



REQUEST FOR PROPOSALS

FOR

**MANAGEMENT AND OPERATION OF THE  
CITY OF DINUBA TRANSIT SYSTEM  
DINUBA AREA REGIONAL TRANSIT (DART)**

JULY 12, 2019

A copy of this RFP is posted on the City of Dinuba website at [www.dinuba.org/public-works](http://www.dinuba.org/public-works) and [www.ciplist.com/usa/?CA#counties](http://www.ciplist.com/usa/?CA#counties).

Please direct all questions regarding this RFP or the submission of proposals in writing to:

Mr. George Avila, Business Manager  
City of Dinuba, Public Works Department  
1088 E. Kamm Avenue, Dinuba, CA 93618  
Telephone: (559) 591-5924; Email: [gavila@dinuba.ca.gov](mailto:gavila@dinuba.ca.gov)

**CITY OF DINUBA**  
**REQUEST FOR PROPOSALS**  
**FOR MANAGEMENT AND OPERATION OF TRANSIT SERVICES**

Pre-Proposal Conference: (Non-mandatory) Thursday, July 25, 2019, at 1:30 p.m.  
City of Dinuba Public Works Department, Conference Room  
1088 E. Kamm Avenue, Dinuba, California

Submittals: One (1) original, four (4) printed copies, and one (1) electronic version on a flash drive must be received on or before 4:00 p.m., Tuesday, August 13, 2019. (Proposals received after the time and date stated above shall be deemed unresponsive and returned unopened to the proposer.)

Address: Mr. George Avila, Business Manager  
City of Dinuba Public Works Department, Conference Room  
1088 E. Kamm Avenue, Dinuba, California

Envelope Label: "CITY OF DINUBA BID" *(in large letters)*  
"MANAGEMENT AND OPERATION OF TRANSIT SERVICES  
TECHNICAL AND COST PROPOSAL"

Inquiries: Questions related to this RFP should be directed to:  
  
Mr. George Avila, Business Manager, Public Works Department  
Telephone: (559) 591-5924  
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## **PART I: SPECIFIC INSTRUCTIONS, CONDITIONS & NOTICES TO PROPOSERS**

The following shall be considered an essential part of this Request for Proposals (RFP).

### **A. General Information**

Proposals are requested by the City of Dinuba, referred to as "CITY" herein, for the management and operation of general public flexroute, Dial-A-Ride, and Dinuba Connection fixed route transit service to the City of Reedley, hereinafter referred to as "DART" (Dinuba Area Regional Transit). The City of Dinuba provides and maintains all transit vehicles. For purposes of this RFP, independent contractors interested in submitting proposals are referred to as "PROPOSER" and/or "CONTRACTOR".

The base period for services is five (5) years from November 1, 2019 to August 31, 2024 with five (5), one (1) year extension options. The CITY also may extend the agreement on a month-to-month basis up to a maximum of six (6) months.

Incorporated into this RFP is a DRAFT AGREEMENT which specifies the SCOPE OF WORK required. The successful PROPOSER to whom an award is made will be required to enter into an agreement with CITY substantially similar to the DRAFT AGREEMENT.

All proposals shall be for the complete management and operation of DART, as specified and in all respects, so that the proposal contemplates and ensures a complete TURNKEY SYSTEM such that nothing remains to be purchased, provided or supplied by CITY, other than as noted within the provisions of this RFP. It is understood by each PROPOSER that this RFP requires, in all cases, all elements of a complete operating system for DART.

Any changes to the proposed requirements will be made by addenda which PROPOSERS are responsible for obtaining. PROPOSERS are encouraged to submit any questions or items for clarification in writing to the City of Dinuba Public Works Department.

The award of a Contract is based on best value and subject to the approval of City Council. The CITY reserves the right to reject any and all proposals.

This solicitation for proposals does not commit the CITY to enter into a Contract or to pay any costs incurred in the preparation of responses to this RFP. The CITY reserves the right to accept or reject all proposals, and to negotiate with any qualified source, or to cancel in part or in its entirety this RFP. It may accept the proposal that it considers to be in the interest of the CITY, with or without negotiation.

Any proposal which is incomplete, conditional, obscure, or which contains irregularities of any kind, may be cause for rejection.

All proposals received shall become the property of the CITY and are subject to public disclosure. Those parts of a proposal which are defined by the PROPOSER as business or trade secrets as the term is defined in California Civil Code, Section 3426.1, and are reasonably marked Trade Secrets, Confidential or Proprietary and placed in a separate envelope shall not be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law or court order.

PROPOSERS who indiscriminately and without justification identify most of their proposals as exempt from disclosure may be deemed non-responsive. Proposals, excluding such marked confidential information, will be available for review after posting of CITY staff recommendation.

The CITY encourages all persons to apply and does not discriminate on the basis of age, race, religion, color, sex, disability or national origin.

#### **B. Documents Required After Award**

Upon the CITY'S acceptance of a proposal, the successful PROPOSER will be required to execute and return a Contract furnished by the CITY, along with a Performance Bond in the amount of ten (10) percent of the annual AGREEMENT, all certificates of insurance within fifteen (15) days from the date of the Notice of Award, and forms included in the RFP. Should the successful PROPOSER fail to execute the AGREEMENT, the CITY has the right to accept the proposal of the PROPOSER offering the next best value to the CITY.

#### **C. Verbal Agreement or Conversation**

No prior, current, or post-award verbal conversations or agreements with any officer, agent, or employee of the CITY shall affect or modify any terms, modifications or obligations of this RFP or any contract resulting from this procurement.

#### **D. Protest Procedures and Appeal (of City of Dinuba's decision) to Caltrans**

**Pre-Award Protests.** Protests concerning the City of Dinuba's pre-award process may be submitted in writing (via express mail or email) to Mr. George Avila, Business Manager, Public Works Department, 1088 E. Kamm Avenue, Dinuba, CA 93618 or at [gavila@dinuba.ca.gov](mailto:gavila@dinuba.ca.gov), by 3:00 p.m., Tuesday, July 30, 2019. Mr. Avila will respond to these protests by Tuesday, August 6, 2019 by email.

**Post-Award Protests.** Protests concerning the City of Dinuba's post-award process may be submitted in writing (via express mail or email) to Mr. George Avila, Business Manager, Public Works Department, 1088 E. Kamm Avenue, Dinuba, CA 93618 or at [gavila@dinuba.ca.gov](mailto:gavila@dinuba.ca.gov), by 3:00 p.m., Tuesday, August 20, 2019. Mr. Avila will respond to these protests by Tuesday, August 27, 2019, by email.

**Appeal to Caltrans.** Under limited circumstances, after an interested party has exhausted its administrative remedies at the City of Dinuba Public Works Department level, the interested party may appeal the County's decision to the California Department of Transportation (Caltrans). The deadline for pre-award protest appeals to

Caltrans is by 3:00 p.m., Tuesday, July 30, 2019. The deadline for post-award protest appeals to Caltrans is 3:00 p.m., Tuesday, August 20, 2019.

Caltrans limits review of appeals to:

- (1) City of Dinuba's procedural failures (i.e., City of Dinuba does not have protest procedures, or has not complied with its protest procedures, or has not reviewed the protest when presented an opportunity to do so.)
- (2) Violations of Federal law or regulations
- (3) Violations of State or local law or regulations

Appeals to Caltrans must:

- (1) State the name and address of the interested party.
- (2) Identify City of Dinuba as responsible for the RFP process.
- (3) State the grounds for appeal, with supporting documentation.
- (4) Include a copy of the protest filed with City of Dinuba and a copy of City of Dinuba's decision.
- (5) State the relief sought from Caltrans.

Direct appeals (via mail or fax only) to:

California Department of Transportation  
Division of Rail & Mass Transportation, MS 39  
PO Box 942874  
Sacramento, CA 94274-0001

Send a copy (via mail or fax only) of the appeal to City of Dinuba.

### **Appeal of Caltrans' Determination to the Federal Transit Administration**

Appeals to the FTA: All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee (Caltrans) before pursuing a protest appeal with FTA.

Reviews of protests by FTA will be limited to:

- (1) a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) violations of Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA Region IX or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

### **E. Labor Protection Requirements**

#### **Compliance with California Labor Code Sections 1070 et seq.**

Contractor and any subcontractors will be responsible for full compliance with California Labor Code Section 1070, et seq. The law establishes incentives to those submitting proposals for public transit service contracts, including those involving paratransit services that will retain qualified employees of the prior contractor or its subcontractor to perform the same or similar work for a period of at least ninety (90) days. These incentives protect against the significant economic dislocation of qualified public transit employees. Pursuant to the law, the Proposer must declare in its proposal whether or not it and its subcontractor(s) will retain the employees (as defined by California Labor Code Section 1071(d)) of the prior contractor or subcontractor(s), except for reasonable and substantiated cause, for a period of at least 90 days. The CITY will give a 10 (ten) percent preference to any Proposer that declares that it will retain such employees. The successful CONTRACTOR and its subcontractor(s) that declares it will retain such employees will be responsible for the duties and obligations provided in California Labor Code Section 1072, including making a written offer of employment to each employee to be retained and in the event fewer employees are necessary under the new contract, retaining qualified employees by seniority within the job classification.

Nothing in California Labor Code Section 1070 et seq. requires CONTRACTOR or the CITY to pay the same wages or offer the same level of benefits provided by the prior contractor or subcontractor(s). The successful CONTRACTOR will also be subject to the enforcement provisions of California Labor Code Section 1073 for any violations of this law.

Prior to the release of the request for proposals/bids, incumbent contractor and its subcontractor(s) shall provide to the CITY (to provide to all bona fide bidders) the name, address, date of hire, wage, benefit level and job classification of each employee employed at the locations covered by the incumbent CONTRACTOR'S contract.

In order to facilitate the provisions of the law, the CITY requires that upon the commencement of the Agreement and throughout the full term of the Agreement, that CONTRACTOR and its subcontractor(s) maintain a list of all employees providing the services required under the Agreement, which includes the information above and must indicate which employees were employed by the prior contractor and its subcontractor(s), if any. CONTRACTOR and its subcontractor(s) must also maintain a list of all employees of the prior contractor and its subcontractor(s) that were not retained by CONTRACTOR or its subcontractor(s), and such list must indicate the reasons why such employees were not retained.

Upon request from the CITY, CONTRACTOR and its subcontractor(s) must provide such lists to the CITY within ten (10) days of such request. The CITY has the ability to request such lists throughout the term of the Agreement.

CONTRACTOR shall be responsible for defending, and shall hold the CITY harmless from, any claims or controversies alleging any violation or breach of Labor Code Section 1070 et seq., whether made by CONTRACTOR'S own employees, the employees of its subcontractor(s), or employees of the prior contractor or its subcontractor(s), arising from or related to the terms and conditions of employment of employees hired to work for CONTRACTOR as of the effective date of this Agreement. Notwithstanding any other provision of this Agreement, no cost of liability for which CONTRACTOR is

responsible under this paragraph shall be deemed an allowable cost payable to CONTRACTOR or claim or liability for which CONTRACTOR is entitled to indemnification or reimbursement from the CITY. CONTRACTOR shall be exclusively responsible for satisfaction of all obligations that may be owed to its employees of the prior contractor, pursuant to Labor Code Section 1070 et seq., both during and subsequent to the term of the Agreement.

At least six (6) months before the end of the Agreement, CONTRACTOR and its subcontractor(s) will be required to provide the CITY a list of employees working at the City location(s). This list of employees shall indicate the length of service of each employee, their job title and description, and their current salary and benefits offered and accepted. This information may be distributed by the CITY to future Proposers for a new contract that will commence whenever the current contract term ends. CONTRACTOR and its subcontractor(s) must provide updates on a quarterly basis of the employee lists after the original employee list has been submitted. CONTRACTOR'S and its subcontractors' obligation to provide monthly updates of the employee lists will last until the end of the Agreement term. If a new contract is awarded to a different contractor at the end of CONTRACTOR'S Agreement, CONTRACTOR must provide to the new contractor the name, address, date of hire, wages, benefit level, and job classification of each employee employed at CONTRACTOR'S locations covered by CONTRACTOR'S Agreement within three working days after CONTRACTOR has been notified by the identity of the new contractor.

### **Compliance with Federal Transit Employee Protections**

CONTRACTOR agrees to comply with applicable Federal Transit Employee Protection requirements as follows (Section 13(c)). CONTRACTOR shall comply with Federal Transit Employee Protections as detailed in 49 U.S.C. 5311 and Federal Department of Labor guidelines in 29 C.F.R. Part 215. Proposer shall describe in its proposal its hiring policies and procedures, including its approach and philosophy to minimize employee turnover and to maintain a stable work force.

### **Compliance with Section 13(c) of Federal Transit Law (49 U.S.C. 5333.)**

Proposers are hereby notified that the CITY receives federal mass transit funds, and that, under Section 13(c) of the Federal Transit Act (49 U.S.C. section 5333(b)), it must protect covered mass transit employees affected by any "project" that the CITY initiates that uses the federal mass transit money. For covered employees, this includes: (a) continuing their collective bargaining rights; (b) protecting them against a worsening of their employment conditions (including reductions in wages and benefits); (c) providing priority of reemployment if the employee is laid off or his job is eliminated; and (d) providing paid training.

No provision of the CONTRACTOR'S Agreement will require CONTRACTOR to dismiss or displace any employee or to rearrange the workforce covered by any Section 13(c) agreement as a result of any "project" as defined by the Section 13(c) agreements to which CONTRACTOR hereby agrees to be bound. The section 13(c) agreement requires the CITY to preserve and continue existing collective bargaining agreements, subject to any negotiated changes, and to staff positions for the operation of service in



compliance with the 13(c) agreements. CONTRACTOR will be responsible for defending, and shall hold the CITY harmless from, any claims or controversies alleging any violation or breach of the Section 13(c) agreement (including alleged worsening of their employment conditions), whether made by CONTRACTOR'S own employees, the employees of its subcontractors, employees of any former contractor of the CITY, or any other employees that allege to have been affected by the project, arising from or related to any organization or reorganization of workforce or any modification of the terms and conditions of employment of employees hired to operate the service on the effective date of the Agreement or as a result of any increases or reductions in the level of those services thereafter.

Notwithstanding any other provision of the Agreement, no cost or liability for which CONTRACTOR is responsible under this paragraph shall be deemed an allowable cost payable to CONTRACTOR or a claim or liability for which CONTRACTOR is entitled to indemnification by the CITY.

The successful Proposer, if different from the present CONTRACTOR, will therefore be required to offer employment to employees in good standing of the present CONTRACTOR who may be laid off as a result of the contract award, for any new positions created locally as a result of the contract award, and for which said employees are qualified. Said employees shall be rehired at not less than their current level of salary (or wages) and benefits as of April 1, 2019.

#### **F. Disadvantage Business Enterprise (DBE) and DBE Goal and Submission of DBE Information and Participation**

1. This solicitation and resultant Agreement is financed in whole or in part with federal funds and therefore subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In compliance with 49 CFR 26, Caltrans set an overall annual DBE goal comprising both race neutral and race conscious elements. To ensure equal participation for DBE groups specified in 49 CFR 26.5, Caltrans specifies a contract goal for DBE participation. The required goal for DBE participation in this solicitation is **0.3 percent (0.3%)**.
2. To ensure applicable participation of the specified DBEs as defined in 49 CFR 26.5, this solicitation's goal applies to all certified DBEs. Only certified DBE participation will count toward the Agreement goal for this solicitation. DBE participation will count towards Caltrans' federally mandated overall annual DBE goal. In order to ascertain whether its overall annual DBE goal is being achieved, Caltrans tracks DBE participation on all federal-aid contracts.
3. It is the Bidder's/Proposer's responsibility to verify that the DBE firm is certified as a DBE by the specified bid submittal due date and time. For a list of DBEs certified by the California United Certification Program (CUCP), go to: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)
4. Proposer shall reference Form H (two forms) for detailed information and

complete the required forms, Bidder/Proposer *Disadvantaged Business Enterprise DBE Information ADM-0227f* (Form H-1) and/or Bidder/Proposer *Disadvantaged Business Enterprise DBE Good Faith Efforts Documentation ADM-0312f* (Form H-2). Required forms will be made a part of the Agreement. Failure to meet the DBE goal or Good Faith Effort requirements and provide required DBE participation may result a bid/proposal being rejected as non-responsive.

5. The requirement to advertise for the purpose of identifying potential DBEs is waived.

In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal and/or make a “Good Faith Effort” (GFE) to meet the contract goal for DBE participation as established for this AGREEMENT.

*Failure to complete and submit the required DBE information and forms will be grounds for finding the bidder/proposer non-responsive and cause for rejection of the bid/proposal.*

## **G. Selection and Award**

A contract will be awarded on a best-value basis and made to the Proposer that submits the proposal considered most advantageous by the CITY’S Evaluation Committee based on evaluation criteria set forth in H. below.

The CITY reserves the right to withdraw from this RFP at any time without prior notice. Further, the CITY reserves the right to modify the RFP schedule described below. The CITY also makes no representations that any contract will be awarded to any Proposer responding to this RFP. The CITY further expressly reserves the right to reject any and all proposals without indicating any reasons for such rejection(s), to waive any irregularity or informality in any proposal or in the RFP procedure, and to be the sole judge of the responsiveness of any Proposer and of the suitability of materials and/or services to be rendered.

## **H. Proposal Evaluation Criteria**

Responsive proposals will be evaluated based on a “best value” basis in accordance with the following criteria. Categories A and B will each receive seventy (70) percent of the total value, and Category C will be assigned thirty (30) percent.

### **CATEGORY A: EXPERIENCE AND QUALIFICATIONS (40%)**

1. Operations and maintenance experience and history with similar and/or nearly transit contracts.
2. Understanding RFP requirements.
3. Experience with integration of innovative transit technologies and strategies.
4. Demonstrated local and regional management support and proactive responsiveness.

**CATEGORY B: FINANCIAL (30%)**

1. Financial stability of Proposer.
2. Reasonableness of price proposal and allocation of contract resources.

**CATEGORY C: ORGANIZATION AND MANAGEMENT (30%)**

1. Demonstrated public transit management and operations capabilities and performance.
2. Qualifications and experience of the proposed management staff, as applicable (i.e., Road Supervisor) and other personnel, as applicable.
3. Commitment and approach to maximizing the safety, quality and efficiency of public transit operations.
4. Demonstrated understanding and commitment to equitable labor management practices, Equal Employment Opportunity, and non-discrimination in the selection of subcontractors and in the provision of public transit services.

**I. RFP Schedule**

The schedule for procurement is as follows:

Issue Request for Proposals	July 12, 2019
Pre-Proposal Conference	July 25, 2019
Deadline for RFP Questions/Clarifications	August 6, 2019
Proposals Due	August 13, 2019
Interviews (If Necessary)	August 19, 2019 (week of)
Best-and-Final Offer	August 26, 2019 (week of)
Notification of Intent to Award	September 3, 2019
Council Approval	September 24, 2019
Service Start*	November 1, 2019

\* Subject to Caltrans review; October 1, 2019 if current contractor is selected.

## **PART II: REQUIRED QUALIFICATIONS OF CONTRACTOR**

Proposals for the management and operation of DART will be evaluated by the CITY to determine whether or not they meet the following required qualifications. Proposals which fail to provide documentation responding to all of the required qualification items set out below may be considered non-responsive and will be rejected.

