



**REQUEST FOR PROPOSALS (RFP)**  
for  
**Professional Consulting Services**

**FOCUSED  
GENERAL PLAN UPDATE**

Date Announced:  
Wednesday, April 14, 2021

**PROPOSALS DUE:**

**Friday, April 30, 2021 no later than 3:00 PM**

CITY OF DINUBA  
Public Works Department  
1088 E. Kamm Avenue  
Dinuba, CA 93618

**CONTACT INFORMATION**

Contact via e-mail preferred  
George Avila, Business Manager  
[gavila@dinuba.ca.gov](mailto:gavila@dinuba.ca.gov)

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## Request for Proposal (RFP) to Provide Professional Consulting Services

**Background:** The City of Dinuba is located in Tulare County in California's San Joaquin Valley. Dinuba is centrally located, approximately 180 miles north of Los Angeles and 200 miles south of the San Francisco Bay Area. The City's economy is driven by agriculture and offers small town charm to its approximate 25,000 residents. Established in 1888 and incorporated in 1906, Dinuba has had a consistent growth pattern ranking fourth in population of the eight incorporated cities in Tulare County. Although agriculture is Dinuba's predominate economic activity, the community has had an active commercial and industrial base for many years. Various parcels of land have been annexed for an expanding industrial park. Currently the industrial park boasts the largest nationwide Hispanic owned enterprise, a major retail distribution center and several other noteworthy industries.

The focused General Plan Update will be funded in large part with State Senate Bill 2 (SB2) Planning Grants Program and Local Early Action Planning Grants Program (LEAP) dollars requiring the selected Consultant to comply with all applicable local and State regulations.

### 1. Project Description

The focused Dinuba General Plan Update will primarily designate new areas for residential development in the community, particularly around the proposed new Dinuba High School in the southwest part of the City's Sphere of Influence, as well as the downtown area and several other locations. The focus of the update will be on the Land Use Element, with other elements reviewed and updated as necessary to ensure they are consistent with the updated Land Use Element.

The future high school area (southwest corner of Kamm and Alta Avenues) is currently designated for industrial development in the City's General Plan, which is not conducive or complementary to the development of a high school. The City intends to designate significant amounts of residential development around the future high school, (including higher density development that is affordable, immediately adjacent to the school) to promote walking and bicycling and ease of access.

Planned residential designations in the future high school area will include:

- Approximately 20 acres of High Density Residential designations (at 20 units per acre yielding approximately 340 dwelling units).
- Approximately 120 acres of Medium High Density Residential (averaging 7.5 units per acre) yielding up to 745 dwelling units.
- Approximately 500 acres of Medium Density Residential, (up to 4.5 units per acre) yielding up to 752 dwelling units.

Lower density residential development will be designated further away from the high-school campus, with neighborhood parks interspersed to promote open space within walking distance.

A commercial node is also desired so that residents can walk or cycle to shopping instead of using their automobiles. This will help promote affordability within the neighborhood as well as achieving air quality and health and fitness objectives for the community. The commercial component may also be designated to allow for mixed use development, thereby allowing for the development of additional affordable housing.

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Once the General Plan update is complete, the City will follow up with re-zoning of parcels that are re-designated in the General Plan.

In addition to the foregoing, the General Plan update shall address the following areas and issues:

**East El Monte area:** The City previously commissioned QK Consultants to prepare an analysis and recommendations to revitalize a 170-acre area along East El Monte Way, centered around the Mercantile Row Shopping Center. A part of the recommendation is to redesignate and rezone certain parcels in this area.

**Downtown/Mixed Use:** The City has expressed strong interest in allowing mixed use developments (a combination of commercial and residential uses) throughout the community, particularly in the downtown area. In addition, the Update should incorporate feasible recommendations from the “Downtown Dinuba Concept Design Plan and Development Strategy” prepared by the 2018 Cal Poly Planning and Design Studio team.

**New Civic Center.** The City desires to establish a new civic center complex in the downtown at the corner of Fresno and L Street. The General Plan update should establish land use designations and policy language for this facility.

**Northwest Community Park and Trail.** The existing General Plan designates a large future regional park along with a future walking/bicycling path along the Traver Creek corridor in the northwest part of the planning area. The General Plan update should examine these designations to ensure they are still feasible and make adjustments as needed.

**Ridge Creek Golf Course.** The City’s golf course is currently designated as a Public Facility and should be designated as a recreational facility. The General Plan should also designate an extension of the Traver Creek trail south along the golf course, connecting east to the existing trail along Sierra Avenue.

**Sphere of Influence Adjustment.** The City wants to examine trading out some areas of the northern Sphere of Influence (SOI) boundary to allow for potential additions in the southern SOI boundary (where more development is expected to occur).

