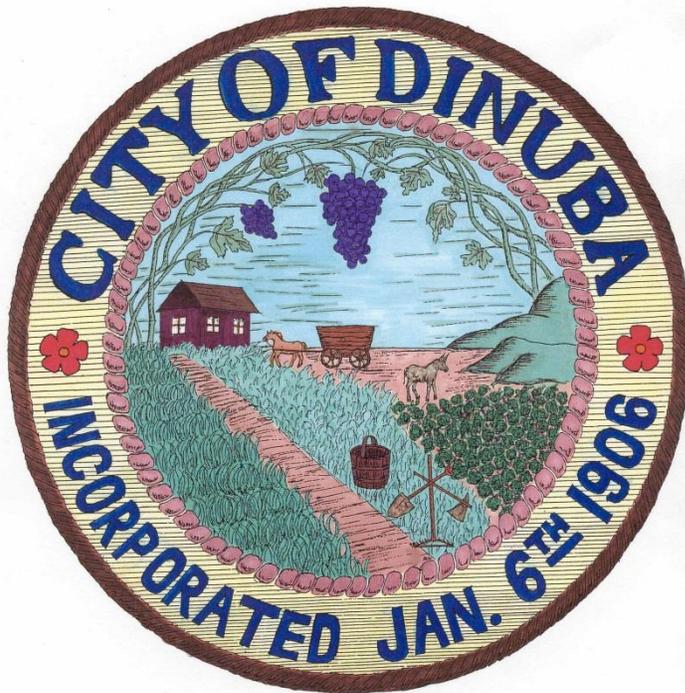


CITY OF DINUBA

County of Tulare
State of California



REQUEST FOR PROPOSAL

for

TRANSIT DEVELOPMENT PLAN (TDP)

August 3, 2018

Proposals Due by:
Friday, August 31, 2018 @ 4:00 p.m.

The City of Dinuba invites the submission of proposals by qualified consultants to prepare a five-year Transit Development Plan for the Dinuba Area Regional Transit (DART).

BACKGROUND

The City of Dinuba is located in Tulare County in California's San Joaquin Valley. Situated roughly 180 miles north of Los Angeles and 200 miles south of San Francisco, Dinuba's centralized location provides many benefits to its roughly 25,000 residents. With undeniable small town charm and a real sense of community, Dinuba is a great place to call home. Dinuba's economy is heavily driven by agriculture with many residents making their living harvesting a large variety of local crops. Although agriculture is the main economic activity, Dinuba also has an active commercial and industrial base. A considerable percentage of Dinuba's residents are low-to-moderate income and some rely on public transportation to get to work, school, and for shopping.

The City of Dinuba has been providing public transit services since 1981. Currently, transit services are offered under the banner of the Dinuba Area Regional Transit (DART). This system is owned by the City of Dinuba but operated by a third-party contractor. Existing bus schedules include two fixed routes (flexed), a dedicated Dial-A-Ride, a commercial circulator and an inter-city route. Routes 1, 2 and Dial-A-Ride operate Monday through Thursday from 7:00 AM to 6:00 PM, on Friday from 7:00 AM to 9:00 PM and on Saturday from 9:00 AM to 9:00 PM. The commercial circulator or Jolly Trolley operates from Monday through Thursday from 9:00 AM to 6:00 PM and Friday and Saturday from 9:00 AM to 9:00 PM. As needed, Routes 1 and 2 deviate (or flex) from their fixed routes to accommodate dial-a-ride requests. The inter-city route (Dinuba Connection) connects the City of Dinuba with the City of Reedley. This route primarily serves Dinuba students who attend the community college located in Reedley and the Reedley residents that shop at the Dinuba Walmart. The Dinuba Connection operates from 7:00 AM to 9:00 PM for 10 months out of the year and from 7:00 AM to 3:00 PM for two months out of the year.

Dinuba receives funding for transit capital and operations through several sources, including Transportation Development Act (TDA) funds, Federal Transit Administration (FTA) Section 5311 Funds, State Transit Assistance (STA) Fund, SB1, and Measure R (local sales tax measure).