### **A. Experience**

In order to be considered eligible and qualified, PROPOSER must have a minimum of five (5) years of experience in the field of providing public transit services for systems similar to that contemplated herein. The PROPOSER should demonstrate familiarity with the management and operation of flexroutes, and demand-response and fixed route services, including all related tasks such as vehicle control and dispatch, training, safety, etc. The PROPOSER must have the capability to provide qualified personnel to manage and operate the system.

A statement of qualifications demonstrating the foregoing and listing the PROPOSER'S experience in the public transit field, together with the names, addresses and telephone numbers of at least three other clients, shall be furnished with the proposal. Clients referenced should be located in California if possible.

### **B. Organization**

The PROPOSER should submit a description of the firm's organizational structure, history, legal status (i.e., partnership, corporation, etc.), list of owners and officers, capabilities and experience, and management philosophy. The CITY is particularly interested in the PROPOSER'S approach to managing projects such as DART, organizational resources and expertise available, and the primary businesses or range of diversified businesses in which the PROPOSER'S firm is involved.

### **C. Resource Allocation**

PROPOSER'S proposed allocation of contract resources must demonstrate an understanding of SCOPE OF WORK requirements as described in the DRAFT AGREEMENT and attachments thereto. PROPOSER must submit a detailed budget breakdown on the PROPOSAL FORM.

### **D. Staffing**

The PROPOSER must submit a proposed staffing plan indicating all management and staff employee positions, the number of full-time equivalent (FTE) employees at each position (a full-time equivalent employee equals 2,000 work hours), and salary and benefit schedules for each employee classification. The staffing plan should be specific to each of the five (5) base years contemplated in the DRAFT AGREEMENT.

The staffing plan, at a minimum, must include the resume of the proposed Road Supervisor showing all relevant education, training and experience.

PROPOSER should also describe other personnel to the extent that their particular experience, skill and availability will affect the performance of this contract.

PROPOSER should submit a complete description of the employee benefit package that will be provided including participation costs and any incentive or motivational programs.

#### **E. Management and Personnel Policies**

The PROPOSER must be able to demonstrate a familiarity with modern management practices, a record of equitable labor management practices, and a commitment to Equal Employment Opportunity practices.

#### **F. Accounting and Reporting**

The PROPOSER must propose an adequate management information system to implement and maintain the data collection, accounting, and reporting requirements of the DRAFT AGREEMENT. Examples of reports must be included with the proposal.

#### **G. Insurance and Bonding**

The insurance and bonding requirements of this RFP, including the DRAFT AGREEMENT, will be considered minimum requirements and must be complied with in every respect.

Certificates of insurance are to be received and approved by the CITY prior to commencing any work under this AGREEMENT. Should CONTRACTOR cease to have insurance as required during any time, all work by CONTRACTOR pursuant to this AGREEMENT shall cease until insurance acceptable to the CITY is provided.

#### **H. Financial Responsibility**

All PROPOSERS shall provide a financial statement, as prepared by a certified public accountant, for their prior fiscal year, consisting of a balance sheet, profit and loss statement and such other financial statements as may be appropriate, which shall demonstrate that the PROPOSER possesses adequate financial ability and stability to enable the PROPOSER to fulfill their obligations in connection with the management and operation of DART under the terms of the AGREEMENT. If requested by the PROPOSER, such information shall be treated as confidential by the CITY and shall not be subject to public disclosure.

#### **I. Screening and Selection Program**

PROPOSER must document PROPOSER'S screening and selection program for vehicle operations employees including a proposed substance abuse screening program in accordance with the SCOPE OF WORK.

## **J. Training and Retraining Program**

PROPOSERS must have a training program that will assure all personnel will meet satisfactory standards of knowledge for operating the system. The training program must be documented in the proposal, and shall explain how replacement personnel are to be trained due to turnover without detriment to DART service or the quality of training.

## **K. Transition Plan**

Each PROPOSER shall submit a detailed transition plan and time schedule setting forth the sequence of events and associated time requirements proposed to be undertaken from the point of contract award through the first full month of system operations under the new AGREEMENT. At a minimum, the proposed transition plan must include: prior transition experience, key transition or start up staff commitments (individuals and onsite schedules), staff training, and dispatch center readiness plan. The time schedule must provide for the transition to the new CONTRACTOR on **Friday, November 1, 2019**, with no disruption to regular DART services.

## **L. Conflict of Interest**

PROPOSER'S proposal must include a written assurance that there will be no conflict of interest as described herein:

PROPOSER covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service required to be performed under this AGREEMENT. PROPOSER further covenants that in the performance of this AGREEMENT, no person having such interest shall be employed by PROPOSER.

## **M. Other Required Forms**

Each PROPOSER is required to submit a Proposal Form, and Forms A – K. These forms are included in Part IV.

## **PART III: SCOPE OF WORK**

### **SECTION 1: INTRODUCTION**

#### **1.1 Background**

The City of Dinuba, California (herein referred to as the CITY) is seeking proposals from qualified transportation operators (herein referred to as CONTRACTOR and/or PROPOSER) to provide high quality management and operation of the Dinuba Area Regional Transit (DART) general public flexroute (combined fixed route and demand-response), Dial-A-Ride, and regional fixed route transit service within the City of Dinuba and surrounding areas. The City of Dinuba is situated in the Central San Joaquin Valley, 13 miles east of Highway 99, and approximately 28 miles south of Fresno and 200 miles north of Los Angeles. An estimated population of 25,328 resides within Dinuba.

The DART public transit system, established by the CITY in 1994, provides flexroute, Dial-A-Ride, and fixed route transit services within the Dinuba area. Flexroute service was implemented in 2007. The CITY finances DART through a combination of fare revenues, Transportation Development Act (TDA) funds, Federal Transit Administration (FTA) 5311 funds, Measure R (local sales tax revenues), and miscellaneous grants.

The Dinuba City Council is the policymaking body for the DART system. Overall administration, planning, monitoring, and marketing of the system is vested in the CITY'S Public Works Department.

#### **1.2 System Goal**

The system goal of DART is to provide affordable, reliable and efficient transit services that Dinuba residents can count on to get them to school, jobs, medical appointments, shopping and entertainment. To achieve this goal, the CITY requires high quality transit services that are also safe, secure, convenient, accessible, attractive, sustainable, and reliable.

#### **1.3 Planned System Description**

*Note: The service plan to be operated under this contract will differ from current services: the existing Jolly Trolley will no longer be operated, the two flex-routes will be extended on hourly schedules, and Saturday evening service will no longer be provided. No changes will be made in the Dinuba Connection or Dial-A-Ride operations.*

##### **Flexroute: DART**

DART flexroute consists of two hourly overlapping flex-routes serving Dinuba, as well as a general public Dial-A-Ride service. The flex-routes operate a scheduled route with deviations for Dial-A-Ride requests. Walk-on passengers do not require a reservation, but anyone requiring a route deviation must call in advance for a pick up. In addition, a separate Dial-A-Ride vehicle is operated from 7:00 am to 5:00 pm to provide the

necessary deviation request capacity. Telephone requests are accommodated from 30 minutes to one day in advance.

DART flexroute service is a general public transit service. Passengers eligible for reduced ADA fares must be pre-screened and registered. Door-to-door service is provided to ADA registrants if needed while curb-to-curb service is provided to general public passengers. Pick up times are negotiated with ADA registrants in accordance with ADA regulations to avoid ADA trip denials.

Flexroute operating hours will be 7:00 am to 6:00 pm, Monday through Thursday, 7:00 am to 9:00 pm on Friday, and 9:00 am to 6:00 pm on Saturday, excluding six (6) legal holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). Two (2) buses are operated during base level service. This schedule results in an annual total of 6,814 vehicle revenue hours and 85,860 vehicle revenue miles for the two flexroutes, and 2,740 vehicle revenue hours and 30,200 vehicle revenue miles for the additional Dial-A-Ride service. The base fare is \$1.00 for a one-way fixed route trip, while demand-response trips are \$1.00 for an ADA passenger and \$2.50 for general public. Various discounts are provided for persons with disabilities, military, students and seniors. System route maps are provided as Exhibit C.

The PROPOSER shall fully understand the flexroute service concept and must be able to operate these services as defined by the CITY.

#### Regional Fixed Route Service: Dinuba Connection

The Dinuba Connection provides regional fixed route service between the City of Dinuba and the City of Reedley (located in Fresno County). This route, developed in partnership with the Fresno County Rural Transit Agency (FCRTA) and the Tulare County Area Transit (TCaT), operates one bus on 60-minute headways on weekdays over the following periods:

- Early-August through Mid-December: 7:00 am – 9:00 am
- Mid-December through Mid-January: 7:00 am – 3:00 pm
- Mid-January through End-May: 7:00 am – 9:00 pm
- End-May through Early-August: 7:00 am – 3:00 pm

Service is not operated on six (6) legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). This schedule will operate an annual total of 2,970 vehicle revenue hours and 56,540 vehicle revenue miles. The base fare is \$1.50 for a one-way fixed route trip. Seniors and students pay \$1.25.

In total, 12,524 vehicle revenue hours and 172,600 vehicle revenue miles are operated each year.



Exhibit B provides a complete list of vehicles owned by the CITY and provided to the CONTRACTOR for transit operations. All CITY buses operate on compressed natural gas (CNG). All vehicles are wheelchair-lift equipped and comply with the ADA.

Bus stop locations are established by the CITY. The CITY purchases and installs all bus stop signs, benches and related amenities. The CITY has installed 24 passenger shelters/benches to date.

All Dinuba transit services begin service at the Dinuba Transit Center transfer site, located at 180 West Merced Street in downtown Dinuba. Scheduled connections with Tulare County Area Transit (TCaT) services are also established at this transfer site.

#### **1.4 Term of Contract**

The initial five (5)-year base period shall begin on November 1, 2019 and terminate on August 31, 2024. The contract will include the provision of five (5), one (1) year service extension options which will be exercised at the discretion of the CITY.

### **SECTION 2: CITY OF DINUBA DUTIES AND RESPONSIBILITIES**

The CITY shall accept the following responsibilities and perform the following duties with respect to DART. To the extent reasonable and feasible, CONTRACTOR shall assist the CITY in this regard.

#### **2.1 System Planning and Administration**

The CITY shall establish all service parameters and policy. The CITY shall be responsible for all planning activities relative to DART routes, fares, schedules, days and hours of operations, bus stop design and locations, location of street furnishings, preparation of planning documents, budgets, grant applications and related documentation, and other such activities relative to overall system administration.

#### **2.2 Advertising and Promotion**

The CITY shall prepare, place, schedule, and pay for all advertising and promotional materials designed to inform DART patrons of DART operations and to promote ridership.

#### **2.3 Vehicles**

The CITY shall provide to CONTRACTOR the vehicles set forth in Exhibit B entitled "DART VEHICLES". These vehicles shall be used only for activity directly related to the transit system covered by this AGREEMENT, unless otherwise authorized, in writing, by the CITY. All equipment is CNG (compressed natural gas) fueled.

#### **2.4 Fuel**

CITY shall provide CNG and gasoline fuel (at no cost to the CONTRACTOR) from the CITY fueling facilities utilizing a cardlock system, approved by the CITY, which

accurately records all fueling purchases to allow the CITY to reconcile all fuel transactions by date and vehicle number. The CITY fueling facility is located at 1088 E. Kamm Avenue, Dinuba, CA, 93618. The CITY expressly reserves the right in its sole discretion to establish fueling procedures as determined by the CITY to be in the CITY'S best interest. CONTRACTOR and all of its employees shall adhere to any and all operating, administrative, and accounting procedures required by the CITY in connection with all fueling operations.

## **2.5 Dinuba Transit Center – Office Space**

CONTRACTOR management and operations of CITY transit services shall be conducted in office space located in the Dinuba Transit Center located at 180 E. Merced Street, Dinuba, California. CITY shall provide this space, as described in "3.17 - Public Information and Dispatch Center."

## **2.6 Bus Storage and Wash Facility**

CONTRACTOR shall be provided vehicle storage and wash facilities at the CITY'S Corporation Yard, located at 1088 E. Kamm Avenue, Dinuba, CA, 93618. All fleet vehicles shall be parked and/or stored at the Corporation Yard when not in service.

## **2.7 Bus Maintenance**

The CITY shall maintain all transit fleet vehicles. Fleet maintenance shall be performed at the CITY'S Corporation Yard, located at 1088 E. Kamm Avenue, Dinuba, CA, 93618.

## **2.8 Fares and Fare Collection**

All fares of any kind or character to be paid by DART patrons shall be established by the CITY. CONTRACTOR shall assure that each patron pays the appropriate fare prior to being provided transportation service. All cash fares will be paid by patrons in the exact amount due for their appropriate fare classification and shall be deposited by patrons in the fareboxes provided by the CITY within each vehicle. CONTRACTOR will collect, or otherwise process in the manner directed by the CITY, all non-cash fares (transfers, passes and like). All fares collected are the sole property of the CITY.

CONTRACTOR shall, in accordance with a procedure specified by the CITY, account for revenues collected on flexroute, fixed route and Dial-A-Ride vehicles and count such fares in coordination with the CITY. All fareboxes will be dropped and accounted for on a schedule to be determined by the CITY. The CITY reserves the right to audit fare revenue collection and accounting at reasonable times without prior notification to CONTRACTOR.

## **2.9 Schedules, Passes, Tickets and Tokens**

The CITY shall prepare, print, and provide to CONTRACTOR all schedules, passes, and like materials required by DART operations. CONTRACTOR shall distribute and disseminate such materials in accordance with the provisions of this AGREEMENT and any directions supplemental thereto provided by the CITY.

## **2.10 Bus Stop Facilities**

The CITY shall purchase, install, maintain, and replace all street furnishings required for DART operations. Such furnishings shall include bus stop signs and posts, benches, shelters and the like. Further, the CITY shall maintain or cause property owners to maintain all trees along all DART routes and stops so as to preclude damaging DART vehicles by reason of low-hanging trees and branches. CONTRACTOR and its employees shall cooperate with the CITY by advising it of any such conditions observed during DART operations. The CITY shall correct such conditions in a timely manner. Nothing heretofore shall relieve DART vehicle operators from exercising good care and caution in their vehicle operations in order to avoid such damage.

The CITY shall be responsible for the maintenance and general upkeep of all transit related facilities (shelters and bus stops), including but not limited to graffiti removal, trash removal and other janitorial duties.

## **2.11 Notification - Potential Interference with DART Operations**

The CITY shall make a reasonable effort to notify CONTRACTOR in advance of any road closures, detours, parades, or other such events under the CITY jurisdiction which may interfere with DART operations or require deviations from established routes or schedules. Such deviations shall be mutually agreed upon by CONTRACTOR and the CITY.

## **2.12 Payment for Services**

The CITY will process CONTRACTOR invoices on a monthly basis within thirty (30) days of receipt, assuming that monthly ridership and revenue hour/mile reports are included with the monthly invoices. Payment of billable charges will be net any cash fares not reconciled.

## **SECTION 3: CONTRACTOR DUTIES AND RESPONSIBILITIES - OPERATIONS**

CONTRACTOR shall perform the duties and accept the responsibilities set forth below in connection with its operation of DART. CONTRACTOR shall perform all terms and conditions included in CONTRACTOR'S OPERATIONS PROPOSAL which shall be attached as an Exhibit in the final AGREEMENT and will be incorporated therein by this reference whether or not specifically stated in this SCOPE OF WORK. CONTRACTOR'S proposal will be relied upon by the CITY in entering into the AGREEMENT and the CITY expects CONTRACTOR to fully perform all promises made therein.

The omission of a duty or responsibility herein below shall not relieve CONTRACTOR of its obligation to perform such duty or accept such responsibility, so long as it is usual, customary, and generally accepted within the public transportation industry as being an integral element of operating a flexroute and fixed route public transportation system of a kind and character such as DART.

### **3.1 City of Dinuba Business License**

The CONTRACTOR shall obtain a business license from the CITY for all work within City limits. Full compensation to conform to this section shall be included in the Monthly Fixed Fee. No additional compensation will be made therefore.

### **3.2 Operations - General**

CONTRACTOR shall provide the necessary management, technical, and operating services for the operation of DART flexroute, fixed route, and demand-response bus services as specified by the CITY.

CONTRACTOR shall assist and cooperate with the CITY in meeting the objectives of providing safe, reliable, quality transportation services. CONTRACTOR shall perform close liaison activities, coordination, and cooperation with the CITY on matters related to operations, monitoring, reporting, and service performance measurements.

All facilities, equipment, and services required in the operation and management of DART shall be furnished by CONTRACTOR unless specifically identified to be contributed by the CITY.

### **3.3 Operations – Service**

Using vehicles and equipment provided by the CITY, CONTRACTOR will operate Dinuba transit services as specified by the CITY. All bus service shall be operated in strict accordance with the operating days and hours, routes and schedules set forth in this RFP (or as modified by the CITY during the term of the AGREEMENT) and shall provide such service in a safe, professional, and courteous manner.

Notwithstanding the above, CONTRACTOR is authorized to deviate from established routes when necessary to avoid construction detours, and vehicles or other obstructions within the public right-of-way.

### **3.4 Special Services**

In addition to regular DART operations, CONTRACTOR may from time to time upon receiving specific written authorization by the CITY, provide special transportation services within the Dinuba service area using DART vehicles, provided that such special services are determined by the CITY to be in the public interest, do not interfere with regular DART operations, and are in compliance with applicable federal and State statutes. CONTRACTOR shall be entitled to compensation for such services at the normal rate per vehicle service hour and mileage rate specified in the AGREEMENT.

### **3.5 Operational Service Standards**

CONTRACTOR shall strive at all times to provide service in a manner which will maximize productivity and at the same time maximize customer service. Recognizing that the goals of productivity and customer service levels may conflict, the following standards are intended to be reasonably attainable by CONTRACTOR, fair to the

customer, and consistent with CITY expectations. The CONTRACTOR is required to meet or exceed the following standards on a monthly basis.

CONTRACTOR and the CITY shall periodically meet to evaluate performance of the system based upon these standards. If the standards are not fulfilling their intended purpose, they shall be adjusted based upon recommendations made by CONTRACTOR with concurrence and final decision by the CITY. Should it be found that CONTRACTOR'S performance has contributed to CONTRACTOR'S failure to achieve these standards, CONTRACTOR shall take all reasonable actions requested by the CITY to correct deficiencies in performance. Should deficiencies persist, the CITY may take whatever additional action is necessitated by the circumstances and provided for in the AGREEMENT of which this SCOPE OF WORK is a part.

- (1) On-Time Performance: Ninety (90) percent of all revenue bus trips will depart the route start point and arrive at the route end point within five (5) minutes of the time published in the service schedule.

No bus shall depart a formal time point before the time published in the service schedule.

Ninety (90) percent of all demand-response pick-ups will be within ten (10) minutes of the confirmed pick up time.