**Circulation Element.** The Circulation Element should be updated to designate roundabouts at key intersections around the community, including Nebraska/Alta, Kamm/Alta, W El Monte/Road 56, East El Monte/Road 92 and S. Alta/Road 400. The City is also interested in promoting the concept of Active Alleys in the downtown area.

As required by State law, the update must also include an Environmental Justice Element. This element must be consistent with all other elements.

### **Zoning Ordinance Update**

A complete update of the City’s Zoning Ordinance is also proposed, and will incorporate form-based zoning standards that will help to facilitate affordable residential and commercial development to promote livable, walkable neighborhoods. Key considerations in the Zoning Ordinance Update will include:

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- A review and update of permitting procedures to identify opportunities to streamline review, thereby allowing staff review and approval for projects that would normally have to go before the Planning Commission (and City Council). This can also help to exempt projects from environmental review under CEQA.
  - A review and update of permitted land use tables, with the goal of transitioning residential and other uses from discretionary approvals to ministerial approvals (or at least a lower approval authority).
  - Clarification and improvements to overall organization of the ordinance and development standards to facilitate residential development. This will include adding graphic elements to illustrate development standards and permit procedures, for greater understanding by the public.
  - Any other focused updates the City needs to make for compliance with housing requirements (e.g. ADU ordinance updates, supportive housing, etc.).

## **2. Professional Scope of Services**

- I. Existing Conditions, Opportunities
- II. Public Participation & Consensus
- III. General Plan Elements
- IV. Master EIR
- V. City Council and Planning Commission Meetings
- VI. Project Management
- VII. Web Page
- VIII. LAFCO Service Review
- IX. Zoning Ordinance & Map Amendment
- X. Meeting Attendance & Research

## **3. Selection Process**

Proposals will be reviewed by a Selection Committee. Consultants are encouraged to keep their proposals brief and relevant to the specific work required. The Committee will rank the consultants based upon the materials submitted. At the discretion of the Selection Committee, some consultants may be invited to participate in an interview to further discuss qualifications. After interviews, if applicable, the Selection Committee will make a recommendation to the City Manager. If City Manager is agreeable to Selection Committee's recommendation, the selected firm will be contacted and the City will initiate "Best and Final Offer" contract negotiations. If the Selection Committee is able to arrive at a mutually agreeable Best and Final Offer, the selected firm will be recommended for contract award at the earliest City Council meeting convenient to the City. Final contract award shall be contingent on City Council approval.

The successful consultant will be expected to enter into the attached Professional Services Agreement (PSA) (Attachment 1). Any consultant with issues or challenges pertaining to the City's standard PSA must advise the City as part of the consultant's proposal. It shall be the responsibility of prospective consultants to review all sections and exhibits of the PSA, including insurance requirements. Otherwise, the City will assume that the consultant is able to enter into the PSA and fulfill all terms and requirements set therein.

## **4. Proposal Format**

Proposals shall include the following items:

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**A. Cover Letter**

- i. The name, address, phone number, and email address of consultant's contact person for the remainder of the selection process.
- ii. Any qualifying statements or comments regarding the consultant's proposal, the information provided in the RFP, or the proposed PSA.
- iii. Identification of sub-contractors and their responsibilities.

**B. Company Qualifications**

This section shall not exceed two pages. Provide: the firm's general qualifications, location of the office from which services will be provided, licenses and certifications possessed by firm; the type of entity, the names of the firm's officers, principals and owners.

**C. Discipline Specific Experience**

A list of similar projects completed, including a brief scope of work and other relevant information no older than five years; and

**D. References**

Provide a minimum of three (3) public agency references.

**E. Project Staff Qualifications**

- i. Provide a Project organization chart showing the names and responsibilities of key personnel to be assigned to provide the subject services.
- ii. Provide the total number of hours each person on the project team will work on each project task.
- iii. Provide resumes for each team member assigned to perform services for project.

**F. Project Schedule**

Show milestones that include all work by sub-consultants and progress submittals to the City. For scheduling purposes, show 10 working days for City review of each submittal. The maximum length of the contract shall be 18 months.

**G. Cost Proposal**

Submit a chart identifying each task required to complete the identified scope of work. Each task shall include the total hours each Project Team member will work on the task, their hourly rate and a total cost per task. A grand total for all tasks including an estimate for deliverables shall be provided. This grant total shall be identified as a "not-to-exceed" fee in the Professional Services Agreement the City will execute with the selected consultant.

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Proposals should be submitted via email to George Avila at [gavila@dinuba.ca.gov](mailto:gavila@dinuba.ca.gov) by no later than **3:00PM on Friday, April 30, 2021.**

## **5. Consultant Selection Procedure & Schedule**

Selection Procedure - The City will evaluate proposals submitted, and select the most qualified consultant for the services being offered. In evaluating the proposals, the City will consider and weigh the following factors:

- 15% - Completeness of the proposals and compliance with the required format.
- 35% - Experience and qualifications of the firm and the Project team members.
- 30% - Approach and understanding to provide services in an efficient and cost effective manner and in compliance with applicable standards and requirements.
- 10% - Cost Proposal.
- 10% - References and performance records on similar assignments.