PURPOSE OF THE TRANSIT DEVELOPMENT PLAN STUDY

The purpose of this study is to develop a Transit Development Plan that is the result of a comprehensive evaluation of the Dinuba Area Regional Transit (DART) system and to make recommendations regarding: program goals and objectives, service enhancement or reduction possibilities, capital improvement planning, management structure and partnership opportunities, marketing and related policy issues. The study shall address internal and external factors influencing the use of public transit, including fares, schedules, route design,

amenities, etc. The plan shall include a short range element (within 5 year window) and a longer 10 year element.

SCOPE OF WORK

The consultant will prepare a five-year Transit Development Plan (TDP) for the City of Dinuba known hereafter as the *City of Dinuba 2018 Transit Development Plan*. The following is the minimum work requested under this RFP:

1.0 Update Goals and Objectives

Review and revise the goals and objectives identified in the 2009 Transit Development Plan. The consultant will review the existing goals and objectives and make recommendations as to revisions as necessary.

2.0 Identification of Issues

As part of the plan development, the consultant shall identify issues which could be addressed in the study. This effort shall include identifying issues from a decision makers' survey and other community surveys as well as at least two community meetings. Consultant shall provide a public participation plan that reaches users, potential users, and underserved populations. Innovation for soliciting input is encouraged. **The consultant shall provide a report on identified issues.**

3.0 Evaluation of Existing Service & Ridership

The consultant shall evaluate each service route including passenger counts, boarding and alighting counts, transfer counts and tracking, running time, hours of service (revenue hours) and mileage and fare rates. This task should include a survey of fixed-route and dial-a-ride ridership. Analysis of the information should include a close examination of compliance with the Americans with Disabilities Act (ADA) and the quality of paratransit. This task will include peer comparisons and an evaluation of existing overall service frequency, overall geographical area served, efficiency and effectiveness. The consultant shall examine existing service standards, update them, remove any that are unnecessary, and recommend any new standards that are necessary.

The consultant shall develop an inventory of existing services including regular route and paratransit operations. This inventory will include a description and analysis on a per route/service basis. A profile of current ridership will also be developed. The consultant will conduct an onboard rider survey.

At a minimum, the inventory shall include the following:

- Overview of Management Structure
- Existing Services Profile
- Facilities
- Fleet

- Fare Structure
- Ridership and Operating Data
- Financial Overview
- Profile of Users
- Coordination with nearby transit service providers
- Coordination efforts with social service agencies, etc.
- Overview of current marketing efforts

The consultant will provide a report on existing services, ridership & standards

3.1 Evaluation of Needed Changes in Service – Fixed Route

This task will include an inventory of service needs, including: un-served and underserved areas; unserved and underserved times; and evaluation of service delivery options. The evaluation shall include a ridership demand analysis. The consultant will examine and make recommendations for potential interaction with regional systems. Task will include a survey of non-users (The consultant shall recommend as to sample size and method of survey). **The consultant will provide a report on service evaluation and needs including rider demand analysis.**

3.2 Development of Recommended Service Plans – Fixed Route

The consultant will develop recommended service plans based on the needs evaluation, which is heavily informed by rider preferences and feedback. Recommended service plans shall include unserved and underserved areas; unserved and underserved times; evaluation of service delivery options; service denials; on-time performance; latent demand; and factors that assist or hinder compliance with ADA and Title VI requirements. Additionally service route designs, time tables, service hours, ridership forecasts and cost estimates, and any policy changes necessary to effect the recommendations shall be included. If applicable any expansion opportunities will be separated into two categories: areas ready for service and areas projecting a need for service within a five year window. **The consultant will provide a report on recommended service plans.**

3.3 Evaluation of Needed Changes to Service – Dial-A-Ride & Paratransit

This task will include an inventory of service needs, including: un-served and underserved areas; unserved and underserved times; evaluation of service delivery options; service denials; on-time performance; latent demand; and factors that assist or hinder compliance with ADA and Title VI requirements. The consultant will examine and make recommendations for potential interaction with regional systems. Task will include a survey of non-users (The consultant shall recommend as to sample size and method of survey). **The consultant will provide a report on service evaluation and needs including rider demand analysis.**

3.4 Development of Recommended Service Plans – Dial-A-Ride & Paratransit

The consultant will develop recommended service plans based on the needs evaluation, which is heavily informed by rider preferences and feedback. Recommended service plans shall include ridership forecasts, cost estimates, service hours, tactics for performance improvement, strategies for improved compliance with ADA requirements, and any policy changes necessary to effect the recommendations shall be included. If applicable any expansion opportunities will be separated into two categories: areas ready for service and areas projecting a need for service within a five year window. **The consultant will provide a report on recommended service plans.**