- (2) Passenger Complaints: The number of complaints shall not exceed 0.10% of the total boardings. Standard = 1 complaint per 1,000 boardings.
- (3) Preventable Accidents: While there should be no preventable accidents, a benchmark has been established to permit some flexibility in the evaluation of training efforts. The number of preventable accidents shall not exceed 0.0005% of total revenue miles operated. Standard = 1 preventable accident per 200,000 revenue miles.
- (4) Roadcalls: The number of roadcalls should not exceed 0.01% of total revenue miles operated. Standard = 1 roadcall per 10,000 revenue miles.
- (5) Bus Trips Cancelled: No scheduled bus trips shall be cancelled because of vehicle shortages or staff absenteeism.
- (6) ADA Trip Denials: No demand-response bookings by ADA-eligible passengers shall be denied for any reason.

### **3.6 Operational Performance Penalties**

The CONTRACTOR is required to meet or exceed the performance/service standards outlined above in Section 3.5. Failure of the CONTRACTOR to meet or exceed these standards may result in the following penalties being assessed against the CONTRACTOR by the CITY.

#### **A. On-Time Performance Penalty (Flexroute and Fixed Routes)**

The CONTRACTOR will be assessed a penalty of \$800 for each month that the average on-time performance fall below ninety (90) percent.

**B. Missed Run Penalty (Flexroute and Fixed Routes)**

The CONTRACTOR will be assessed a penalty of \$500 for each scheduled bus run missed because of driver absenteeism.

**3.7 Books, Records and Reports**

CONTRACTOR shall maintain all books, records, documents, accounting ledgers, and similar materials relating to work performed for the CITY under this AGREEMENT on file for at least three (3) years following the date of final payment to the CONTRACTOR by the CITY. Any duly authorized representative(s) of the CITY shall have access to such records for the purpose of inspection, audit, and copying at reasonable times, during CONTRACTOR'S usual and customary business hours. CONTRACTOR shall provide proper facilities to the CITY representative(s) for such access and inspection. Further, any duly authorized representative(s) of the CITY shall be permitted to observe and inspect any or all of CONTRACTOR'S facilities and activities during CONTRACTOR'S usual and customary business hours for the purposes of evaluating and judging the nature and extent of CONTRACTOR'S compliance with the provisions of this AGREEMENT. In such instances, the CITY'S representative(s) shall not interfere with or disrupt such activities.

CONTRACTOR shall collect, record, and report to the CITY all accounting data for the DART operation in accordance with 49 U.S.C. 5335(a) of the Federal Transit Act, and Section 99243 of the California Public Utilities Code, as each of the foregoing are now in force or may hereafter be amended. All worksheets and detail information used to prepare these reports shall be available to the CITY.

CONTRACTOR shall collect, record, and report all operational data required by the CITY in a format approved by the CITY. Such data shall include, but not be limited to: statistics required under National Transit Database (NTD) reporting of the Federal Transit Act, as amended; passenger count data by stop/zone and fare category, vehicle hours, vehicle miles, vehicle revenue hours, vehicle revenue miles, passengers per hour, ADA boardings and demand-response passenger no-shows and cancellations.

Information concerning vehicle activity shall be collected daily on the driver's trip sheets, dispatch logs, and/or other forms as developed by CONTRACTOR and approved by the CITY, and shall be summarized daily on the Service Provision Report.

The operations data shall be collected and compiled daily, weekly, monthly, quarterly, and annually; and shall provide reports according to the individual routes, modes and total system. Individual totals shall be provided for peak-hour services, weekdays, and Saturdays (and Sundays, as appropriate).

Daily logs, reports, and summaries shall be available for the CITY review by 5:00 pm of the next business day following data collection. Monthly reports shall be forwarded to

the CITY no later than the 15<sup>th</sup> of the following month. The following is a list of required reports. The reports list may be revised, reorganized, deleted or changed as directed by the CITY.

<b>Report</b>	<b>Frequency</b>	<b>Description</b>
Accident and Incident	Per occurrence	Copy of written reports and Contractor Report within 24 hours of occurrence
Service Provision	Daily	Summary report of service provided that includes revenue hours, miles and passengers by type and stop; vehicle hours and miles; and missed trip information
Dispatch Logs	Daily	Details demand-response trips; call-in time; wait time; pick-up time; drive time; drop-off time; no- shows
Vehicle Inspection Report	Daily	Driver's log
Farebox/Revenue	Monthly	Revenue collected by category
Ridership	Monthly	Passengers by fare category; ridership by route on trip by trip basis to determine peak and off-peak utilization
Customer Relations	Monthly	Customer contacts by type; list of customer complaints and explanation of how issues were resolved
On-Time Performance	Monthly	By type of trip
Safety	Monthly	Vehicle and passenger accidents
Trips Denied	Monthly	Detailing denied trips and reasons for denials (agency vs. customer) and negotiations
Roadcalls	Monthly	Details by vehicle number, type and description of any event requiring off-site maintenance personnel intervention
Mileage	Monthly	Scheduled revenue miles and revenue hours, missed revenue miles and revenue hours, total revenue miles and revenue hours
Employee Turnover	Monthly	Number of employees, reason for turnover by category, employee turnover ratio
New Employees	Monthly	Name of employee and position held
Drug and Alcohol	Annually	FTA Drug and Alcohol Management Information System (MIS) Report
Drug and Alcohol	Quarterly	Quarterly MIS report provided to Contractor by Medical Review Officer
Drug and Alcohol	Monthly	Listing of safety sensitive employees to be in random test pool; listing of number of pre- employment, random, post-accident, reasonable suspicion or return-to-duty tests performed, test results, log illustrating random spread of testing over the period
DBE	Quarterly	Disadvantaged Business Enterprise Report (DBE)
NTD Data	Annually	As specified in the applicable report year Reporting Manual

### **3.8 Required Staffing**

The CONTRACTOR shall supply a sufficient number of personnel to operate and maintain all equipment and to provide the service required. The CONTRACTOR shall

comply with the requirements of employee liability insurance, workers' compensation, employment insurance, and Social Security. The CONTRACTOR and its employees shall, in the performance of all duties, conduct themselves with the highest degree of courtesy and service.

The CONTRACTOR shall be required to submit at the CITY'S request, an accurate and up-to-date organizational chart that depicts all personnel utilized in the service of the AGREEMENT. The organizational chart shall indicate titles, filled positions and number of vacancies.

The CONTRACTOR shall provide dedicated staff according to the following minimum requirements:

<b>Job Title</b>	<b>Number of FTE Positions</b>
Road Supervisor	1.0
Scheduler/Dispatcher	1.5
Full-Time Bus Operators	Determined by CONTRACTOR
Part-Time Bus Operators	Determined by CONTRACTOR

The CITY reserves the right to approve the CONTRACTOR'S proposed and successive Road Supervisor. The persons serving as Road Supervisor shall not perform any other duties for CONTRACTOR, being solely dedicated to management of DART transit operations unless CITY agrees upon a shared staffing arrangement or provides written authorization to work on other projects. The CONTRACTOR must receive approval for the transfer of the Road Supervisor from this project to another.

Any Road Supervisor assigned to this project must remain in that position for a period of one (1) year unless the CITY asks the CONTRACTOR to remove such manager(s). If for reasons other than a personal termination (voluntary resignation) or emergency, the Road Supervisor leaves prior to this date, the CITY at its sole discretion may immediately assess a penalty equal to one and a half (1 ½) times the Road Supervisor's annual salary, collected through a reduction in payment owed the CONTRACTOR in the next invoice cycle, or as otherwise agreed to at the CITY'S sole discretion. Any management personnel assigned to fill open management positions on a temporary basis must meet the qualifications as stated in this SCOPE OF WORK for a permanent manager.

If for any reason the Road Supervisor position is left open or not permanently filled with a qualified full-time manager approved by the CITY, for more than sixty (60) days, a penalty equal to the Road Supervisor's monthly salary may be immediately assessed by the CITY, and collected through a reduction in payment owed the CONTRACTOR in the next invoice cycle, or as otherwise agreed to at the CITY discretion. Such liquidated damages may continue to be assessed for each subsequent month in which no permanent manager is designated.



CONTRACTOR shall provide operations management at a level and capability sufficient to oversee its functions and employees. CONTRACTOR shall provide operations management as necessary to monitor drivers and vehicles and assist drivers in revenue service. All PROPOSERS must provide a proposed organization chart indicating all proposed positions and staffing levels (FTEs) for each position. Key personnel (by position) must be identified. Following are specific requirements by position:

**A. Road Supervisor** – CONTRACTOR shall provide operations management through an Road Supervisor at a level and capability sufficient to oversee its functions and employees.

(a) Principal Functions – The principal function of the Road Supervisor will be to oversee transit operations functions and employees. The Road Supervisor will be responsible to the third-party contractor’s Regional and/or Area Manager, and the CITY for safe and reliable provision of all services referenced in this Scope of Work. The Road Supervisor will supervise the daily activities of all operators, supervisors, dispatchers, and other operationally focused staff. The Road Supervisor will work cooperatively with the CITY and be accountable for all substantive matters pertaining to the provision of transit services as provided under this SCOPE OF WORK/AGREEMENT. These matters include but are not limited to:

- Ensuring all operational performance goals are met
- Providing effective operations, design, system, design scheduling, and management
- Ensuring effective quality assurance
- Providing the highest quality passenger and resident service
- Preventing and mitigating service delays, interruptions, and accidents
- Providing complete and accurate data collection, compilation, analysis, and reporting
- Managing compliance with FTA and other federal, State and local regulatory requirements
- Ensuring knowledge, preparedness, and professionalism of all operating personnel
- Providing professional and effective response to comments from passengers and the general public
- Responding to specific requests for other assistance as the need arises
- Attending local and regional meetings at the CITY’s request.
- Responding to, investigating, and reporting to CITY all accidents
- Maintaining a fully and competently-staffed organization
- Ensuring proper fleet maintenance
- Ensuring compliance with FTA and other federal, State, and local regulatory requirements
- Maintaining effective environmental compliance and sustainability management

- Providing effective response to specific request for other assistance as the need arises
- (b) Minimum Qualifications – The Road Supervisor shall have a minimum of three (3) years of direct successful experience in an Road Supervisor capacity managing a transit property/operation of similar size and scope. The Road Supervisor shall have a minimum of five (5) years of transit operations management experience overall. The CITY reserves the right to review the qualifications of any Road Supervisor proposed by the CONTRACTOR and to provide input to the CONTRACTOR, as appropriate. The CITY may advise the CONTRACTOR regarding the individual’s performance with respect to the specifications and performance goals stated in the AGREEMENT.
- (c) Temporary Assignment of Project Responsibility – Should the Road Supervisor be unavailable to perform his/her duties (e.g., illness, vacation), the third-party contractor’s Regional and/or Area Manager will appoint a staff member temporarily to serve in his/her place. CONTRACTOR will notify the CITY Transit Manager two (2) weeks in advance whenever the substitution will be more than a three (3) days substitution will occur, prior to the event. If the Road Supervisor will be unavailable for more than three (3) weeks, the CONTRACTOR will be required to provide a qualified Road Supervisor as a substitute.
- (d) Vacancy and Replacement – At no time shall the Road Supervisor position be vacant. In the event of the Road Supervisor’s planned departure, the CONTRACTOR will ensure a qualified replacement, as described herein, is permanently on-site prior to the previous Road Supervisor’s departure. Otherwise, the CONTRACTOR will assign a suitable substitute to oversee the operation on-site until a qualified replacement Road Supervisor is in place.

As an indication of CONTRACTOR’s commitment to the CITY and this project, CONTRACTOR guarantees the following:

CONTRACTOR will not remove the Road Supervisor assigned to this contract during the term of this contract, unless their employment is terminated, the CITY requests their removal, or if the removal is mutually agreed to in writing by both the CITY and CONTRACTOR. If said manager is moved without the consent of the CITY, CONTRACTOR shall pay the CITY the sum of \$100,000 (one-hundred thousand dollars), within thirty (30) days of the manager’s relocation.

The resume and qualifications of the proposed replacement shall be submitted to CITY for approval as soon as possible, but in no event later than five (5) working days prior to the departure of the incumbent Road Supervisor, unless CONTRACTOR is not provided with such notice by the departing employee. CITY shall respond to CONTRACTOR within three (3) working days following receipt of these qualifications concerning acceptance of the candidate for replacement Road Supervisor.

**B. Other Personnel** - In addition to the Road Supervisor, the CITY shall require 1.5 full-time dedicated dispatchers with assurance that one (1) dispatcher is on duty at all times during DART hours of operation.

CONTRACTOR shall ensure that these positions are permanently filled and that vacancies not exceed thirty (30) days. In the event of a vacancy in any one of these positions, the CONTRACTOR will establish temporary measures to ensure the functions related to those positions are effectively performed. In the event that there is a change in the number of required positions to operate DART, CITY and CONTRACTOR shall mutually agree to amend the current contract to reflect such change.

### **3.9 Employee Selection and Supervision**

CONTRACTOR shall be responsible for the employment and supervision of all employees necessary to perform DART operations. Such responsibilities shall include employee recruitment, screening, selection, training, supervision, employee relations, evaluations, retraining, and termination.

CONTRACTOR shall use appropriate driver screening and selection criteria in order to employ drivers. These criteria will include Department of Motor Vehicles license check and physical examination sufficient to meet all applicable requirements for DART vehicle operations.

CONTRACTOR shall develop, implement, and maintain an employee substance abuse/alcohol abuse testing program, subject to CITY approval, for all employees in safety-sensitive positions including personnel engaged in the operation, maintenance, and control of DART vehicles and equipment. Such program will meet all applicable Federal requirements promulgated to implement the Omnibus Transportation Employee Testing Act of 1991 and related supplements and amendments. CONTRACTOR shall make all reasonable efforts to ensure that employees having contact with the public in the course of their duties are of good moral character. Any such employee who is convicted of a felony or of a crime involving moral turpitude before or during the time of his/her employment shall not be permitted to continue to hold a position of employment involving contact with the general public.

CONTRACTOR shall be responsible for recruiting a sufficient number of bilingual (Spanish and English) employees to ensure that the bilingual communications requirement under Section 3.18 of this SCOPE OF WORK is met.

CONTRACTOR shall at all times comply with applicable State and Federal employment laws, including Section 1735 of the California Labor Code and Title VI of the Civil Rights Act of 1964, as amended.

### **3.10 Training of Drivers and Operations Personnel**

CONTRACTOR shall develop, implement, and maintain a formal training and retraining program which shall be subject to review and approval by the CITY. An outline of the training program, including periodic updates, shall be on file in the office of the CITY

Public Works Director. All drivers, dispatchers, telephone information personnel, and supervisors shall participate in the program.

CONTRACTOR shall implement and maintain a specific training and retraining program for all drivers. The program must provide a fixed minimum number of hours of training for new employees, including classroom instruction, behind the wheel training under supervision of a certified instructor, and in-service training. The program shall include, but not necessarily be limited to, instruction covering applicable laws and regulations and defensive driving practices, passenger assistance techniques, accident/incident procedures, radio procedures, DART operating policies and procedures, employee work rules, vehicle safety inspection, equipment care and maintenance, customer relations and passenger conduct. Drivers shall be trained to operate all types of buses, wheelchair lifts and securement systems, and other equipment which they may be expected to use in the delivery of City of Dinuba transit services.

All drivers shall be certified as having completed CONTRACTOR'S formal training course for new drivers as approved by the CITY, and be licensed with a valid California Class B operator's license with appropriate certification(s) and medical card. Drivers of transit buses shall possess a transit bus certificate as issued by the State of California Department of Motor Vehicles, pursuant to Section 12804.6 of the California Vehicle Code. Drivers of demand-response (Dial-A-Ride) vehicles shall possess a California General Public Paratransit Vehicle (GPPV) certificate as required under State of California Statutes. For this contract, CONTRACTOR shall provide no less than two (2) GPPV certified drivers. Drivers shall meet all applicable requirements as established by the California Highway Patrol.

CONTRACTOR shall prepare and furnish to the CITY and to all drivers, dispatchers, telephone operators, and supervisors a Driver's Manual. Contents of the Driver's Manual shall include the following subject areas: driver's rules; accident/incident policies; radio policies and procedures; electronic farebox policies and procedures; video surveillance policies and procedures; fog and inclement weather policy; vehicle inspection, care and maintenance policy and procedures; reporting procedures and pertinent sample forms.

Dispatchers, telephone operators, supervisors, and any other personnel who may from time-to-time be assigned to telephone information or dial-a-ride reservation lines shall be trained in customer relations skills, telephone manners, accident/incident procedures, transfer points, fares, Dial-A-Ride reservation procedures, and operating policies. Operations control personnel assigned to Dial-A-Ride trip scheduling and vehicle dispatching duties shall have a detailed knowledge of applicable procedures and professional techniques.

### **3.11 Driver's Responsibilities**

Drivers will be required to fuel buses, conduct daily pre-inspections and daily vehicle checks, inspecting the units for damage, and reporting defects, damage or repair items to the CITY'S mechanic; and repairs due to accidents or misuse of the unit. Drivers are also responsible for cleaning bus interiors at the end of each service day. Interior cleaning will include generally keeping the driver area neat, emptying trash containers, sweeping floors and mopping floors if needed. Driver will also be responsible for

washing the exterior of the bus with CITY provided equipment and supplies on a weekly basis.

Drivers will, when requested by the CITY, hand out notices to passengers or otherwise render assistance with the CITY'S customer relations, promotion, monitoring, and supervisory functions. Drivers will be required to honor special passes; collect, cancel and/or validate passes, tickets, and issue passes and collect transfers, as determined by the CITY. Drivers will verify cash fares deposited in farebox, but will not handle money. Drivers will turn over all farebox receipts collected at the end of each service day to the CITY. Drivers will record ridership counts by passenger category using counters provided on each bus, or in accordance with procedures and methods approved by the CITY.

Drivers shall have available at all times during operation of any bus an accurate time piece set each day to conform to the system time.

### **3.12 Uniforms**

Drivers shall be in uniform at all times while in service or otherwise on duty. Driver uniforms shall be provided by CONTRACTOR to its employees. The design, type, and logo of the uniforms shall be subject to the CITY'S approval. Drivers shall be required to maintain a neat and clean appearance at all times while on duty, to ensure a public perception of professionalism and trust.

### **3.13 Safety Program**

CONTRACTOR shall prepare an Injury and Illness Prevention Program (IIP) to be in full compliance with California Law (SB198) It should include a formal safety illness and prevention program including periodic safety meetings, participation in safety organizations, safety incentives offered by CONTRACTOR to drivers and other employees, and participation in risk management activities under the auspices of CONTRACTOR'S insurance carrier or other organization.

CONTRACTOR shall provide a copy of said IIP, including evidence of compliance with SB198, and subsequent program updates to the CITY.

CONTRACTOR shall participate in the State of California Department of Motor Vehicles "Employer Pull Program" for appropriate monitoring of employee driver license activity.

CONTRACTOR will require all drivers, control room personnel, and supervisors to participate in the safety program.

### **3.14 Accident, Incident and Complaint Procedures**

CONTRACTOR shall develop, implement, and maintain formal procedures, subject to CITY review and approval, to respond to accidents, incidents, service interruptions, and complaints. Such occurrences to be addressed include, but are not necessarily limited to: vehicle accidents, passenger injuries, passenger disturbances, in-service vehicle failures, and lift failures of buses in service.

All traffic accidents involving transit system vehicles, irrespective of injury, shall be reported to the appropriate agency. CONTRACTOR will advise such agency of the accident and request a police unit to investigate the accident.