Selection Schedule - The following estimated schedule will be used for the procurement of services:

- A. Request for Proposals Announced ..... April 14, 2021
- B. Deadline for Questions..... April 22, 2021
- C. Request for Proposals Due ..... April 30, 2021
- D. Contract Negotiations Completed..... May 5, 2021
- E. Award of Contract by City Council..... May 11, 2021

The City reserves the right to alter the schedule as may be necessary.

## **6. General Conditions**

- A. The City of Dinuba shall not be liable for any pre-contractual expenses incurred by any proposing firm (proponent) in response to this RFP, nor shall any proponent include such expenses as part of the proposed cost. Pre- contractual expenses include any expense incurred in preparing a proposal and negotiating any terms with the City.
- B. The City reserves the right to withdraw this RFP at any time without prior notice and to reject any and all proposals submitted without indicating any reasons. Any award of contract for services will be made to the Consultant that is best qualified and most responsive in the opinion of the City.
- C. The City reserves the right to reject any and all Proposals. The City expressly reserves the right to postpone the opening of submittals for its own convenience and to reject any and all submittals responding to this RFP.
- D. Consultant must agree to indemnify, hold harmless and defend the City, its officers, agents and assigns from any and all liability or loss resulting from any suits, claims, or actions brought against the City which result directly or indirectly from the wrongful or

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negligent actions of the consultant in the performance of the Agreement.

- E. Consultant, at its own cost and expense, shall procure and maintain insurance coverages as required by the Professional Services Agreement (Agreement).
- F. Consultant will be required to comply with all applicable labor laws including those applicable to equal opportunity employment provisions.
- G. Consultant is required to have in full force and effect all licenses and permits required by all applicable laws. Consultant shall obtain a City of Dinuba Business License during the term of the Agreement.
- H. Consultant, its agents, and employees shall comply with all laws, ordinances, rules and regulations of the Federal and State governments, the County of Tulare, the City of Dinuba and all governing bodies having jurisdiction applying to work done under the Agreement.
- I. The City reserves the right to negotiate special requirements and proposed service levels using the selected proposal as a basis. Compensation for services will be negotiated with the Consultant.
- J. Consultant shall not sublet any portion of the Agreement with the City without express written permission of the Director of Public Works or his/her designated representative.
- K. The City reserves the right to review and approve qualifications of subcontracting firms or persons. Substitutions that are not approved are considered sufficient grounds for termination of the Agreement.
- L. The City, or any of its duly authorized representative, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time and work records, employment records, or other records relating to personnel employed by the Consultant. Such material, including pertinent cost accounting, financial records and proprietary data, will be kept and maintained by Consultant for a period of at least four years after completion of a Consultant's performance unless the City's written permission is given to dispose of same prior to that time.
- M. All response to this RFP shall become the property of the City of Dinuba and will be retained or disposed of accordingly.
- N. No amendments, additions, or alterations shall be accepted after the submission deadline.
- O. All documents, records, designs, and specifications developed by the Consultant in the course of providing services to the City, shall become the property of the City. Anything considered proprietary should be so designated by the Consultant.
- P. Acceptance by the City of any qualifications submitted pursuant to this RFP shall not constitute any implied intent to enter into an Agreement for services.
- Q. The City reserves the right to issue written notice to all interested parties of any change in the qualifications submission schedule should the City determine, at its sole discretion, that such changes are necessary.

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## 7. Protest Procedures

Because it is essential that bidders, offerors, and contractors have confidence in the procurement procedures for soliciting and awarding contracts, it is the policy of the Purchasing Division to offer all bidders, offerors, and contractors the opportunity to appeal award of purchase of contracts. The following procedures shall apply in regard to appeals by prospective bidders, offerors, or contractors:

- a. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of an Agreement may protest to the City of Dinuba Purchasing Agent and/or Administrative Services Director. Appeals must be submitted in writing within five (5) working days after such aggrieved person knows, should have reasonably known, or could reasonably be expected to know of the facts giving rise thereto.
- b. Appeals shall be submitted to the City of Dinuba Purchasing Agent, 405 E. El Monte Way, Dinuba, CA 93618. Appeals should address only areas regarding proposal.



**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") \_\_\_\_\_ ("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

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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

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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

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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

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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 reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorney's 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

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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

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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.

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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:

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

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



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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).

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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

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EXHIBIT "A"

SCOPE OF SERVICES

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EXHIBIT "B"  
COMPENSATION

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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.

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- 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.