a sum not to exceed _____ dollars (\$). This amount shall constitute complete compensation, including document production and out-of-pocket expenses for all services for the work and PROJECT identified in Exhibits "A" and "B".
- B. Payment of Compensation: The CONSULTANT shall be compensated according to the progress payment schedule set forth in Exhibit "D" 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 Community Services Director 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 they have, 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.

IX. 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.

X. 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.

XI. 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.

XII. 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.
- C. 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.
- D. Patent Rights: Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall apply to this agreement.

XIII. 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.
5. 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.
6. Each insurance policy required by this Agreement shall contain the following clause:
7. "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."

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.

XIV. 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.

XV. 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:

- 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.

XVI. 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 Principles: 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.
 - 1. Definition. "Facility" means a 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.
 - 2. 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:

- a) 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;
- b) 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;
- c) 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).

1. 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:

- a) 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.
- b) 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.
- c) 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.

- d) 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.
- e) 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.
- f) 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.
- g) 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.
- h) 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.
- i) 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.

- j) 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.

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

- a) 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.
- b) 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.
- c) 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

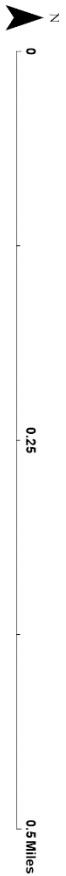
Attachments:

Attachment A

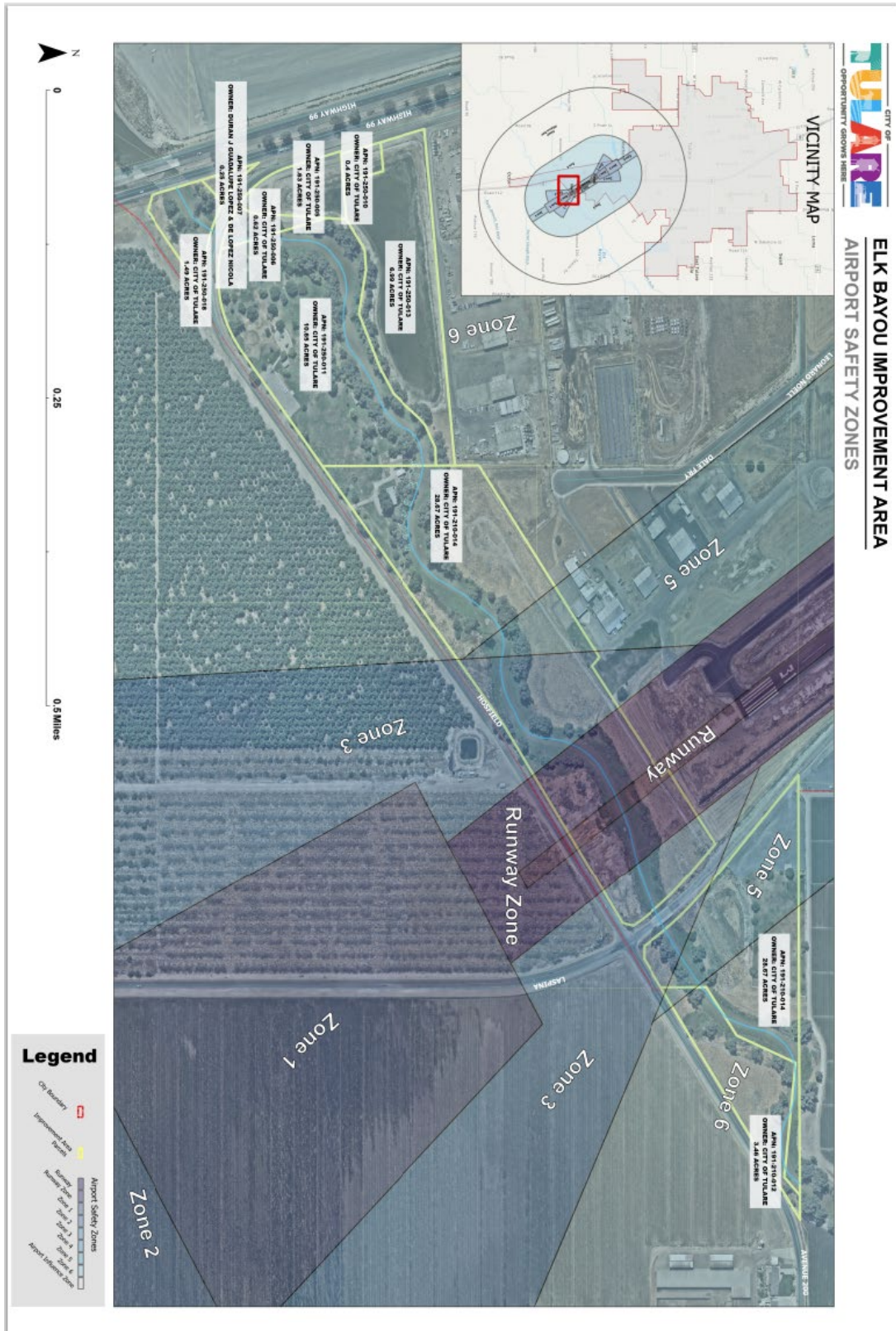


CITY OF
TULARE
OPPORTUNITY GROWS HERE

**ELK BAYOU
IMPROVEMENT AREA**



Attachment B



The screenshot displays the FEMA's National Flood Hazard Layer (NFHL) Viewer interface. The main map area shows a coastal region with various flood hazard zones. Key labels on the map include "CITY OF ILLAIRE" and "ILLIAR CO. UNINCORPORATED AREAS". A legend on the right side of the map provides a key for the symbols used, including General Structures, Flood Hazard Boundaries, and Flood Hazard Zones. The map also shows the location of the City of Illaire and Illiar Co. Unincorporated Areas.

Legend

- General Structures**
 - Structure Type
 - Bridge
 - Dam, Weir, Jetty
 - Other Structures
 - River Mile Markers
 - Limits of Moderate Wave Action
- Flood Hazard Boundaries**
 - Limit Lines
 - SFHA / Flood Zone Boundary
 - Flowage Easement Boundary
- Flood Hazard Zones**
 - Zone Type
 - 1% Annual Chance Flood Hazard
 - Regulatory Floodway
 - Special Floodway
 - Areas of Undersaturated Flood Hazard
 - 0.2% Annual Chance Flood Hazard
 - Flood Conditions 1% Annual Chance Flood Hazard
 - Areas with Reduced Risk Due to Levee
 - Areas with Risk Due to Levee
 - Primary Frontal Dunes
- Coastal Barrier Resources System Area (US FWS)**
 - CBSL, Prohibitions
 - Use Type
 - Overseas Protected Area
 - System Unit

At the bottom of the screen, there is a navigation bar with a search icon and a "Find address or place" input field. The bottom right corner of the screen shows the FEMA logo and the text "FEMA's National Flood Hazard Layer (NFHL) Viewer" and "with Web Application for ArcGIS".