The CITY Public Works Director shall be notified in writing or by the most expeditious means available by CONTRACTOR of all accidents and incidents resulting in loss or damage to CITY property within twenty-four (24) hours of occurrence. In cases involving injury, CONTRACTOR shall notify the CITY'S Public Works Director immediately upon receipt by CONTRACTOR of such information.

### **3.15 Parking and Traffic Violations**

The CONTRACTOR shall be solely responsible for any parking and traffic violations of vehicles operating in connection with the transit programs described herein.

### **3.16 Driving Record Notification**

The CONTRACTOR shall be responsible for immediately notifying the CITY of any drivers who are identified in the State's Pull Notice Program.

### **3.17 Public Information and Dispatch Center**

As noted in "2.5 – Dinuba Transit Center – Office Space," CONTRACTOR shall lease 650 square feet of office space from the CITY at the Dinuba Transit Center. The lease rate shall be \$1,345 per month (including phones, internet, electrical power, and natural gas costs). This rate shall be indexed annually by the U.S. City Average (1967=100), All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the U.S. Department of Labor, for December of each preceding year. This space shall be staffed for public information and pass sales, and is available for a dispatch center. The CITY will work with CONTRACTOR to establish proper fiscal controls related to cash handling. The dispatch center will be operated for the purpose of booking and assigning demand-response trip requests on the flexroute/Dial-A-Ride system.

Cell phones used by CONTRACTOR and associated fees are the sole responsibility of the CONTRACTOR.

### **3.18 Telephone Reservation and Information System**

The CITY shall provide and maintain a telephone number for trip bookings and service information. The telephone system shall be dedicated exclusively to the reception of incoming calls from DART patrons for the purposes of requesting service information and Dial-A-Ride service or reservations. The CITY shall be responsible for all telephone (excluding cell phone) charges.

CONTRACTOR shall provide dispatch personnel necessary to effectively respond to incoming calls at a quality and level consistent with DART patron demand, and in strict accordance with the operating days and hours set forth in the current CITY bus schedule or any revisions thereto.

CONTRACTOR shall make special efforts to respond to telephone service and information requests from deaf or Spanish-speaking patrons of DART. CONTRACTOR will provide TDD equipment for communications with deaf patrons, and will provide bilingual (Spanish/English) telephone information personnel. An answering machine shall be available for recording trip requests for the dial-a-ride service when the administrative and dispatch offices are closed.

### **3.19 Vehicle Scheduling and Dispatching**

CONTRACTOR shall utilize a systematic method to schedule and transport passengers using Dial-A-Ride services on the flexroute system. The method should be capable of accommodating both advance reservations and requests for immediate service, and of integrating all demand for service into efficient vehicle tours which maximize productivity and assure service quality to levels prescribed in this SCOPE OF WORK. Either a manual or computer-assisted scheduling technique is acceptable.

CONTRACTOR shall provide an adequate fixed number of persons to staff the Dial-A-Ride scheduling and system vehicle dispatching functions. These persons shall also be responsible for maintaining radio control with all vehicles in service and for maintaining the daily dispatch logs.

### **3.20 Fares and Fare Collection**

As noted under CITY responsibilities in “2.7 – Fares and Fare Collection,” all fares of any kind or character to be paid by DART patrons shall be established by the CITY. CONTRACTOR shall assure that each patron pays the appropriate fare prior to being provided transportation service. All cash fares will be paid by patrons in the exact amount due for their appropriate fare classification and shall be deposited by patrons in the fareboxes provided by the CITY within each vehicle. CONTRACTOR will collect, or otherwise process in the manner directed by the CITY, all non-cash fares (transfers, passes and like). All fares collected are the sole property of the CITY.

CONTRACTOR shall, in accordance with a procedure specified by the CITY, account for revenues collected on flexroute and fixed route vehicles and count such fares in coordination with the CITY. All fareboxes will be dropped and accounted for at the end of each service day by a CITY representative. The CITY reserves the right to audit fare revenue collection and accounting at reasonable times without prior notification to CONTRACTOR.

### **3.21 Pass Sales and Public Information**

CONTRACTOR shall, in accordance with a procedure specified by the CITY, provide for the sale of passes, as needed. CONTRACTOR shall staff a pass sale/public information counter at the Dinuba Transit Center a minimum of eight hours per day during regular business hours on all weekdays (excluding holidays). The CITY will work with CONTRACTOR to establish proper fiscal controls related to cash handling. This staff can also perform other duties, so long as these other duties do not unduly delay the ability to serve the public.

### **3.22 Advertising and Promotion**

CONTRACTOR shall, as requested by the CITY assist with the preparation and updating of service brochures and up to four (4) community presentations annually, as needed. CONTRACTOR shall cooperate with the CITY in any such activities initiated by the CITY, by making available needed equipment, facilities, and personnel at no cost or expense to the CITY. CONTRACTOR also shall dispense DART informational publications, respond to patron requests for information, act as a liaison and provider of information with and to community agencies and groups, and do all other things to assist and support the CITY'S advertising and public information efforts.

### **3.23 Planning and System Design Assistance**

CONTRACTOR shall, as requested by the CITY, provide assistance with route planning, system design and policies. Upon identification of a problem or issue, CONTRACTOR shall notify the CITY and assist with finding the most appropriate resolution. This also applies to periodic route changes that may be needed or reported by passengers.

### **3.24 System Recommendations**

CONTRACTOR shall continually monitor DART operations, facilities, and equipment; and shall, from time-to-time, and as warranted, advise the CITY and make recommendations to it based upon observed deficiencies and needed improvements. The CITY shall retain all authority, however, to make determinations and to take action on such recommendations.

### **3.25 Emergencies and/or Natural Disasters**

In the event of an emergency or natural disaster, CONTRACTOR shall make available, to the maximum extent possible, transportation and communications services and facilities to assist the CITY in ameliorating such incidents. To the extent the CITY requires CONTRACTOR to provide such emergency services and facilities CONTRACTOR shall be relieved of the obligation to fulfill the duties and responsibilities to operate DART hereinabove contained. Further, CONTRACTOR shall be entitled to be paid reasonable compensation for providing such emergency services and facilities, provided however, that the amount of such compensation and time of its payment shall be mutually agreed upon by CONTRACTOR and the CITY following the conclusion of the emergency or disaster, or at such other time as they may mutually agree.

### **3.26 Holiday Service**

The CONTRACTOR shall be responsible for providing flexroute (including Dial-A-Ride) and fixed route services on all legal holidays, excluding the following: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

### **3.27 Damage to County Facilities, Buildings or Grounds**



CONTRACTOR shall repair, or cause to be repaired, at its own expense, any and all damage to COUNTY facilities, building or grounds cause by CONTRACTOR or employees or agents of CONTRACTOR, or its subcontractors. Such damage repair shall be made immediately after CONTRACTOR has become aware of such damage, but in no event later than thirty (30) days after the occurrence. If CONTRACTOR fails to make timely repairs, COUNTY may make any necessary repairs, and all costs incurred by COUNTY in doing so shall be repaid by CONTRACTOR by cash payment upon COUNTY'S demand.

#### **SECTION 4: CONTRACTOR DUTIES AND RESPONSIBILITIES – DART VEHICLES**

CONTRACTOR shall perform the duties and accept the responsibilities set forth below in connection with the operation and general maintenance of all DART vehicles. CONTRACTOR shall perform all terms and conditions included in CONTRACTOR'S SERVICE PROPOSAL which is incorporated herein by this reference, whether or not specifically stated in this SCOPE OF WORK.

The omission of a duty or responsibility herein below shall not relieve CONTRACTOR of its obligation to perform such duty or accept such responsibility, so long as it is usual, customary and generally accepted within the public transportation industry as being an integral element of operating a flexroute and fixed route public transportation system of a kind and character such as DART.

#### **4.1 Vehicles**

Upon commencement of this AGREEMENT, the CITY will deliver the CITY-owned vehicles as identified in Exhibit B, entitled "DART VEHICLES", which is attached to the AGREEMENT and incorporated therein, to CONTRACTOR at the CITY'S Corporation Yard ready for use. The CITY'S Corporation Yard is located at 1088 E. Kamm Avenue, Dinuba, CA, 93618.

#### **4.2 Radio Communication Systems**

CONTRACTOR shall provide all radio communication systems necessary for providing radio communications between its radio communications dispatch center and DART vehicles in connection with DART operations. CONTRACTOR shall comply with all applicable federal statutes and regulations in connection with such use.

#### **4.3 Fuel**

As noted under CITY responsibilities in "2.4 – Fuel," CITY shall provide CONTRACTOR all CNG fuel required for the operation of all DART vehicles. Vehicles shall be fueled from the CITY'S CNG Fueling Station located at 1088 E. Kamm Avenue, Dinuba, California. CONTRACTOR shall be responsible for fueling transit buses utilizing a CITY cardlock system that accurately records purchase of fuel. CONTRACTOR shall be responsible for all cardlock access cards in CONTRACTOR'S possession. Any financial loss due to the fraudulent use of fuel cards shall be a responsibility of the CONTRACTOR.

The CITY expressly reserves the right in its sole discretion to establish fueling procedures as determined by the CITY to be in the CITY'S best interest. The CONTRACTOR shall fuel DART vehicles at such location(s) and in such manner as the CITY may direct. CONTRACTOR and all of its employees shall adhere to any and all operating, administrative, and accounting procedures required by the CITY in connection with all fueling operations.

#### **4.4 Daily Vehicle Inspection**

CONTRACTOR shall perform daily vehicle servicing on all DART vehicles and equipment used in revenue service. For purposes of this SCOPE OF WORK/AGREEMENT, daily servicing shall include, but not be limited to:

- a. Fueling
- b. Engine oil, coolant, water and transmission fluid check/add
- c. Wheelchair lift check
- d. Light and flasher check
- e. Interior sweeping, moping and dusting
- f. Exterior and interior visual inspection
- g. Check of all vehicle performance defects reported by drivers to identify potential safety and reliability items requiring immediate attention
- h. Additional requirements as specified by vehicle manufacturers

CITY will provide a written checklist of items that should be included in the daily inspection of each vehicle. The checklist shall be utilized and kept on file for the CITY and California Highway Patrol review. This checklist requirement may incorporate or supplement CHP required driver's pre-trip safety inspections.

#### **4.5 Daily Driver's Inspection Report**

13 CCR 1234 lists the records required by regulation to be kept by motor carriers. Section 1234, 13 CCR, reads, in part: (e) Daily Vehicle Inspection Reports. Motor carriers shall require drivers to submit a documented daily vehicle inspection report pursuant to section 1215(b). Reports shall be carefully examined, safety defects shall be corrected before the vehicle is driven on the highway, and carriers shall retain such reports for at least one month.

13 CCR 1215 (a) reads: "Prior to operation, the driver shall inspect each vehicle daily to ascertain that it is in safe condition, it is equipped as required by all provisions of law, and all equipment is in good working order." The requirement to perform a daily pre-trip inspection applies to all drivers of all vehicles listed in 34500 CVC, without exception. There is no legal provision for this task to be delegated to someone other than the driver, such as to a mechanic who may arrive at work early to start all of the vehicles and "check them out."

The Driver's Daily Vehicle Inspection report is not required to be submitted or otherwise documented until the end of the driver's work period. This is so that any defects that

become apparent during the course of the work period can be included in the report. This report is required whether or not any defects are found.

#### **4.6 Vehicle Cleaning**

CONTRACTOR shall maintain DART vehicles in a clean and neat condition at all times. CONTRACTOR shall perform all cleaning at the vehicle washing facilities provided at the CITY'S Corporation Yard, located at 1088 E. Kamm Avenue, Dinuba, CA, 93618.

The interior of all vehicles shall be kept free of litter and debris to the maximum practicable extent throughout the operating day. Vehicles shall be swept and dusted daily. Interior panels, windows, and upholstery shall be cleaned of marks as necessary. The interiors of all vehicles shall be thoroughly washed at least once per week, including all windows, seats, floor, stanchions and grab-rails. All foreign matter such as gum, grease, dirt and graffiti shall be removed from interior surfaces during the interior cleaning process. Any damage to seat upholstery shall be repaired immediately upon discovery. Ceilings and walls shall be thoroughly cleaned at least once per month, or more often as necessary. Destination sign interior glass shall be cleaned as necessary to maintain a clean appearance and maximize visibility.

Exteriors of all DART vehicles shall be washed as required to maintain a clean, inviting appearance and in no event less than once per week. Exterior washing shall include bus body, all windows and wheels.

Buses shall be kept free of vermin and insects at all times. CONTRACTOR shall exterminate all vermin and insects from all vehicles immediately upon their discovery, utilizing safe and non-hazardous materials.

#### **4.7 Out-of-Service Designation**

A vehicle shall be designated as unfit for revenue service (considered Out of Service) if, upon inspection, any of the following conditions are found:

- a. Failure to clean each vehicle as outlined in Section 4.6 above
- b. Failure to repair vehicle body damage (interior or exterior) within thirty (30) days of the date damage occurred

Vehicle shall continue to have the Out-of-Service designation until it is brought into compliance, subject to approval by the CITY (or its designee).

CONTRACTOR shall not be paid for hours operated in DART revenue service by coaches that are in an Out-of-Service condition. The CITY may, at its sole discretion, correct any unresolved Out-of-Service condition, and withhold the costs related to such correction(s) from payment to the CONTRACTOR.

# **SCOPE OF WORK**

## **EXHIBIT A**

### **WAGES AND FRINGE BENEFITS FOR THE OPERATION OF DINUBA AREA REGIONAL TRANSIT**

## IMPORTANT NOTE AND DISCLAIMER

The wages and benefits paid to all full-time and regular part-time drivers and dispatchers are currently governed by a collective bargaining agreement with Amalgamated Transit Union Local 1027. The current CBA expires June 30, 2023.

### **BARGAINED NON-EXEMPT EMPLOYEE BENEFITS:**

**ANNUAL SAFETY BONUS:** Operators that work (12) twelve consecutive months without committing an unsafe act or chargeable accident receive a \$200 annual safety bonus.

**PAID HOLIDAYS:** Employees with (12) twelve months of continuous service shall receive (6) seven paid holidays. If the holiday falls on the employee's normally scheduled day off, the employee will be paid eight (8) hours at the regular rate of pay. If an employee works on a paid holiday, the employee will be paid his/her regular scheduled pay plus eight (8) hours at the regular rate of pay for the holiday pay.

Holiday pay shall not be counted as hours worked for the purpose of computing overtime.

**PAID TIME OFF (PTO):** All full-time employees shall receive, after one (1) year continuous full-time employment, vacation pay as follows:

Hire – 6	0 hours/pay
At 6 months	1.54
At 3 Year	3.08
At 10 Year	4.62

**MEDICAL BENEFITS (Health, Dental, & Vision):** The company agrees to maintain its' contribution to the existing health care coverage plan for all eligible employees.

The current Company contribution is a minimum and it reserves the right to increase its current contribution in order to maintain the Company contribution at or above the rate required to maintain compliance with the Affordable Care Act.

The current contractor contributes 95% of the total contribution rate for employee-only coverage for the Company's Core Low Cost Aetna Plan. The Company will maintain its existing contribution rates for all other plans and levels of coverage.

**Sick Leave:** The current contractor provides sick leave benefits in accordance with the California Sick Leave Act.

**401 (k) PLAN :** Employees may contribute to a pre-tax retirement savings plan the first day of the month following thirty (30) calendar days of employment at their cost subject to the Plan Provisions.

### **NON-BARGAINED NON-EXEMPT EMPLOYEE BENEFITS:**

**Medical, Dental & Vision:** Full time employees and those who qualify under the ACA are eligible for health, dental and vision benefits.

**Vacation Pay:** Employees working 70+ hours in a pay period accrue 1.54 hours per pay period after one year of employment. After three years accrual increases to 3.08 hours per pay period.

**Paid Holidays:** All employees are eligible for six (6) paid holidays.

**Supplemental Voluntary Benefits:** Following 30 days of employment fulltime and part time employees are eligible to participate in Company offered benefits for short term disability, accident care, critical illness, universal life, and term life insurance.

**Supplemental Life/Disability:** Employees are eligible for Supplemental Life/AD&D coverage, as well as Spouse and Child Life effective on the 1st of the month following their waiting period.

**401(k):** Employees are eligible to participate in a 401(k) program. After 6 months of employment, the current contractor matches \$0.10 for every \$1.00 contributed on the first 6 percent of their compensation.

**Flexible Spending Account (FSA):** Employees are eligible to participate in the Company offered Medical and Dependent Care Reimbursement FSA plans following a waiting period.

**Employee Assistance Program (EAP):** Employee are eligible to participate in the Company EAP plan.

**MV Transportation – Dinuba Area Regional Transit (DART) –  
ATU 1027 Wage Rates as of 5/1/19 (Excludes Exempt  
Employees)**

<b>Position</b>	<b>Status</b>	<b>Seniori</b>	<b>Rate</b>
Driver	Regular	10/6/20	\$20.0
Driver	Regular	4/18/20	\$20.0
Driver	Regular	5/3/201	\$20.0
Driver	Regular	4/4/201	\$17.5
Dispatcher	Regular	11/8/20	\$18.5
Driver	Regular	12/13/2	\$17.5
Road	Regular	1/23/20	\$20.0
Dispatcher	Regular	2/14/20	\$18.2
Driver	Regular	5/8/201	\$16.5
Driver	Regular	7/25/20	\$16.5
Driver	Regular	10/29/2	\$16.0
Driver	Regular	1/14/20	\$16.0

\*indicates non-bargained employees.

**Drivers** - Effective June 15, 2018, all drivers correspond to one of the wage rates set forth below based on years of service. To the extent the minimum wage is higher than any of the wage rates, the minimum wage will replace that corresponding wage rate.

	6/15/2	6/15/2	6/15/2	6/15/2
Traini	Min	Min	Min	Min
Start	\$16.0	\$17.0	\$18.0	\$19.0
After 1	\$16.5	\$17.5	\$18.5	\$19.5
After 2	\$17.2	\$18.2	\$19.2	\$20.2
After 3	\$18.5	\$19.5	\$20.5	\$21.5
After 4	\$19.5	\$20.5	\$21.5	\$22.5
After 5	\$20.2	\$21.2	\$22.2	\$23.2
After 6	\$20.5	\$21.5	\$22.5	\$23.5

**Dispatchers** – Effective June 15, 2018, the dispatchers shall correspond to the wage rates set below based on years of service.