4.0 Performance Indicators

This task will include peer comparisons and an evaluation of existing service costs, efficiency and effectiveness, and comparison with adopted performance standards. The consultant shall recommend performance goals. Performance indicators currently used include farebox return ratio, passengers per hour and miles on a per trip and system average. **The consultant will provide a report of Performance Indicators.**

5.0 Development of a Capital Improvement Plan

The consultant shall develop a five year capital asset plan that includes schedules and cost estimates for replacement, expansion and introduction of new technologies. At a minimum the following elements shall be included:

1. Buses
2. Shelters
3. Information Systems
4. Electronic farebox
5. Identification of lacking capital needs
6. Cost neutral improvements

The Capital Improvement Plan should outline a systemic scheme for cost-effective repairs, maintenance, replacement, and rehabilitation of transportation assets based on engineering and economic analysis. **The consultant shall provide a 5 year capital asset plan.**

6.0 Marketing and Communications

The plan will measure community awareness and effectiveness of past efforts thereby providing a benchmark for past and future comparisons. Recommendations will be provided as to: types of media and messages to market services and improvements to rider information services. Consultant shall examine technologies that may increase ridership or convenience. **The consultant will provide a report on Marketing and Communications.**

7.0 Financial Plan

The consultant shall project the operating costs and revenues (or savings) on an annual basis for each proposed service change (on a per route basis) and for proposed capital improvements. The financial plan shall be for a minimum of 5 years. Also, the consultant shall identify and recommend an annual financing plan for operations and capital improvements based on current and expected funding sources. **The consultant shall provide a report on the Financial Plan.**

8.0 Review Organizational and Staffing Framework

The consultant shall compare the staffing levels (City of Dinuba and third-party contractor) of the DART system to other organizations in peer-level transit systems and provide a summary of comparison staffing levels and duties/expertise. Consultant will make a minimum of two organizational structural recommendations based on summary comparisons and observed best practices among peer transit systems. **The Consultant will provide a report on management and organizational framework.**

9.0 Third-Party Contract Review

The consultant shall evaluate the City's current contract with MV Transportation Inc. for industry standards and conformance with law, and make recommendations for current and future contract changes needed to support current service and staffing levels. Include documentation needed for driver training and certifications, dispatch procedures and insurance coverage. Under direction from City Staff, selected consultant shall also develop a Request for Proposal (RFP) for a third party transit services provider that is based on the findings of the subject Transit Development Plan and will assist the City in selecting a provider for a five year contract effective January 1, 2020.

10.0 Meetings & Public Participation

The development of the subject plan shall include at least eight (8) personal appearances by the consultant. The first meeting will be a project kick-off meeting that will serve to provide further detail on roles and responsibilities and to identify the data needed to accomplish full scope of the TDP as identified above. At the kick-off meeting, consultant shall distribute the "decision maker survey" referenced above. Consultant shall prepare an agenda for kick-off meeting. There will also be at least two (2) technical working meetings with City staff. The consultant shall also conduct at least two (2) public participation meetings. One will be with the local stakeholder committee appointed by the Dinuba City Council and another will be held with the general public. Once a draft of the plan has been prepared, consultant shall meet with stakeholder committee once again to review content of draft document. After updating plan with stakeholder committee input, consultant will present draft plan to the City Council at a regularly scheduled worksession. After updating plan with City Council input, consultant shall present a final draft of the plan at a regularly scheduled City Council meeting and City staff will make a request to adopt the plan as presented.

11.0 Final Plan Document

The consultant will assemble an executive summary and final report combining all of the task reports. **The consultant shall provide and executive summary and final plan.**

INSTRUCTIONS TO PROPOSERS

The Proposer shall include in its Proposal, at a minimum, the following information presented in a clear and concise format, in order to demonstrate the Proposer's competence and professional qualifications for the satisfactory performance of the Scope of Work described above:

1. Cover Letter (not to exceed ONE page)
 - The content of this section is to be determined by the respondent, but it is recommended that the cover letter serve as a summary of the firm's distinctive qualifications and characteristics that make it best suited to successfully complete the identified Scope of Work.
2. Firm Experience and Team Qualifications
 - This section should provide a more detailed description of the firm's overall qualifications for this project and previous experience on similar or related engagements. Prospective consultants shall designate by name the project manager to be employed. The selected consultant **shall not substitute** the project manager without prior approval by the City of Dinuba. All personnel to be used on this Project must be identified. Include personnel resumes; identify relevant experience for each person, their area of expertise, registration, special training and office location. Identify how much of each person's time will be spent on the project. Describe why team is the best qualified to perform this comprehensive study.
 - If subcontractors are used, prospective consultants must submit a description of each person or firm and the work to be done by each subcontractor. The proposal **MUST** state the percentage of work to be completed by a certified Disadvantaged Business Enterprise (DBE) firm.
3. Project Understanding and Approach
 - A brief narrative describing the consultant's understanding of the unique characteristics of this Project and what it will take for its successful completion. Prospective consultant shall describe their overall approach to the project, specific techniques that will be used, and the specific administrative and operational management expertise that will be employed.
4. Schedule and Critical Path Timeline
 - Project schedule is aggressive; the City wishes to complete this plan with City Council adoption no later than **May 28, 2019**. Consultant shall submit a timeline indicating delivery of the full scope of work by this deadline.

5. Previous Projects (References)

- Prospective consultants shall provide names, addresses and telephone numbers for at least three clients for whom the prospective consultant has performed technical and management assignments of similar complexity to that proposed in this request. A summary statement for each assignment shall be provided.

6. Project Costs

- All fees for elements contained in this scope of work should be included in this proposal. A total proposed “not to exceed” fee for consulting services, including a fee schedule describing all charges and hourly rates for services shall be negotiated between the City and proposer for this Project. The City has set a budget of approximately \$90,000 for the subject Project.

SELECTION CRITERIA

A Consultant Selection Committee will be convened to evaluate and rank the consultants that respond to this RFP. This evaluation will be based on the submitted proposals and will be evaluated and ranked on a 100 point scale in accordance with the following factors:

<u>CRITERIA:</u>	
Comprehension and Approach to Project	10
Thoroughness of Proposal	10
Meeting the RFP Objectives	15
Project Delivery Time	15
Qualifications and Experience	20
References	15
DBE Participation Level	5
Cost	<u>10</u>
SUBTOTAL	100
Local Firm ¹	5
TOTAL	105

¹ **Local firms are required to meet both of the following:**
- Local office in Tulare County AND at least 51% of the work be conducted by employees in the local office

CONFLICT OF INTEREST

Prospective consultants shall disclose any financial, business or other relationship with the Tulare County Association of Governments (TCAG) any of the eight incorporated cities in Tulare County, the County of Tulare, or any of their officers or officials that may have an impact on the outcome of the project. The prospective consultant shall also list current clients who may

have a financial interest in the outcome of the project. The consultant will be required to include conflict of interest statement in the final report.

INSURANCE REQUIREMENTS

The City of Dinuba will require the selected consultant to obtain and maintain at its sole cost and expense the following insurance coverage:

- a) Workers' compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$500,000 per accident, (See Attachment "B").
- b) Comprehensive general liability insurance with a combined single limit of not less than \$500,000 per occurrence covering injury to or death of any person or persons, and with limits of not less than \$500,000 per occurrence covering property damage. Such insurance shall 1) name the City of Dinuba, its appointed and elected officials, officers, employees and agents as insured; and 2) contain an endorsement that this insurance may not be canceled or reduced until thirty (30) days after the City Manager has received notice of such cancellation or reduction, (See Attachment "C").
- c) Comprehensive automobile liability insurance with a combined single limit of not less than \$500,000 covering per occurrence covering injury to or death of any person or persons, and with limits of not less than \$500,000 per occurrence covering property damage. Such insurance shall 1) name the City of Dinuba, its appointed and elected officials, officers, employees and agents as insured; and 2) contain an endorsement that this insurance may not be canceled or reduced until thirty (30) days after the City Manager shall have received notice of such cancellation or reduction.

The selected consultant shall maintain said insurance policies in effect during the term of the contract and shall cause all parties supplying services, labor, or materials to maintain insurance in amounts and coverage not less than those specified above.

The consultant shall file certifications of this insurance with the City Manager of the City of Dinuba prior to commencement of its performance under this agreement.