	6/15/2	6/15/2	6/15/2	6/15/2
0-6	\$17.0	\$18.0	\$19.0	\$20.0
After 6	\$17.0	\$18.0	\$19.0	\$20.0
After 1	\$17.5	\$18.5	\$19.5	\$20.5
After 2	\$18.2	\$19.2	\$20.2	\$21.2
After 3	\$19.5	\$20.5	\$21.5	\$22.5
After 4	\$20.5	\$21.5	\$22.5	\$23.5
After 5	\$21.2	\$22.2	\$23.2	\$24.2
After 6	\$21.5	\$22.5	\$23.5	\$24.5

# SCOPE OF WORK

## **EXHIBIT B**

### DART VEHICLES



## **Dinuba Transit Vehicle Fleet**

*Current as of October 2018*

Bus #	Make	Model	Fuel Type	Length	Year	Seating Capacity <sup>1,2</sup>	Mileage	Expiration based on Age
4	Freightline/ Cummins	Trolley	CNG	31'	2008	27	179,608	2018
5	Chev/El Dorado AeroElite	C5500	CNG	32' 2"	2008	31	277,198	2018
6	Chev/El Dorado AeroElite	C5500	CNG	29' 6"	2009	27	232,694	2019
7	Ford/El Dorado AeroTech	E450	CNG	24'	2011	19	204,746	2021
8	Ford/El Dorado AeroTech	E450	CNG	24'	2011	19	226,309	2021
9	Ford/El Dorado AeroElite	F550	CNG	33'	2012	31	207,974	2022
11	Ford/Startrans	Goshen	CNG	30'	2013	29	105,941	2023
10	Ford/Glaval	E450	CNG	28'	2014	19	77,870	2024
12	Ford/El Dorado AeroElite	E450	CNG	28'	2016	19	79,863	2026
3	Ford/ Glaval Universal	F550	CNG	25'	2017	18	3,451	2027

Note 1: Ambulatory seating capacity is increased by 2 if there are no wheelchair passengers, and includes driver. Wheelchair positions are at the rear of the bus except for Bus 11, which is at the front.

Note 2: All buses have a bike rack in front except trolleys.

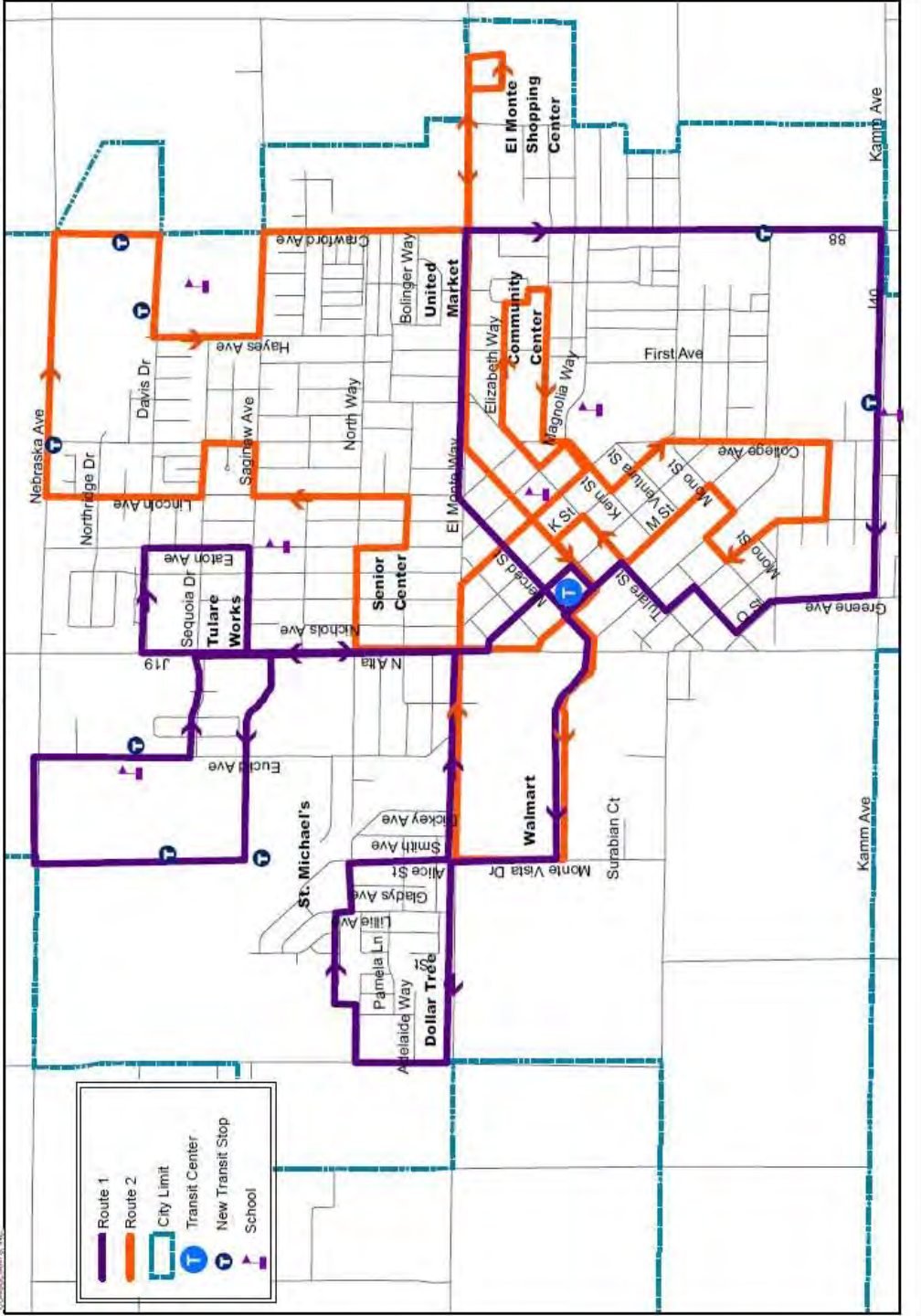
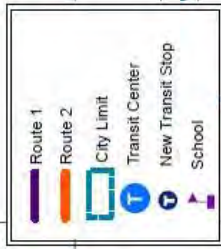
Source: *City of Dinuba Public Works Department*

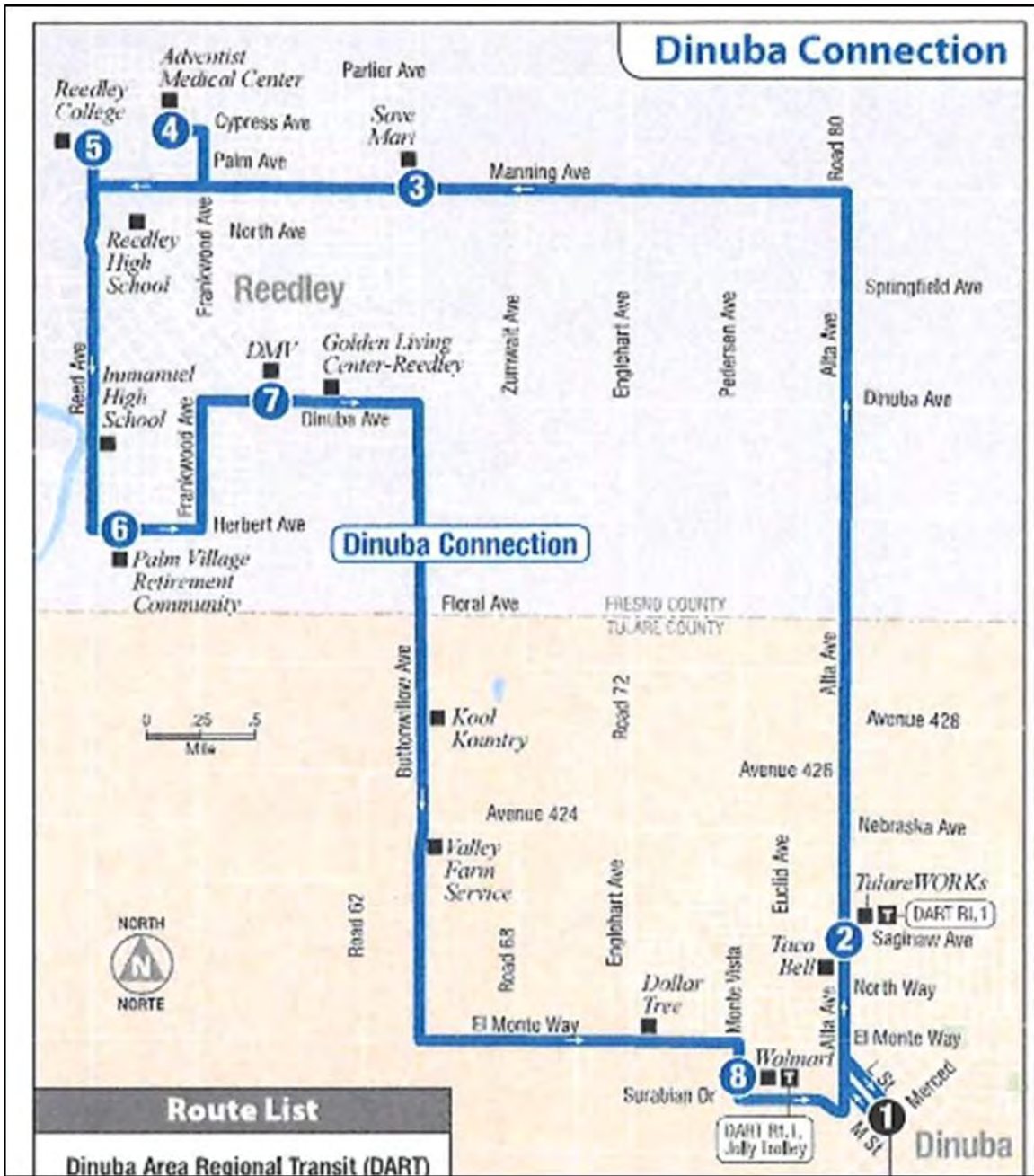
# **SCOPE OF WORK**

## **EXHIBIT C**

### **DART ROUTE MAPS**

# Two Dinuba Hourly Routes





## PART IV: DART PROPOSAL FORM

This PROPOSAL FORM is to be used to submit the PROPOSER'S firm fixed price proposal for all work described in the Part III of the Request for Proposals (RFP) for Management and Operation of the City of Dinuba Transit System (DART) dated July 12, 2019.

The PROPOSER'S price proposal must consist of fixed hourly rates by mode of service and fixed monthly rates. Such rates shall be proposed for each of the five (5) years contemplated in this RFP, and shall be based on the levels of service, in terms of vehicle service hours for all DART services. Any increase or decrease exceeding twenty percent (20%) shall be negotiated and shall be in writing with final approval by the CITY. In the event the CITY exercises any option year(s) allowed under this AGREEMENT, the rates shall be adjusted to no more than the national Consumer Price Index (CPI) for each option year but in no event shall exceed three percent (3%). For purposes of this AGREEMENT, "CPI" shall mean the U.S. City Average (1967=100), All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the U.S. Department of Labor, for December of each preceding year. The detailed Budget Breakdown of this PROPOSAL FORM should be consistent with the rates proposed. The CITY reserves the right to the right to review and discuss the basis of individual cost items as part of the RFP review process.

PRICE PROPOSAL	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
LEVEL OF SERVICE	11/1/19 - 8/31/20	9/1/20 - 8/31/21	9/1/21 - 8/31/22	9/1/22 - 8/31/23	9/1/23 - 8/31/24
Vehicle Revenue Hours	12,524 ±20%	12,524 ±20%	12,524 ±20%	12,524 ±20%	12,524 ±20%

PRICE PROPOSAL	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
COST PER HOUR	11/1/19 - 8/31/20	9/1/20 - 8/31/21	9/1/21 - 8/31/22	9/1/22 - 8/31/23	9/1/23 - 8/31/24
Cost per Revenue Hour					
Annual Percent Increase					

PRICE FORMULA – TOTAL						
SUMMARY – DART	11/1/19 - 8/31/20	9/1/20 - 8/31/21	9/1/21 - 8/31/22	9/1/22 - 8/31/23	9/1/23 - 8/31/24	5-YEAR TOTAL
Cost per Revenue Hour (annual hours x cost per revenue hour)						
Overhead Charge (monthly overhead from costs on Page 2 x 12 months)						
<b>TOTAL COST</b>						
<b>TOTAL COST (% Increase)</b>						

PRICE PROPOSAL	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
<b>MONTHLY OVERHEAD COST ELEMENTS (EXAMPLE)</b>	11/1/19 - 8/31/20	9/1/20 - 8/31/21	9/1/21 - 8/31/22	9/1/22 - 8/31/23	9/1/23 - 8/31/24
Road Supervisor Wages					
Road Supervisor Fringes					
Dispatch/Info Staff Wages					
Dispatch/Info Staff Fringes					
Other Wages					
Other Fringes					
Hiring/Training Expenses					
Safety Expenses					
Uniforms					
Office Lease*					
Office Supplies					
Accounting					
<b>INSURANCE</b>					
Worker's Compensation					
Other Expense:**					
<b>TOTAL MONTHLY OVERHEAD</b>					

\* Office lease cost includes telephones (excluding cell phones) and utilities.

\*\* Cost Plus a Percentage of Cost (CPPC) methods (i.e., management fees and profit) are prohibited by the Federal Transit Administration.

## COST PROPOSAL FORM

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(Name of Company)

hereby submits this cost proposal to meet the specifications for operating the City of Dinuba/DART transit services. This proposal is effective for ninety (90) days from the City of Dinuba's deadline for submittal of RFPs.

---

Type of Business (sole proprietorship, partnership or corporation)

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Address

---

Telephone

---

Fax Number

---

Email Address

---

Name

---

Title

---

Signature

---

Date

NON-COLLUSIVE AFFIDAVIT

STATE OF \_\_\_\_\_

CITY OF \_\_\_\_\_

being first duly sworn, deposes and says:

That he/she is \_\_\_\_\_ of the firm of \_\_\_\_\_  
(Firm Name)

the party making the foregoing Bid, that such Bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any bidder or person, to put in a sham Bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any person interested in the proposed contract; and that all statements in said bid are true.

That neither officer nor employee of \_\_\_\_\_ is in any manner interested, directly or indirectly, in the bid to which this Non-Collusive Affidavit is attached, nor in the contract which made be made pursuant to said Bid, nor in any expected profits which may arise therefrom.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Name of Bidder)

Official Address:  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

By \_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)  
My Commission Expires \_\_\_\_\_



**ELIGIBLE BIDDER CERTIFICATION**

The bidder hereby certifies that he/she is not on the Comptroller General of the United States of America list of ineligible bidders.

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name of Bidder)

By: \_\_\_\_\_

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

By: \_\_\_\_\_

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

Official Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**  
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**  
*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned [CONTRACTOR] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The CONTRACTOR, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of CONTRACTOR's Authorized Official

\_\_\_\_\_ Name & Title of CONTRACTOR's Authorized Official

\_\_\_\_\_ Date

**Certification Regarding Debarment, Suspension, Ineligibility and  
Voluntary Exclusion - Lower Tier Covered Transaction**

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date \_\_\_\_\_

Company Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

**BUY AMERICA CERTIFICATION**

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. §5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. §5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. §5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. §5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. §5323(j)(2)(A), §5323(j)(2)(B), or (j)(2)(D) and the regulations in 49 CFR Part 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. §5323(j)(2)(C)*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. §5323(j)(2)(C) and the regulations at 49 CFR Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. §5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. §5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. §5323(j)(2)(A), §5323(j)(2)(B), or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Certification Regarding Alcohol Misuse and Prohibited Drug Use**

- 1) As required by FTA regulations, ``Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the undersigned certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, ``Prevention of Alcohol Misuse and prohibited Drug Use in Transit Operations," 49 CFR part 655.
  
- 2) The undersigned shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (9)), between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. The undersigned's failure to so comply shall constitute a material breach of contract.

Date \_\_\_\_\_

Company Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

## **Certification Regarding Financial Contributions**

Certification to be executed by Proposer and each proposed first tier subcontractor whose subcontract exceeds \$100,000. Make additional copies of the Certification as necessary.

Proposer is responsible for collecting the Certification from each first-tier subcontractor whose subcontract exceeds \$100,000 and submitting it along with its own Certification to the City of Dinuba with the proposal on the date proposals are due.

Proposer is advised that if all Certifications are not submitted on the date proposals are due, they must be submitted within five (5) calendar days thereafter. Failure to submit all Certifications within five (5) calendar days following the date proposals are due may render the proposal nonresponsive. See instructions in the RFP for submitting Certifications after proposal due date.

The undersigned certifies that:

1. It will not make any monetary or in-kind contribution (including loans) to any City of Dinuba employee, Mayor, Councilperson, or any candidate for office, from the date proposals are due until the award of the agreement.
2. It understands that the term "contribution" shall have the same meaning as defined in Government Code section 82015 and implementing regulations adopted by the Fair Political Practices Commission.
3. If Proposer is awarded the agreement, the undersigned shall continue to comply with this prohibition for three (3) months following the award of the agreement.

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

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

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

Print Name/Title: \_\_\_\_\_

**NOTICE TO BIDDERS/PROPOSERS**  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM  
AND  
DBE PARTICIPATION GOAL

The Department of Transportation (Caltrans) has set an overall annual DBE goal comprising of both race neutral and race conscious elements to be in compliance with Title 49, Code of Federal Regulations, Part 26 (49 CFR 26). This regulation requires that all recipients of United States Department of Transportation (USDOT), Federal Transit Administration (FTA) federal-aid shall establish an overall annual Disadvantaged Business Enterprises (DBE) goal. Caltrans is required to report to FTA the DBE participation for all federal-aid contracts each year so that the overall annual DBE goal attainment efforts may be evaluated. Caltrans encourages DBE participation in the performance of agreements financed in whole or in part with federal funds.

Bidders and proposers are advised that Caltrans has established a federally mandated overall annual DBE goal comprising both race neutral and race conscious elements to ensure equal participation of DBE groups specified in 49 CFR 26.5. In compliance with 49 CFR 26, Caltrans set a contract goal for DBEs participating in this solicitation expressed as a percentage of the total dollar value of the resultant agreement.

**The DBE participation goal for this solicitation is 0.3 percent (0.3%).**

To ensure applicable participation of the specified DBEs as defined in 49 CFR 26.5, this solicitation's goal applies to the following certified DBE groups: African Americans, Asian-Pacific Americans, Hispanic Americans, Native Americans, Subcontinent Asian Americans, or Women. Only DBE participation will count toward the contract goal for this solicitation.

The attached Kform15drmt, Disadvantaged Business Enterprise (DBE) Information and Instructions for Bidders must be included with the solicitation. The subsequent forms **must** be submitted with the bid, cost proposal, price and/or rate schedule by the bid due date and time as indicated in the solicitation:

- **ADM-0227f: Disadvantaged Business Enterprise (DBE) Information Participation, and/or**
- **ADM-0312f: Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation**

*Failure to complete and submit the required DBE information and forms, will be grounds for finding the bidder/proposer non-responsive and cause for rejection of the bid/proposal (also refer to the solicitation, Special Programs).*

**New Requirement effective February 28, 2011:** The bidder/proposer awarded the Agreement shall complete and submit [ADM-3069](#), Disadvantaged Business Enterprises Utilization Report with each invoice as required in the Proposed form of Agreement's Exhibit B, Budget Detail and Payment Provisions and Exhibit D, Special Terms and Conditions.

Please read this Notice and Attachments very carefully as bidder/proposer is responsible to ensure bid submittal documents are complete and accurate.

## A) AUTHORITY AND BIDDER'S RESPONSIBILITY

This solicitation is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS. Bidders/Proposers (bidder) shall be fully informed of the requirements of the regulations and Caltrans' DBE Program developed pursuant to the regulations. It is the policy of the State of California, Department of Transportation (Caltrans), that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26, be encouraged to participate in the performance of Agreements financed in whole or in part with federal funds. The Bidder should ensure that DBE firms have an opportunity to participate in the performance of this solicitation and shall take all necessary and reasonable steps for this assurance. The bidder shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

### Terms as used in this document:

- 'Caltrans' means 'State of California, Department of Transportation'
- 'Awarding Agency' means the agency that let the contract and subrecipient of Caltrans
- 'Agreement' also means 'Contract'
- 'Bidder' also means 'proposer' or 'offeror'
- 'Work Codes' indicate the types of work DBE firms are certified to perform

It is the bidder's responsibility to make work available to DBEs and select portions of work, services, or materiel needed from the Scope of Work. The required work, services and/or materiel must be relevant to the DBEs work codes to meet the contract goal for DBE participation in this solicitation or provide information to establish, that prior to bidding, the bidder made an adequate Good Faith Effort (GFE) to meet the goal.

To be eligible for award of the Agreement, the bidder shall demonstrate that the contract goal for DBE participation was met or that, prior to bidding, an adequate GFE to meet the goal was made. Preliminary determination of goal attainment or GFE by the bidder will be by the Awarding Agency. Final determination of goal attainment or GFE by the bidder will be at Caltrans' discretion.

Bidder is cautioned that even though its submittal indicates it will meet the stated DBE goal, its submittal should also include its GFE documentation along with DBE goal information to protect its eligibility for award of the Agreement in the event Awarding Agency, in its review, finds that the goal has not been met.

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**It is the bidder's responsibility to verify DBE certifications.**

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## B) SUBMISSION OF DBE INFORMATION AND PARTICIPATION

In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal and/or make a GFE to meet the contract goal for DBE participation as established for this Agreement (refer to Section III, DBE Certification Requirements, Section 4). Bidder shall submit the attached form(s).

- ADM-0227f, Disadvantaged Business Enterprise (DBE) Information
- ADM-0312f, Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation. Bidder shall provide sufficient documentation to demonstrate adequate GFEs were made. For disqualification examples, refer to the Instructions to Bidder/Proposer on page 1 of the ADM-0312f.

## C) DBE CERTIFICATION REQUIREMENTS

It is the bidder's responsibility to be fully informed regarding the requirements of 49 CFR 26 and Caltrans' DBE Program developed pursuant to the regulations. Particular attention is directed to the following:



1. A DBE must be a small business firm defined pursuant to Section 3 of the Federal Small Business Act **and** certified through the California Unified Certification Program (CUCP). A DBE firm is a DBE certified through CUCP. In accordance with 49 CFR 26, the DBE must be certified by bid opening date of the Invitation for Bid (IFB), the Request for Proposal (RFP), or the Architectural and Engineering (A&E) Request for Quotations (RFQ), before credit may be considered toward meeting the DBE goal. It is the bidder's (prime contractor's) responsibility to verify that DBEs are certified by accessing the CUCP database.
2. The CUCP database includes DBEs certified from all certifying agencies participating in the CUCP. If a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
3. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity (OBEO) web site at: <http://www.dot.ca.gov/hq/bep/>.
  - Click on the blue DBE Search Click Here button
  - Click on Click To Access DBE Query Form
  - Searches can be performed by one or more criteria
  - Follow instructions on the screen (read about NAICS definitions below)
  - "Start Search", is located at the bottom of the query form,
  - "Civil Rights Home" (OBEO), "Caltrans Home", and "Instructions/Tutorial" links are located on top of the query page.

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MUST USE EITHER INTERNET EXPLORER 5.5 OR NETSCAPE 7 (OR GREATER) FOR THIS DATABASE.

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### **Resources to Obtain a List of Certified DBEs for Caltrans Solicitations**

Contractors bidding on Caltrans solicitations with a contract goal for DBE participation may contact the DBE supportive services consultant or obtain lists of certified DBEs from the CUCP database referenced above.

### **NAICS Work Codes and Work Descriptions**

The North American Industry Classification System (NAICS) work codes are used to identify the type of work performed by DBEs. You will need to have the NAICS work code numbers before querying. The United States (US) Census Bureau has developed cross-references from Standard Industrial Classification (SIC) codes to the NAICS codes. Please visit the US Census Bureau web site for more information concerning work areas related to NAICS 237310 Highway, Street, and Bridge Construction, at the following location: <http://www.census.gov/epcd/naics02/def/ND237310.HTM>.

### **How to Obtain a Quarterly List of Certified DBEs without Internet Access**

If you do not have Internet access, Caltrans also publishes a quarterly directory of certified DBE firms extracted from the on-line database. A copy of the quarterly directory of certified DBEs may be ordered from the Caltrans' Division of Procurement and Contracts/Materiel and Distribution Branch/Publication Unit by calling (916) 263-0822.

4. In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal and/or make a Good Faith Effort to meet the contract goal for DBE participation established for the Agreement. The bidder can meet this requirement in one of two ways:
  - a. Meet the contract goal and document commitments for participation by DBE firms.
  - b. If the contract goal is not met or is partially met, the bidder must document an adequate GFE.
5. A bidder (**prime contractor**), **who is not a certified DBE**, will be required to document one or a combination of the following:
  - a. The bidder will meet the contract goal for DBE participation through work performed by DBE subcontractors, suppliers, or trucking companies.
  - b. Prior to bidding, the bidder made an adequate GFE to meet the contract goal for DBE participation.

6. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
7. A certified DBE bidder not bidding as a joint venture with a non-DBE, is required to document one or more of the following:
  - a. The DBE bidder will meet the goal by performing work with its own forces.
  - b. The bidder will meet the contract goal for DBE participation through work performed by DBE subcontractors, suppliers, or trucking companies.
  - c. Prior to bidding, the bidder made adequate GFEs to meet the contract goal for DBE participation.
8. A DBE joint venture partner must be responsible for specific Agreement items of work, or portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces.
9. The DBE joint venture partner must share in the capital contributions, control, management, risks and profits of the joint venture. The DBE joint venture must attach and submit the joint venture agreement with the ADM 0227F as instructed on page 2 of the form.
10. A DBE must perform a Commercially Useful Function (CUF), pursuant to 49 CFR 26, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible for materiel and supplies to be used on the Agreement for negotiating price, determining quality, and quantity, installing (where applicable), and paying for the material itself.
11. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in its bid/proposal and all DBE subcontractors must be listed in the bid/cost proposal list of subcontractors.
12. Any dollar amount of work, service or supplies proposed for DBE participation can be counted only once. That is, any further subcontracting or spending for DBE work, service or supplies already credited once for DBE participation cannot be counted again.
13. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the goal except that portion of the work to be performed by non-DBE subcontractors.
14. If the bidder performs and documents an adequate GFE to meet the goal, the award cannot be denied on the basis that the bidder failed to meet the goal.

#### **D) CREDIT: MATERIEL – SUPPLIES – TRUCKING COMPANIES**

##### **A. CREDIT FOR MATERIEL OR SUPPLIES PURCHASED FROM DBEs WILL BE AS FOLLOWS:**

1. If the materiel or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materiel or supplies will count toward the DBE goal.
2. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materiel, supplies, articles, or equipment required under the Agreement and of the general character described by the Agreement.
3. If the materiel or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materiel or supplies will count toward the DBE goal.
4. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materiel, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
5. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products.

6. Any supplementing of regular dealers' own distribution equipment shall be a long-term lease Agreement and not on an ad-hoc or Agreement by Agreement basis.
7. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
8. Credit for materiel or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commission charged for assistance in the procurement of the materiel and supplies or fees or transportation charges for the delivery of materiel or supplies required on a job site, provided the fees are reasonable and not excessive as compared with similar fees charged for services. The cost of materiel or supplies is not counted toward the DBE goal in this instance.

**B. CREDIT FOR DBE TRUCKING COMPANIES WILL BE AS FOLLOWS:**

1. The DBE must manage and supervise the entire trucking operation for which it is responsible on a particular Agreement and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
3. The DBE will receive credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. A lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from being used by others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck.
7. Leased trucks must display the name and identification number of the DBE.

**E) USE AND/OR TERMINATION OF PROPOSED DBEs**

If awarded the Agreement, the successful bidder must use the DBE subcontractor(s) and or supplier(s) proposed in its bid/proposal.

The Contractor may not substitute, add or terminate a subcontractor, supplier or, if applicable, a trucking company, listed in the original bid/proposal without the prior written approval by the Awarding Agency Contract Manager and concurred by Caltrans and only as allowable as specified in the Agreement. This includes work that a prime contractor can perform with its own forces, or with a non-DBE firm, or another DBE firm.

Prior to the termination request, the prime contractor **must** notify the DBE, in writing, of the intent to terminate allowing for five days of response time in opposition of the rejection.

The prime contractor must have good cause in which to terminate the DBE firm. A good cause includes:

1. The DBE fails or refused to execute a written contract.
2. The DBE fails or refuses to perform the work consistent with normal industry standards.
3. The DBE fails or refuses to meet the prime contractor's nondiscriminatory bond requirements.
4. The DBE becomes bankrupt or has credit unworthiness.
5. The DBE is ineligible to work because of suspension and debarment.
6. It has been determined that the DBE is not a responsible contractor.
7. The DBE voluntarily withdraws, with written notification, from the contract.
8. The DBE is ineligible to receive credit for the type of work required.
9. The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
10. Or other documented compelling reason.

The Contractor must make an adequate GFE to find another certified DBE subcontractor to substitute for the original DBE. The GFE shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was substituted or terminated to the extent needed to meet the established contract goal for DBE participation.

The requirement that DBEs must be certified by the bid opening date does not apply to DBE substitutions after award of the Agreement. Substitutions of DBEs after award must be certified at the time of the substitution or addition.

#### **F) AWARD**

Award of the Agreement will be in accordance with the respective solicitation.

The bidder awarded the Agreement shall be responsible for implementing the applicable requirements of 49 CFR 26 in performance of the Agreement.

The bidder awarded the Agreement shall complete and submit ADM-3069, Disadvantaged Business Enterprises Utilization Report with each invoice.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION**

ADM-0227f (Rev. 06/2012) Page 1 of 2 (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

**PART A – CONTRACTORS INFORMATION (Refer to Instructions on Page 2 of this form. Bidder/Proposer shall ensure all information provided is complete and accurate.)**

CONTRACTOR'S BUSINESS NAME		AGREEMENT NUMBER	CONTRACT AMOUNT	DOLLAR	DATE
CONTRACTOR'S BUSINESS ADDRESS		CITY		ST AT E	ZIP CODE
CONTACT PERSON	BUSINESS PHONE ( )	FAX NUMBER ( )	EMAIL ADDRESS		

**PART B – DBE INFORMATION AND DOCUMENTATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall verify DBE certifications.)** Contractor shall attach a copy of the bid (or price quote) from the DBE (on the DBE's Letterhead) for all DBEs listed below.

(1) Prime and Subcontractors: List Name(s) and addresses of all DBEs that will participate in this Agreement:	(2) Area Code & Phone Number	(3) T	(4) Description of Work, Service, or Materiel Supplied	(5) DBE or CUCP Certific	(6) O w ne	(7) DBE \$ Amoun	(8) % of	(9) ) ) C

**PART C – FOR CALTRANS USE ONLY (Verification Completed by Civil Rights, Office of Business and Economic Opportunity):**

PRINT VERIFIER'S NAME AND TITLE	SIGNATURE	DATE	CIVIL RIGHTS STAMP OF APPROVED
DBE PARTICIPATION <input type="checkbox"/> YES ( % ) <input type="checkbox"/> NO			

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION**

ADM-0227f (Rev. 06/2012) Page 2 of 2

AUTHORITY: Title 49, Code of Federal Regulations, Part 26 (49 CFR 26)

INSTRUCTIONS FOR COMPLETING FORM ADM-0227f (Please Type or Print Legibly):

**PART A – CONTRACTOR INFORMATION**

**CONTRACTOR'S BUSINESS INFORMATION:** Bidder's/Proposer's Business Name, Address, City, State, Zip Code, Contact Person, Business Phone, Fax Number, and Email Address.

**Agreement Number:** The Agreement number is the same number as the Invitation for Bid (IFB) or Request for Proposal (RFP) number.

**CONTRACT DOLLAR AMOUNT:** Total dollar amount that Contractor proposes to accomplish the Agreement.

**Date:** Date this form is completed.

**PART B – DBE INFORMATION AND DOCUMENTS**

PRIME: Complete if Prime is a certified DBE.

Sub-Contractor: Complete if the Subcontractor(s)/Supplier(s) are certified DBE. Please make and attach additional copies of page 1 if needed. Attach a copy of the bid (or price quote) from the DBE (on the DBE's Letterhead) for all DBEs listed.

Column 1 Enter the names (includes all certified DBE Prime and Subcontractors) and complete addresses of all certified DBE Contractor/Subcontractor/Supplier(s) that will be used in the Agreement.

Column 2 Enter the area code and phone number of the corresponding certified DBE listed in Column 1.

Column 3 Enter the Contracting Tier number for each DBE correspondingly listed in Column 1: 0 = Prime or Joint Consultant, 1 = Primary Subcontractor, 2 = Subcontractor/Supplier of level 1 Primary Subcontractor.

Column 4 Enter a description that briefly captures the work to be performed or supplies to be provided by each corresponding DBE firm listed in Column 1.

Column 5 Enter the DBE or CUCP Certification Number for the corresponding DBE listed in Column 1. Self-certification is NOT acceptable. DBEs must be certified by the submittal date identified in the IFB or RFP. For more certification and verification information, refer to the IFB's or RFP's Notice to Bidders/Proposers Disadvantaged Business Enterprise (DBE) Program and Participation Goal.

Column 6 Enter the correct Ownership Code number below for the corresponding DBE listed in Column B.

- |                       |                                 |                    |
|-----------------------|---------------------------------|--------------------|
| 1 = Black American    | 4 = Asian-Pacific American      | 7 = Woman          |
| 2 = Hispanic American | 5 = Subcontinent Asian American | 8 = Other          |
| 3 = Native American   | 6 = Caucasian                   | 9 = Not Applicable |

Column 7-8 Enter the dollar and/or percentage (%) of the dollar (\$) value claimed for each corresponding DBE listed in Column 1.

EXAMPLE:

**PART B – DBE INFORMATION AND DOCUMENTATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall verify DBE certifications.)**

(1) List Name(s) and addresses of all DBEs that will participate in this	(2) Area	(3) T	(4) Description of Work, Services, or Materiel Supplied	(5) DBE or CUCP	(6)	(7) DBE \$ Amo	(8) % of \$	(9) C alt
1 B Jane Prime Inc., 1234 Jane's	( x x x	0	Project management	X X X	7 ,	48 ,0 00	4 8 %	

Joe Subcontracto r Inc., 4567	( X X X	1	Design, surveys, environmental	00 00 00	6	42 ,0 00	4 2 %	
Supplier International LLC, 1100 X	( 1 1 1	2	Survey instruments, testing	11 11 11	3	10 ,0 00	1 0 %	

**ADDITIONAL INFORMATION:**

- Form ADM-0312f should be submitted with the ADM-0227f to demonstrate good faith efforts (GFE) AND protect bidder's/proposer's eligibility for contract award in the event Caltrans determines the bidder/proposer failed to meet the DBE goal.
- A DBE joint venture partner shall submit the joint venture agreement with the form ADM-0227f.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

FORM H-2

STATE OF CALIFORNIA · DEPARTMENT OF TRANSPORTATION

**BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION**

ADM-0312f (REV 6/2012) Page 2 of 4

CONTRACTOR'S NAME	IFB OR RFP OR RFQ NUMBER	D A T E
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**2. DBE DOCUMENTATION (Continued)**

**SOLICITATION**

D A T E  M A I L E D	D A T E P H O N E D	D A T E O F F O L L O W - U P	F O L L O W - U P M E T H O D P H O N E/ E M A I L	N A M E O F F I R M S O L I C I T E D	C O N T A C T N A M E	P H O N E N U M B E R

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**1. ITEMS OF WORK**

Identify the items of work made available to DBE firms, including, where appropriate, any breakdown of the contract work into economically feasible units to facilitate DBE participation. Bidder/Proposer shall demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

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ITEMS OF WORK:

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BREAKDOWN OF ITEMS:

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**BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION**

ADM-0312f (REV 06/2012)

Page 4 of 4

CONTRACTOR'S NAME	IFB OR RFP OR RFQ NUMBER	DATE
-------------------	--------------------------	------

**4. ASSISTANCE TO DBEs – Equipment/Materials, etc.**

Identify efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.

**5. ADDITIONAL DATA**

Provide any additional data to support a demonstration of GFE such as contacts with DBE assistance agencies. Identify the names of agencies, organizations, and groups providing assistance in contacting, recruiting, and using DBE firms. Attach copies of requests to agencies and any responses received, i.e., lists, Internet pages, etc.

NAME OF AGENCY/ORGANIZATION	METHODS/DATE OF CONTACT	RESULTS

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 9581

## **POTENTIAL DBE CONTRACTING OPPORTUNITIES**

**(The City of Dinuba's DBE Goal for this project is 0.3%.)**

- Office Furniture
- Bus Operations and Management - Rural
- Office Equipment
- Paper and Paper Products
- Uniforms
- Auto and Home Supply Stores
- Towing

## Protest Procedures and Appeal to Caltrans

**Pre-Award Protests.** Protests concerning the City of Dinuba's pre-award process may be submitted in writing (via express mail or email) to Mr. George Avila, Business Manager, Public Works Department, 1088 E. Kamm Avenue, Dinuba, CA 93618 or at [gavila@dinuba.ca.gov](mailto:gavila@dinuba.ca.gov), by 3:00 p.m., Tuesday, July 30, 2019. Mr. Avila will respond to these protests by Tuesday, August 6, 2019 by email.

**Post-Award Protests.** Protests concerning the City of Dinuba's post-award process may be submitted in writing (via express mail or email) to Mr. George Avila, Business Manager, Public Works Department, 1088 E. Kamm Avenue, Dinuba, CA 93618 or at [gavila@dinuba.ca.gov](mailto:gavila@dinuba.ca.gov), by 3:00 p.m., Tuesday, August 20, 2019. Mr. Avila will respond to these protests by Tuesday, August 27, 2019, by email.

**Appeal to Caltrans.** Under limited circumstances, after an interested party has exhausted its administrative remedies at the City of Dinuba Public Works Department level, the interested party may appeal the County's decision to the California Department of Transportation (Caltrans). The deadline for pre-award protest appeals to Caltrans is by 3:00 p.m., Tuesday, July 30, 2019. The deadline for post-award protest appeals to Caltrans is 3:00 p.m., Tuesday, August 20, 2019.

Caltrans limits review of appeals to:

1. The City of Dinuba's procedural failures (City does not have protest procedures, or has not complied with its protest procedures, or has not reviewed the protest when presented an opportunity to do so.)
2. Violations of Federal law or regulations
3. Violations of State or local law or regulations

Appeals to Caltrans must:

1. State the name and address of the interested party.
2. Identify the City of Dinuba as responsible for the RFP process.
3. State the grounds for appeal, with supporting documentation.
4. Include a copy of the protest filed with the City of Dinuba Public Works Department and a copy of the City of Dinuba's decision.
5. State the relief sought from Caltrans.

Direct appeals (via mail only) to:

California Department of Transportation  
Division of Rail & Mass Transportation, MS 39  
PO Box 942874  
Sacramento, CA 94274-0001

Send a copy (via mail or email only) of the appeal to Mr. George Avila, Business Manager, Public Works Department, at the address or email above.