HARMLESS CLAUSE

The City of Dinuba will require the successful consultant to hold harmless, defend and indemnify the City of Dinuba, their officers, employees and agents from any liability, claims, actions, costs, damages or losses, for injury, including death to any person, or damage to any property arising out of the consultant's services.

SIGNATURE

The proposal shall be signed by an official authorized to bind the consultant and shall contain a statement to the effect that the proposal is a firm offer for a 90-day period. The proposal shall also provide the following: name, title, address, and telephone number of individuals with authority to negotiate and contractually bind the company.

PROPOSAL DEADLINE

Four (4) hard copies and one electronic copy (preferably on thumb drive) must be submitted no later than **4:00 p.m. on Friday, August 31, 2018**. All material should be submitted to the following address:

George Avila, Business Manager
City of Dinuba
405 El Monte Way
Dinuba, CA 93618
gavila@dinuba.ca.gov

MODIFICATION OR WITHDRAWAL OF PROPOSAL

Any proposal received prior to the date and time specified above may be withdrawn or modified by written request of the consultant. However to be considered, the modified proposal must be received by the date and time specified above. All verbal modifications of these conditions or provisions are void and ineffective for proposal evaluation purposes. Only written changes issued to consultants by the City of Dinuba are authorized and binding.

REJECTION OF PROPOSAL

Failure to meet the requirements of the Request for Proposals will be cause for rejection of the proposal. The City of Dinuba may reject any proposal if it is conditional, incomplete, contains irregularities, or has inordinately high or low costs. The City of Dinuba reserves the right to reject any and all proposals **without cause**. The City of Dinuba may waive an immaterial deviation in a proposal. Waiver of an immaterial deviation shall in no way modify the Request for Proposals documents or excuse the proposer from full compliance with the contract requirements, if the proposer is awarded the contract.

INELIGIBLE BIDDERS

Each consultant must certify that it is not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions. Attachment "A" must be properly completed and submitted with the proposal.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The contractor agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (49 USC 2000d) and the regulations of the U.S. Department of Transportation issued thereunder in 49 CFR Part 21.

EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this contract, the contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, 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.

CONTRACT AWARD

The selected consultant will execute a professional services contract with the City of Dinuba. The City wishes to use the template contract attached hereto as "Attachment D". Consultant shall acknowledge that the standard contract for the City of Dinuba is acceptable as presented or as amended (include the proposed amendments). The official selection of the consultant and execution of the contract will be made by City Council at its September 25, 2018 meeting. Unsuccessful proposals will be notified by writing after September 25, 2018.

METHOD OF PAYMENT

Payment to the selected consultant will be made upon successful completion of project tasks as invoiced by the consultant. Ten (10%) percent of the invoiced amount will be reserved, and will be paid to the consultant upon successful completion of the entire project.

ATTACHMENT A

INELIGIBLE CONTRACTORS CERTIFICATION

Contractors or firms who are included on the U.S. Comptroller General's list of persons or firms currently debarred for violations of various public contracts incorporating labor standards provisions cannot be awarded this contract, the undersigned hereby certify that:

(Name of Proposer)

does not appear on the U.S. Comptroller General's list of ineligible contractors.

Date: _____

Name of Proposer: _____

By: _____

Title: _____

ATTACHMENT B

CERTIFICATION CONCERNING WORKERS'

COMPENSATION INSURANCE

STATE OF CALIFORNIA)
)
COUNTY OF TULARE)

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Date _____

CONSULTANT

ATTACHMENT C

GENERAL LIABILITY

ADDITIONAL INSURED ENDORSEMENT

City of Dinuba
405 E. El Monte Way
Dinuba, CA 93618

The following described policy has been issued to:

Insured(s) _____

General Description of agreement(s) between the City of Dinuba and insured(s):

2018 City of Dinuba, Transit Development Plan

Type of Insurance:

Comprehensive General Liability

Limits of Liability:

- () \$ _____ Combined Single Limit
Per Occurrence for
Bodily Injury and
Property Damage
- OR
- () \$ _____ Bodily Injury (per
person, per occurrence)
- () \$ _____ Bodily Injury
(aggregate)
- () \$ _____ Property Damage
(per occurrence)
- () \$ _____ Property Damage
(aggregate)

ATTACHMENT C (cont.)