## **Appeal of Caltrans Determination to the Federal Transit Administration (FTA)**

An appeal to the FTA of the Caltrans determination must be made in writing. A protester must exhaust all administrative remedies with the grantee (Caltrans) before pursuing a protest appeal with FTA.

Reviews of protests by FTA will be limited to:

1. A grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
2. Violations of federal law or regulation.

An appeal to FTA must be received by the cognizant FTA region IX or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

## **PART V: DRAFT AGREEMENT**

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**CITY OF DINUBA  
DRAFT SERVICE AGREEMENT**

This Service Agreement ("Agreement") is made by and between the City of Dinuba ("CITY"), a municipal corporation formed pursuant to the laws of the State of California, and \_\_\_\_\_ ("CONTRACTOR") with its principal place of business at \_\_\_\_\_. The effective date of this Agreement is \_\_\_\_\_, 2019.

**RECITALS**

- A. CITY operates a public transit system for the use of its citizens; CITY operates a flexroute service between the hours of 7:00 a.m. to 6:00 p.m. Monday through Thursday, 7:00 a.m. to 9:00 p.m. Friday, and 9:00 a.m. to 6:00 p.m. Saturday. A regional fixed route service to Reedley between the hours of 7:00 a.m. and 9:00 p.m. Monday through Friday.
- B. CITY desires to retain an outside service provider to supply ongoing management and operation of general public flexroute, fixed route, and Dial-A-Ride transit services within the City of Dinuba service area.
- C. CONTRACTOR is capable of and willing to provide the services described in "Part III, Scope of Work" of the Request for Proposals (RFP) for the Management and Operation of the City of Dinuba Transit System (DART) dated July 12, 2019.
- D. CONTRACTOR acknowledges that all terms, descriptions and requirements identified in the RFP dated July 12, 2019, are hereby included in this service AGREEMENT by reference.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this AGREEMENT, the parties agree as follows:

**I. PERSONNEL**

Subject to the terms of this AGREEMENT, CONTRACTOR agrees to furnish CITY, and CITY agrees to engage from CONTRACTOR, employees listed in Exhibit A and those that thereafter may be hired with individuals qualified and capable of operating the CITY'S transit services in accordance with the CITY'S transit service program,

including but not limited to those individuals listed in Exhibit A, and as may thereafter be hired by CONTRACTOR.

- A. CITY acknowledges that it shares with CONTRACTOR the right of direction and control over employees assigned to CITY'S work site.
- B. CITY acknowledges that it shares with CONTRACTOR the right of direction and control over the adoption of employment policies and procedures.
- C. At all times during the term of this AGREEMENT, CONTRACTOR shall be an independent contractor and neither CONTRACTOR nor its employees shall be considered as employees of CITY. CITY shall have the right to control CONTRACTOR and CONTRACTOR'S employees only insofar as the result of CONTRACTOR'S services rendered pursuant to this AGREEMENT; however, CITY shall not have the right to control the means by which CONTRACTOR accomplishes services rendered pursuant to this AGREEMENT.

## **II. TERM OF AGREEMENT**

2.1 This AGREEMENT shall commence on November 1, 2019, and remain in force and effect through August 31, 2024. Upon completion of the initial five (5) year term, the CITY may exercise an option for an additional five (5), one (1) year extensions. The extension options are exercised at the sole discretion of the CITY.

It is mutually understood and agreed that CITY is under no obligation whatsoever to exercise any option and that no representations have been made by CITY committing it to such exercise of an option. The exercise of such option may be made by amendment to this AGREEMENT. Should CITY elect to exercise said option, and upon CONTRACTOR'S acceptance of CITY'S election to exercise the option herein described, the parties shall execute a written amendment to this AGREEMENT.

2.2 Upon completion of the full term of this AGREEMENT, CITY at its sole discretion may extend the term of this AGREEMENT on a month-to-month basis up to a maximum of six (6) months. CITY shall notify CONTRACTOR of such extensions at least thirty (30) days prior to the termination date of this AGREEMENT. The compensation rates in effect during the last monthly period of the full term of this AGREEMENT shall remain in effect and be applicable to such extensions.



2.3 In negotiations between CONTRACTOR and employee representation, CONTRACTOR will bargain in good faith. CONTRACTOR will notify the COUNTY a minimum of sixty (60) days in advance of finalization/signing of a revised bargaining agreement.

It is mutually understood and agreed that all work performed and services provided under the exercised option shall be in strict compliance with all of the requirements of this AGREEMENT as such may be amended from time to time, in writing, by mutual AGREEMENT of the parties.

### **III. ADMINISTRATION**

3.1 CONTRACTOR is the employer of those persons identified herein and those that thereafter may be hired and is liable as such for the following purposes.

- a. Compliance with rules and regulations governing the reporting and payment of all federal and state taxes on payroll wages paid under this Agreement including, but not limited to: (i) federal income tax withholding provisions of the Internal Revenue Code; (ii) state and/or local income tax withholding provisions if applicable; (iii) Federal Insurance Contributions Act (FICA); (iv) Federal Unemployment Tax Act (FUTA); and (v) applicable state unemployment provisions and payment of all payroll taxes and collection of payroll taxes and collection of taxes from payroll for all employees assigned to CITY.
- b. Compliance with applicable workers' compensation laws including but not limited to: (i) procuring workers' compensation insurance, (ii) completing and filing all required reports, and (iii) managing claims.
- c. Compliance with the Consolidated Omnibus Reconciliation Act (COBRA).
- d. Compliance with the Immigration Reform and Control Act (IRCA).
- e. Compliance with the Consumer Credit Protection Act, Title III.
- f. Procuring and providing employee benefits, if any.
- g. Monitoring and transmitting to CITY changes in governmental regulations relating to policies and practices governing the employer-employee relationship including, but not limited to, issues such as recruiting, interviewing, testing selecting,

orientation of, training, evaluating, replacing, supervision, disciplining and terminating employees.

- h.** Compliance with federal and drug testing regulations applicable to Federal Transit Administration recipients including but not limited to those regulations and requirements included hereto in “XV. Compliance with Federal Laws and Regulations.”

3.2 CONTRACTOR reserves the right of direction and control over CONTRACTOR'S employees assigned to the CITY'S location.

3.3 CONTRACTOR reserves the authority to hire, terminate, discipline, assign, direct, and control the performance of, and hiring, terminating, disciplining, and reassigning any employee assigned to CITY.

3.4 CONTRACTOR will assign drivers to CITY operations as specified and requested.

3.5 CITY and CONTRACTOR agree to immediately report to each other all accidents and injuries involving CONTRACTOR employees assigned to CITY.

3.6 This AGREEMENT is between CONTRACTOR and CITY, and creates no individual rights of CONTRACTOR employees as against CITY.

3.7 CONTRACTOR and CONTRACTOR Workers' Compensation Insurance carrier shall have the right to inspect CITY'S premises, the area in which CITY stages transit services, relevant to this AGREEMENT.

3.8 CONTRACTOR'S responsibilities include providing written notice to all CONTRACTOR assigned personnel that all assigned personnel are the employees of CONTRACTOR.

#### **IV. COMPENSATION/WAGE GUARANTEE**

In exchange for the personnel services provided by CONTRACTOR hereunder, CONTRACTOR and CITY agree as follows:

4.1 CONTRACTOR fee rates (per month and per vehicle service hour) are set forth in “XI. Payment.”

4.2 The fee provided for by this AGREEMENT shall be due and payable within thirty (30) days of receipt of CONTRACTOR'S invoice. In the event payment is received late, there shall be an additional charge of five (5) percent per month for each month past the due date.

CONTRACTOR assumes responsibility for the payment of all wages to CONTRACTOR employees assigned to CITY without regard to payments by CITY to CONTRACTOR. CONTRACTOR is required to compensate the employees furnished herein with wages and benefits which are no less than those provided for in the prevailing union agreement, as applicable.

## **V. INSURANCE COVERAGE AND REQUIREMENTS**

CONTRACTOR shall procure and maintain the types of insurance and in the minimum amounts stated herein. CONTRACTOR'S liability coverages shall be primary and no insurance or self-insurance coverage of the CITY shall contribute with these primary coverages. Said insurance shall be written by an insurer having a most recent published rating by A.M. Best & Company of "A-VII" or better. Prior to commencing any work under this Agreement and no less than thirty (30) days prior to the expiration of any of these policies, Certificates of Insurance evidencing the maintenance of said insurance shall be furnished to the other party. CONTRACTOR shall notify the CITY (Transit Manager, City of Dinuba, 1088 E. Kamm Avenue, Dinuba, CA 93618) in writing and provide documentation within thirty (30) days of a change in insurance carrier(s), any material alteration or cancellation of insurance coverage, and/or change in scope or coverage, including expiration and/or non-renewal. In the event of insurance coverage expiration and/or non-renewal, CONTRACTOR shall ensure that the same level of insurance coverage, as required per the Agreement, is provided to the CITY by a new insurance carrier(s) with no gap in coverage. CITY shall be named as an Additional Insured by a written endorsement acceptable to the CITY.

- A. WORKER'S COMPENSATION INSURANCE with statutory limits, and EMPLOYER'S LIABILITY INSURANCE with limits of not less than one million dollars (\$1,000,000) per accident and disease. Worker's Compensation Insurance as required by the State of California covering all its employees providing service under this Agreement. CONTRACTOR agrees to indemnify, defend, and hold harmless the CITY from any and all claims arising out of any injury, disability, or death of any of CONTRACTOR's employees or agents.
- B. COMMERCIAL GENERAL LIABILITY INSURANCE with a combined single limit of not less than ten million dollars (\$10,000,000) per occurrence. Such insurance shall include products/completed operations liability, owner's and CONTRACTOR's protective, blanket contractual liability, broad form property damage coverage, and explosion, collapse and

underground hazard coverage. Such insurance shall (a) name the CITY, its appointed and elected officials, officers, employees and agents as Additional Insureds; (b) be primary with respect to any insurance or self-insurance programs maintained by the CITY; and (c) contain standard cross liability provisions. CONTRACTOR further agrees to hold the CITY free and harmless from any and all claims arising from any such negligent act or omission.

- C. EMPLOYMENT PRACTICES LIABILITY INSURANCE (EPLI) shall be provided to cover defense and indemnity for Employment Practices Liability (EPL) claims arising from the performance of CONTRACTOR under this Agreement with liability limits of no less than \$2 Million per occurrence and a general aggregate of \$4 Million. This coverage may be provided as a stand-alone insurance coverage for EPL claims or as part of a Commercial General Liability of Management Liability Policy.
- D. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE with a combined single limit of not less than ten million dollars (\$10,000,000). Such insurance shall (a) include coverage for owned, hired and non-owned automobiles; (b) name the CITY, its elected and appointed officials, officers, employees and agents as Additional Insureds; (c) be primary for all purposes; and (d) contain standard cross liability provisions.
- E. AUTOMOBILE COLLISION AND COMPREHENSIVE COVERAGE for the actual cash value of transit vehicles (based upon straight-line depreciation, the original purchase price and service life expectancy). Such insurance shall name the CITY as loss payee.
- F. SELF-INSURED RETENTION (SIR) CONTRACTOR shall disclose to the CITY its SIR amount for Commercial General Liability and Commercial Auto claims. If CONTRACTOR SIR amount is in excess of \$100,000, CONTRACTOR shall provide CITY with the latest independent financial audit report that will ensure CONTRACTOR is financially able to pay claims within this amount.
- G. CALIFORNIA GOVERNMENT CODE COMPLIANCE  
Any bodily injury or property damage claims against the CITY must comply with the California Government Code. Even if the CITY tenders a claim or lawsuit to CONTRACTOR per this Agreement, CONTRACTOR shall notify the CITY or the CITY's claims representative of any claim or lawsuit to protect the interests of the CITY per the Government Claims Act.

The CONTRACTOR shall furnish properly executed Certificates of Insurance and signed copies of the specified endorsements for each

policy prior to commencement of work under this Agreement. Such documentation shall:

(1) clearly evidence all coverages required above, including specific evidence of endorsements naming the CITY as additional insured as required hereinabove; or provide blanket endorsements; and

(2) indicate whether coverage provided is on a claims made or occurrence basis.

The CONTRACTOR shall be fully responsible for the cost of such insurance. The CITY shall not be responsible for reimbursement of any insurance costs to the CONTRACTOR. Such insurance shall be maintained from the time work first commences until completion of the work under this AGREEMENT if an occurrence policy form is used. If a claims made policy is used, coverage shall be maintained during the contract term and for a period extending five (5) years beyond the contract termination date. The CONTRACTOR shall replace such certificates for policies expiring prior to completion of work under this AGREEMENT and shall continue to furnish certificates five (5) years beyond the contract term, when CONTRACTOR has claims made form(s).

If the CONTRACTOR, for any reason, fails to maintain insurance coverage that is required pursuant to this AGREEMENT, the same shall be deemed a material breach of contract. The CITY, at its sole option, may terminate this AGREEMENT and obtain damages from the CONTRACTOR resulting from said breach. Alternatively, the CITY may purchase such required insurance coverage, and without further notice to the CONTRACTOR, the CITY may deduct from sums due to the CONTRACTOR any premium costs advanced by the CITY for such insurance.

The parties shall also carry such other insurance that may be required by law. The foregoing requirements as to the types and minimum limits of insurance to be maintained shall not in any manner limit the liability or obligations otherwise assumed by the parties under this AGREEMENT, including but not limited to the indemnification provisions of this AGREEMENT. Anything to the contrary notwithstanding, the liabilities of the parties under this AGREEMENT shall survive and not be terminated, reduced, or otherwise limited by any expiration or termination of insurance coverage. If either party, for any reason, fails to maintain insurance coverage which is required pursuant to this AGREEMENT, the same shall be deemed a material breach of contract, and the other party, at its sole option, may immediately terminate this AGREEMENT. Should CONTRACTOR terminate the AGREEMENT

pursuant to this provision, CONTRACTOR shall be compensated for all work performed.

## **VI. FIDELITY BOND**

CONTRACTOR shall secure for its employees a Fidelity Bond protecting the CITY from employee theft up to the amount of ten thousand dollars (\$10,000) for any one occurrence. Such Fidelity Bond shall name CITY as loss payee with respect to amounts claimed there under arising out of CONTRACTOR's performance under this AGREEMENT. CONTRACTOR shall provide CITY a copy of said bond accompanied by proof of payment for same within thirty (30) days of the date of this AGREEMENT is fully executed. Subject to review by its Risk Manager, CITY will accept in lieu of the required Fidelity Bond, Employee Dishonesty Insurance.

## **VII. PERFORMANCE GUARANTEE**

Prior to approval of this AGREEMENT by the CITY, the CONTRACTOR must submit a bond or other acceptable security to the CITY. CONTRACTOR shall perform no services pursuant to this AGREEMENT, nor be entitled to compensation therefore, unless and until CONTRACTOR submits a bond or other acceptable security to CITY for use of CITY, such bond executed by CONTRACTOR and a surety company licensed to do business in the State of California, such bond in the amount of ten percent (10%) of the annual AGREEMENT price, and which shall at all times be kept in full force and effect. The condition of such bond shall be that CONTRACTOR shall fully and faithfully perform all conditions and covenants of this AGREEMENT. CONTRACTOR shall provide CITY a copy of said bond accompanied by proof of payment for same prior to the execution of this AGREEMENT. The bond may be a renewable one-year bond, and shall be renewed annually before its expiration date; provided, however, that such bond must remain in full force and effect from and after the date CITY makes any demands for payment on the bond until the CITY releases such claim. Provision of such bond or its equivalent, approved by CITY, is a material covenant of this AGREEMENT. CITY shall not approve any security which is not unconditionally payable to CITY upon CITY demand.

## **VIII. EMPLOYMENT APPLICATION**

Each employee furnished by CONTRACTOR to CITY must be listed on Scope of Work Exhibit A (Wages and Fringe Benefits for the Operation of DART) or any amendment thereto. Any amendments to Scope of Work Exhibits A and/or B (DART Vehicles) must comply with the provisions of "XIV. Amendments" of this AGREEMENT. Employees

must complete all payroll required forms (W-9, I-9, etc.) prior to payroll processing. CITY will allow CONTRACTOR to provide copies of the prior employee applications completed by current employees. Only new hires must complete the new application forms referred to herein.

## **IX. CROSS-HIRING**

CONTRACTOR and CITY agree that during the term of this AGREEMENT, and for a period of one (1) year following the termination thereof, neither party shall hire an employee or former employee of the other party without the written approval of the other party. The term "former employee" used in this provision shall mean employees who have separated their employment within the prior twelve (12) months.

## **X. INDEMNIFICATION**

10.1 CONTRACTOR shall hold harmless, defend and indemnify CITY, its agents, officers, employees, agents and volunteers from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including CITY property, arising from, or in connection with, the performance by CONTRACTOR, or its agents, officers and employees under this AGREEMENT. This indemnification specifically includes any claims that may be made against CITY by any taxing authority asserting that an employer-employee relationship exists by reason of this AGREEMENT, and any claims made against CITY alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on CITY for CONTRACTOR'S failure to provide form DE-542 (State of California Employment Development Department "Report of Independent Contractor(s)"), when applicable. This indemnification obligation shall continue beyond the term of this AGREEMENT as to any acts or omissions occurring under this AGREEMENT or any extension of this AGREEMENT.

10.2 It is the intent of the parties that CONTRACTOR will indemnify, defend and hold harmless CITY and its officers, agents, employees and assigns, from any and all claims, demands, costs, suits or actions as set forth above, except for the sole negligence or willful misconduct of CITY. This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of this indemnity and hold harmless provision may be within public policy and enforceable.

10.3 CONTRACTOR shall protect the interests of Medicare's interests on all claims brought by Medicare beneficiaries or Medicare eligible

claimants. CONTRACTOR shall protect Medicare conditional liens and future payment interests. Any penalties associated with not protecting Medicare interests or for improper reporting of claims to the Center for Medicare & Medicaid Services (CMS) shall be the sole responsibility of the CONTRACTOR.

## **XI. PAYMENT**

CITY agrees to pay CONTRACTOR for the performance of services set forth in this AGREEMENT as follows:

### 11.1 Price Formula

For services rendered under this AGREEMENT, entitled "Scope of Work", and detailed in Exhibit A, which is attached hereto and made a part hereof, payment shall be based on the following rates for the periods of November 1, 2019 through August 31, 2020 (2019-20); September 1, 2020 through August 31, 2021 (2020-21); September 1, 2021 through August 31, 2022 (2021-22); July 1, 2022 through June 30, 2023 (2022-2023) and September 1, 2023 through August 31, 2024 (2023-2024). Billing shall be based on actual services performed.

In the event CITY exercises any option year(s) allowed under this AGREEMENT, rates shall be adjusted to no more than the national Consumer Price Index (CPI) for each option year but in no event shall exceed three percent (3.0%). In the event of a negative CPI, the prior year's rates shall apply to the following option year.

For purposes of this AGREEMENT, "CPI" shall mean the change in CPI for All Urban Consumers, the CPI published by the Bureau of Labor Statistics of the U.S. Department of Labor, for All Urban Consumers, U.S. City Average (1982-84=100), "All Items." The previous December unadjusted 12-month percent change number shall be used.