Policy Term: From: _____ to: _____

Insurance Company _____

Policy Term: From _____ to: _____

The following are included in the above policy:

- 1. Premises & Operations
- 2. Independent Contractors
- 3. Personal Injury
- 4. Explosion, Collapse and Underground Hazards
- 5. Broad Form Property Damage including Completed Operations () including care, custody and control of all Port property under contract or agreement.
- 6. Blanket Contractual Liability
- 7. Products
- 8. Completed Operations
- 9. Owned Automobiles
- 10. Non-owned Automobiles
- 11. Leased or Hired Automobiles
- 12. Fire Legal Liability Limit
- 13. Garagekeepers Legal Liability Limit
- 14. Stevedore/Cargo Liability
- 15. Liquor Liability
- 16. Professional Liability Insurance (Errors and Omissions)

1. The City of Dinuba acting by and through its City Council, and their officers, agents and employees, while acting within the scope of their authority, are Additional Insured in the policy.
2. The above policy shall not be canceled, changed in coverage or reduced in limits for any reasons whatsoever except after written notice to the City Manager of the City of Dinuba by certified mail, return receipt requested, not less than thirty (30) days prior to the effective date thereof.
3. The above stated limits of liability are on an occurrence basis.
4. Such insurance shall be primary, and not contributing with any other insurance maintained by the City of Dinuba.

- 5. In the event of one of the insured incurring liability to any other of the insureds, the policy shall cover the insured against which claim is or may be made in the same manner as if separate policies had been issued to each insured. Nothing contained herein shall operate to increase Underwriters' limit of liability.
- 6. There are no deductibles except as indicated above.

Insurance Company

Address _____

I, _____, hereby declare under penalty of (type or print name) perjury, under the laws of the State of California, that I have the authority to bind the above-named insurance company and by my execution hereof, do so bind said company.

Signature of authorized Representative
(original Signature only; no facsimile signature or initialed signature accepted)

Title: _____

Organization: _____

Address: _____

Phone No.: _____

Executed at _____ on _____, 19__

INSURANCE COMPANY _____

POLICY NUMBER _____

ENDORSEMENT NUMBER _____

EFFECTIVE DATE _____

ATTACHMENT D

AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE CITY OF DINUBA AND _____

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this ____ day of _____ 20__, by and among the City of Dinuba, a California municipal corporation ("CITY") and _____, a [California corporation, partnership, LLC or LLP, or individual] ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of one (1) year from the date of execution of this AGREEMENT, as first shown above. Such term may be extended upon written agreement of both parties to this AGREEMENT.

SECTION 2. SCOPE OF SERVICES.

CONSULTANT agrees to perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT.

SECTION 3. ADDITIONAL SERVICES.

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or City Manager of CITY. CONSULTANT shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay CONSULTANT the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT. The total compensation, including reimbursement for actual expenses, shall not exceed _____ dollars (\$_____), unless additional compensation is approved in writing by the City Council or City Manager.

(b) Each month CONSULTANT shall furnish to CITY an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. CITY shall independently review each invoice submitted by the CONSULTANT to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by CITY, the original invoice shall be returned by CITY to CONSULTANT for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by CONSULTANT which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT'S invoice.

(d) Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

CITY may inspect and accept or reject any of CONSULTANT'S work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT'S work within sixty (60) days after submitted to CITY. CITY shall reject work by a timely written explanation, otherwise CONSULTANT'S work shall be deemed to have been accepted. CITY'S acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT'S work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, sections 15 and 16, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files,

files and other documents.

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

(a) CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT'S performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT'S address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT'S business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors interest and authorized representatives.

SECTION 8. STATUS OF CONSULTANT.

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf

of CONSULTANT shall at all times be under CONSULTANT'S exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT'S officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT'S officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT'S officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

SECTION 11. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

SECTION 12. UNAUTHORIZED ALIENS.

CONSULTANT hereby promises and agrees to comply with all of the provisions of

the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should the any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

SECTION 13. CONFLICTS OF INTEREST.

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT'S performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONSULTANT is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 14. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to persons or entities other than CITY without prior written authorization from the City Manager, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided

CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reim-bursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT'S conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

SECTION 15. INDEMNIFICATION.

(a) CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the CONSULTANT'S performance of or failure to perform any services under this AGREEMENT or by the negligent or willful acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT'S expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification

in order to be so indemnified. The insurance required to be maintained by CONSULTANT under Section 16 shall ensure CONSULTANT'S obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) The provisions of this section do not apply to CLAIMS occurring as a result of the CITY'S sole negligence or willful acts or omissions.

SECTION 16. INSURANCE.

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. CONSULTANT agrees to provide CITY with copies of required policies upon request.

SECTION 17. ASSIGNMENT.

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this Agreement or any portion of this AGREEMENT or the performance of any of CONSULTANT'S duties or obligations under this AGREEMENT without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

SECTION 18. CONTINUITY OF PERSONNEL.

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT'S staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT'S staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

SECTION 19. TERMINATION OF AGREEMENT.

(a) CITY may terminate this AGREEMENT, with or without cause, at any time

by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(b) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY.

(c) If either CONSULTANT or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT, or CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT'S possession shall be returned to CITY. CONSULTANT shall furnish to CITY a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

SECTION 20. DEFAULT.

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

SECTION 21. EXCUSABLE DELAYS.

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

SECTION 22. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

SECTION 23. NOTICES.

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY:

City Manager

To CONSULTANT:

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 24. AUTHORITY TO EXECUTE.

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

SECTION 25. BINDING EFFECT.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 26. MODIFICATION OF AGREEMENT.

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 27. WAIVER.

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

SECTION 28. LAW TO GOVERN; VENUE.

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

SECTION 29. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 30. ENTIRE AGREEMENT.

This AGREEMENT, including the attached EXHIBITS "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 31. SEVERABILITY.

If an term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF DINUBA

CONSULTANT:

By _____
(Authorized Officer)

By _____
Luis Patlan, City Manager

By _____
APPROVED AS TO FORM:
(Authorized Officer)

Nancy Jenner, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

EXHIBIT "B"
COMPENSATION

EXHIBIT "C"

INSURANCE

- A. Insurance Requirements. CONSULTANT shall provide and maintain insurance, acceptable to the City Manager or City Attorney, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. CONSULTANT shall provide the following scope and limits of insurance:
- a. Workers' compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$500,000 per accident.
 - b. Comprehensive general liability insurance with a combined single limit of not less than \$500,000 per occurrence covering injury to or death of any person or persons, and with limits of not less than \$500,000 per occurrence covering property damage. Such insurance shall 1) name the City of Dinuba, its appointed and elected officials, officers, employees and agents as insured; and 2) contain an endorsement that this insurance may not be canceled or reduced until thirty (30) days after the City Manager has received notice of such cancellation or reduction.
 - c. Comprehensive automobile liability insurance with a combined single limit of not less than \$500,000 covering per occurrence covering injury to or death of any person or persons, and with limits of not less than \$500,000 per occurrence covering property damage. Such insurance shall 1) name the City of Dinuba, its appointed and elected officials, officers, employees and agents as insured; and 2) contain an endorsement that this insurance may not be canceled or reduced until thirty (30) days after the City Manager shall have received notice of such cancellation or reduction.
- B. Insurance policies required by this AGREEMENT shall contain the following provisions:
- a. All Policies: Each insurance policy required by this paragraph shall be endorsed and state that the coverage shall not be suspended, voided, cancelled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to George Avila, Business Manager, 405 E. El Monte Way, Dinuba, CA 93618.
 - b. Workers' Compensation and Employer's Liability Coverage: Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights

of subrogation against CITY, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by CONSULTANT.

- c. General Liability and Automobile Liability Coverages:
 - i. CITY, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities CONSULTANT performs; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, and their respective elected and appointed officers, officials, or employees.
 - ii. CONSULTANT'S insurance coverage shall be primary insurance with respect to CITY, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONSULTANT'S insurance.
 - iii. CONSULTANT'S insurance 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.

C. Other provisions:

- a. Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, and its respective elected and appointed officers, officials, employees or volunteers.
- b. CONSULTANT agrees to deposit with CITY, at or before the effective date of this contract, certificates of insurance necessary to satisfy CITY that the insurance provisions of this contract have been complied with. The City Attorney may require that CONSULTANT furnish CITY with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. CITY reserves the right to inspect complete, certified copies of all required insurance policies, at any time.
- c. CONSULTANT shall furnish certificates and endorsements from each subcontractor identical to those CONSULTANT provides.

- d. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY or its respective elected or appointed officers, officials, employees and volunteers or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.
- e. The procuring of such required policy or policies of insurance shall not be construed to limit CONSULTANT'S liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.