#### A. **FIXED HOURLY RATE**

A fixed hourly rate per vehicle revenue hour, per mode, for fixed-route with route deviation (flexroute)/fixed-route service and Dial-A-Ride will be, as follows:

#### Flexroute/Fixed-Route

\$xx.xx	2019-20	(11-1-19 to 8-31-20)
\$xx.xx	2020-21	(9-1-20 to 8-31-21)
\$xx.xx	2021-22	(9-1-21 to 8-31-22)
\$xx.xx	2022-23	(9-1-22 to 8-31-23)
\$xx.xx	2023-24	(9-1-23 to 8-31-24)



Dial-A-Ride

\$xx.xx	2019-20	(11-1-19 to 8-31-20)
\$xx.xx	2020-21	(9-1-20 to 8-31-21)
\$xx.xx	2021-22	(9-1-21 to 8-31-22)
\$xx.xx	2022-23	(9-1-22 to 8-31-23)
\$xx.xx	2023-24	(9-1-23 to 8-31-24)

“**Vehicle revenue hours**” will be calculated based on the actual time that each revenue vehicle is in service and available to passengers. For flexroute and fixed-route service, “vehicle revenue hours” is defined as all hours accumulated by transit vehicles and includes only those hours while in revenue service.

For flexroute, fixed-route, and Dial-A-Ride service, “**vehicle revenue hours**” shall specifically exclude deadhead hours, including time for travel to and from storage facilities, changing routes, downtime for road calls, road tests, fueling, vehicle inspections, driver training, driver lunches, and rest breaks. Vehicle revenue hours shall include layover time. “**Total hours**” traveled by revenue vehicles consist of hours traveled when in revenue service and deadhead hours.

For Dial-A-Ride service, “**vehicle revenue hours**” will be calculated based on the time from a vehicle’s first pick up through the time of its last drop off. All vehicle travel with or without passengers while available to carry passengers between starting and ending points should be considered as revenue hours. Travel without passengers to and from a dispatching location should not be reported as vehicle revenue hours.

**B. FIXED MONTHLY RATE**

\$xx,xxx	2019-20	(11-1-19 to 8-31-20)
\$xx,xxx	2020-21	(9-1-20 to 8-31-21)
\$xx,xxx	2021-22	(9-1-21 to 8-31-22)
\$xx,xxx	2022-23	(9-1-22 to 8-31-23)
\$xx,xxx	2023-24	(9-1-23 to 8-31-24)

Fixed monthly rate cost elements are detailed in the CONTRACTOR’S Proposal for Management and Operations of DART Services Proposal Form that is attached hereto as Exhibit E.

**XII. MAXIMUM OBLIGATION**

Notwithstanding any provisions of this AGREEMENT to the contrary, CITY and CONTRACTOR mutually agree that CITY’s maximum obligation under this AGREEMENT is limited to \_\_\_\_\_ million, \_\_\_\_\_ hundred and \_\_\_\_\_ thousand, \_\_\_\_\_ dollars (\$X,XXX,XXX), including amounts payable to

CONTRACTOR for subcontracts, leases, materials, and costs arising from or due to the performance of CONTRACTOR's obligations under of this AGREEMENT. It is the intent and expectation of the parties hereto that said maximum obligation shall be sufficient to compensate CONTRACTOR for services performed for the base term of this AGREEMENT. Said maximum obligation may be amended if CONTRACTOR and CITY agree to additional services or an extension period is provided subsequent to the initial base period.

In the event that CITY's maximum obligation provided herein is reached, CONTRACTOR shall have no obligation to perform any additional work under this AGREEMENT and, any work performed, or expenditures incurred, by the CONTRACTOR over and above the cumulative obligation amount specified above shall be at the sole risk of CONTRACTOR.

In the event that CITY does not intend to amend this maximum obligation amount, CITY shall so notify CONTRACTOR, by written notice, at least thirty (30) days before the maximum obligation amount specified herein is estimated to be reached.

### **XIII. INVOICES AND PAYMENT**

Invoices shall be submitted to the CITY itemizing CONTRACTOR's full and complete performance hereunder for the previous one-month period. The invoice shall be in such form and shall incorporate such supporting documentation as CITY may from time to time require. All invoices shall be submitted in person, by mail or email to the following address:

City of Dinuba \_\_\_\_\_ Department  
Attention: Accounts Payable

\_\_\_\_\_  
Dinuba, CA 93618

Email: \_\_\_\_\_

If submitting by email, the CITY's Transit Manager shall be copied.

CITY shall endeavor to pay all reasonable and allowable items in CONTRACTOR's invoice, within the timeframes specified above. If CITY disputes any item on an invoice for a reasonable cause, or if the CITY discovers an invoice that has been paid in error, CITY may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for disputing the item(s) shall be stated in writing by CITY and sent to CONTRACTOR within fifteen (15) working days after receipt of invoice by CITY or fifteen (15) working days after the error is discovered.

#### **XIV. AMENDMENTS**

This AGREEMENT and its exhibits may be amended from time to time as agreed by the parties in writing. Such amendment shall become effective on the date, time and place so designated when pre-approved by Caltrans and signed by both CONTRACTOR and CITY.

#### **XV. COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS**

This AGREEMENT is financed in part with funding received under Section 5311 of the Federal Transit Act.

“Awarding Agency” is the subrecipient of the State of California Department of Transportation.

“PROJECT” is the Awarding Agency’s federally supported project.

“CONTRACTOR” is the third-party vendor who has entered into this third-party contract with the Awarding Agency to provide goods or services directly to the Awarding Agency for the accomplishment of the PROJECT.

“Subagreements” are agreements made between the CONTRACTOR and any subcontractors to facilitate the accomplishment of this third-party contract.

All services performed by CONTRACTOR pursuant to this AGREEMENT shall be performed in accordance and full compliance with all applicable Federal laws and requirements as stated and amended, including, but not limited to:

##### **15.1 No Obligation to Third-Parties by Use of a Disclaimer**

A. No Federal Government Obligation to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.

- B. Third-Party Contracts and Subagreements Affected. To the extent applicable, federal requirements extend to third-party contractors and their contracts at every tier, and to the subagreements of third-party contractors and the subagreements at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each subagreement financed in whole or in part with financial assistance provided by the FTA.
- C. No Relationship between the California Department of Transportation and Third-Party Contractors. Nothing contained in this Contract or otherwise, shall create any contractual relationship, obligation or liability between the California Department of Transportation and any third-party contractors, and no third-party contract shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be fully responsible to the Awarding Agency for the acts and omissions of its third-party contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR'S obligation to pay its third-party contractors is an independent obligation from the Awarding Agency's obligation to make payments to the CONTRACTOR. As a result, the California Department of Transportation shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.
- D. Obligations on Behalf of the California Department of Transportation. The CONTRACTOR shall have no authority to contract for or on behalf of, or incur obligations on behalf of the California Department of Transportation.
- E. Awarding Agency Approval of Subagreements. The Awarding Agency shall approve in writing all proposed Subagreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any Subagreements unless the same are approved in writing by the Awarding Agency. Any proposed amendments or modifications to such Subagreements must be approved by the Awarding Agency prior to implementation.
- 15.2 Program Fraud and False or Fraudulent Statements and Related Acts**

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and US Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to the underlying contract or the federally assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 in the CONTRACTOR to the extent the Federal Government deems appropriate.
- B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- C. The CONTRACTOR agrees to include the above two clauses in each subagreement financed in whole or in part with Federal Assistance provided by the California Department of Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **15.3 Access to Records**

The Awarding Agency, the California Department of Transportation, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this Contract of audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The

CONTRACTOR shall include a clause to this effect in every subagreement entered into relative to the PROJECT.

#### Record Keeping

The CONTRACTOR and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Contract. All parties shall make such materials available at their respective offices at all reasonable times during the performance and for three (3) years from the date of final payment under this Contract and all subagreements.

#### Accounting Records

The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures specified for the fiscal activities of the PROJECT. The CONTRACTOR'S accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by California Department of Transportation. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices, and vouchers.

#### **15.4 Federal Changes, Amendments to State, and Local Laws, Regulations, and Directives**

The terms of the most recent amendments to any federal, State, or local laws, regulations, FTA directives, and amendments to the grant or cooperative contract that may be subsequently adopted, are applicable to the PROJECT to the maximum extent feasible, unless the California Department of Transportation provides otherwise in writing.

#### **15.5 Civil Rights (Title VI, EEO, & ADA)**

During the performance of this Contract, the CONTRACTOR its assignees and successors in interest, agree to comply with all federal statutes and regulations applicable to grantee subrecipients under the Federal Transit Act, including, but not limited to the following:

- A. Race, Color, Creed, National Origin, Sex. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and federal transit law at 49 U.S.C. Section 5332, the CONTRACTOR Agrees to comply with all applicable equal employment opportunity (EEO) requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to

Equal Employment Opportunity,” 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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 from training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.

B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation’s Regulations, including employment practices when the Contract covers a program whose goal is employment. Further, in accordance with Section 102 of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.

C. Solicitations for Subcontractors Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work performed under a subagreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor’s obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

- D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Awarding Agency or the California Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the information, the CONTRACTOR shall certify to the Awarding Agency of the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of the Contract, the Awarding Agency shall:
1. Withholding of payment to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
  2. Cancellation, termination, or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs A through F in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor or procurement as the Awarding Agency or the California Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the CONTRACTOR may request the Awarding Agency to enter into such litigation to protect the interest of the Awarding Agency, and, in addition, the CONTRACTOR may request the California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

#### **15.6 Incorporation of FTA Terms**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and



Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any California Department of Transportation requests which would cause the California Department of Transportation to be in violation of the FTA terms and conditions. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any Awarding Agency requests which would cause the Awarding Agency to be in violation of the FTA terms and conditions.

### **15.7 Energy Conservation**

The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable California Department of Transportation energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, U.S.C. Section 6321 et seq.

### **15.8 DBE Contract Assurance**

The CONTRACTOR or SUBCONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR or SUBCONTRACTOR shall carry out applicable requirement of 49 CFR Part 26 in the award and administration of [Federal] DOT-assisted contracts. Failure by the CONTRACTOR or SUBCONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of the Standard Agreement between the STATE and the Awarding Agency, the termination of this contract by the Awarding Agency, or such other remedy the STATE or Awarding Agency deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the CONTRACTOR from future bidding as non-responsive.

Awarding Agency shall notify the CALTRANS DBELO in the event the Awarding Agency finds the CONTRACTOR or SUBCONTRACTOR is in violation of 49 CFR Part 26 within five (5) business days the finding is made.

### DBE Participation Goal

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The contract goal for participation of Disadvantaged Business Enterprises (DBE) for this contract is 0.3%.

Offerors are required to document sufficient DBE participation to meet the contract goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53 (3)(i)(A). Award of this contract is conditioned on submission of the following:

1. If the offer meets the DBE contract goal the offeror must include with the offer a completed ADM-0227F form.
2. If the offer cannot meet the DBE contract goal the offeror must include with the offer a completed ADM-0312F form that documents the offeror's good faith efforts (GFE) and ADM-0227F form. The Awarding Agency must document concurrence with the offeror's GFE and provide a copy of the GFE to Caltrans DRMT Compliance Liaison for additional concurrence prior to contract award.

The CONTRACTOR shall not terminate the DBE subcontractors listed on ADM-0227F without the Awarding Agency's prior written consent and concurrence from the CALTRANS DBELO. The Awarding Agency may provide such written consent only if the CONTRACTOR has good cause to terminate the DBE firm. Before transmitting a request to terminate, the CONTRACTOR shall give notice in writing to the DBE SUBCONTRACTOR of its intent to terminate and the reason for the request. The CONTRACTOR shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the CONTRACTOR shall make good faith efforts (GFE) to find another DBE subcontractor to substitute for the original DBE and immediately notify the Awarding Agency in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement.

### Continued Compliance

The Awarding Agency shall monitor the CONTRACTOR'S DBE compliance during the life of this contract and submit to the STATE a completed ADM-0369 form in each their request for reimbursement (RFR) packet.

## **15.9 Prompt Payment and Return of Retainage**

1. The Awarding Agency shall comply with 49 CFR Part 26.29 and ensure the CONTRACTOR pay its subcontractors performing work satisfactorily completed related to this contract no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency.
2. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.
3. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
4. The CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

## **15.10 Intelligent Transportation Systems (ITS) National Architecture**

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 U.S.C. Section 517(d), 23 U.S.C. Section 512 note, and 23 CFR Part 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives the FTA may issue at a later date, except to the extent the FTA determines otherwise in writing.

## **15.11 Debarment and Suspension**

- A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note; and U.S. DEPARTMENT OF TRANSPORTATION regulations on Debarment and Suspension and 49 CFR Part 29.
- B. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract of any amount with a party included in the "U.S. General

Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement and Non-procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12546 and 12689.

- C. Before entering into any subagreements with any subcontractor, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that awarding agency and its "principals," as defined at 49 CFR Part 29.
- D. Before entering into any third-party contract exceeding \$25,000.00, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any subagreements of any amount, at any tier, to a debarred or suspended subcontractor, and to obtain a similar certification for any third-party subcontractor, at any tier, seeking a contract exceeding \$25,000.00.

#### **15.12 Buy America**

The CONTRACTOR shall comply with the Buy-America requirements of 49 U.S.C. 5323(j) and 49 CFR Part 661 for all procurements of steel, iron, and manufactured products used in PROJECT. Buy-America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000.00). Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

#### **15.13 Provisions for Resolution of Disputes, Breaches, or Other Litigation**

The Awarding Agency and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the CONTRACTOR shall submit to the Awarding Agency Representative for this Contract or designee a written demand for a

decision regarding the disposition of any dispute arising under this Contract. The Awarding Agency Representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have the opportunity to challenge in writing within ten (10) working days to the Awarding Agency's Executive Director or his/her designee. If the CONTRACTOR'S challenge is not made within the ten (10) day period, the Awarding Agency Representative's decision shall become the final decision of the Awarding Agency. The Awarding Agency and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the Awarding Agency shall be final, conclusive, and binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

#### **15.14 Lobbying**

- A. The CONTRACTOR agrees that it will not use federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. Department of Transportation Regulations, "New Restrictions on Lobbying." 49 CFR Part 20, if the bid is for an award for \$100,000.00 or more the Awarding Agency will not make any federal assistance available to the CONTRACTOR until the Awarding Agency has received the CONTRACTOR'S certification that the CONTRACTOR has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal grant, cooperative agreement, or any other federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;
- B. If applicable, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the form instructions.
- C. The CONTRACTOR shall require that the language of the above two clauses be included in the award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts

under grants, loans, and cooperative agreements) which exceed \$100,000.00 and that all awarding agencies shall certify and disclose accordingly.

This Contract is a material representation of facts upon which reliance was placed when the Contract was made or entered into. These provisions are a prerequisite for making or entering into a Contract imposed by Section 1352, Title 31, U.S. Code. Any person who fails to comply with these provisions shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure.

#### **15.15 Clean Air**

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **15.16 Clean Water**

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **15.17 Fly America**

In accordance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1973, as amended, ("Fly America" Act), 49 U.S.C. 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed

international air travel and transportation, to the extent such service is available or applicable.

#### **15.18 Transit Employee Protective Arrangements**

The CONTRACTOR agrees to comply with applicable transit employee protective requirements, as follows:

- A. The CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. 5333(b), and U.S.DOL guidelines at 29 CFR Part 215, and any amendments there to.
  
- B. The CONTRACTOR also agrees to include the applicable requirements in each subagreement involving transit operations financed in whole or in part with federal assistance provided by the FTA.

#### **15.19 Charter Service Operations**

The CONTRACTOR agrees to comply with 49 U.S.C. Section 5323(d) and 49 CFR Part 604, which provides that recipients and awarding agencies of the FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions listed at 49 CFR-Subpart B. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation. The CONTRACTOR assures and certifies that the revenues generated by its incidental charter bus operations (if any) are, and shall remain, equal to or greater than the cost (including depreciation on federally assisted equipment) of providing the service. The CONTRACTOR understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this contract, and any violation of this contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

#### **15.20 School Bus Operations**

Pursuant to 49 U.S.C. 5323(F) and 49 CFR Part 605, the CONTRACTOR agrees that it and all its subcontractors will: (1) engage

in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(F) and implementing regulations, and (2) comply with requirements of 49 CFR Part 605 before providing any school transportation using equipment or facilities acquired with federal assistance awarded by the FTA and authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. for transportation projects. The CONTRACTOR understands that the requirements of 49 CFR Part 605 will apply to any school transportation it provides, that the definitions of 49 CFR Part 605 apply to any school transportation agreement, and a violation of the contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

#### **15.21 Drug-Free Workplace and Drug and Alcohol Testing**

The CONTRACTOR certifies by signing a Contract with the Awarding Agency that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with Government Code Section 8355, et seq. The CONTRACTOR is required to include the language of this paragraph in award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all awarding agencies shall disclose accordingly. To the extent the CONTRACTOR, any third-party contractor at any tier, any awarding agency at any tier, or their employees, perform a safety sensitive function under the PROJECT, the CONTRACTOR agrees to comply with, and assure the compliance of each affected third-party contractor at any tier, each affected awarding agency at any tier, and their employees with 49 U.S.C. Section 5331, and the FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations," 49 CFR Part 655.

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the California Department of Transportation, or the Awarding Agency to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Part 655 before March 1 and to submit the Management Information System (MIS) reports before March 15 or required deadline to the appropriate Caltrans office. To



certify compliance the CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

#### **15.22 Recycled Products**

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### **XVI. SAFE OPERATION OF MOTOR VEHICLES**

- A. Seat Belt Use - The CONTRACTOR is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the CONTRACTOR or AGENCY.
  
- B. Distracted Driving - The CONTRACTOR agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle CONTRACTOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

### **XVII. AUDIT AND RETENTION OF RECORDS**

CONTRACTOR shall allow the authorized representatives of COUNTY, the U.S. Department of Transportation, and the Comptroller General of the United States and the California State Controller's Office to inspect and audit all data and records of the CONTRACTOR relating to performance under this AGREEMENT. Such audit shall be allowed upon reasonable notice of any aforementioned agency. Further, CONTRACTOR shall maintain all required records for three (3) years after final payment under this AGREEMENT and until all other pending matters are closed.

### **XVIII. ASSIGNMENT**

Neither party shall assign or subcontract this AGREEMENT or its rights and duties hereunder, nor any interest herein, without the express written consent of the other party, unless such assignment or subcontract is to a wholly-owned subsidiary.

#### **XIX. ATTORNEY'S FEES**

The prevailing party in any enforcement action arising in respect to this AGREEMENT shall be entitled to recover from the other party all costs of such enforcement action including, without limitation, reasonable attorney's fees, court costs and related expenses.

#### **XX. GOVERNING LAW**

Except for Section XII of this Agreement, this Agreement shall be governed by the laws of the State of California.

#### **XXI. ENTIRE AGREEMENT**

This instrument, including the Exhibits attached hereto, contains the entire AGREEMENT of the parties and supersedes all prior and contemporaneous agreements or understandings, whether written or oral, with respect to the subject matter hereof. No amendment or modification hereto shall be valid unless in writing and signed by both parties hereto.

#### **XXII. SEVERABILITY**

If any provision of this AGREEMENT, or any amendment thereof, should be invalid, the remaining provision shall remain in effect and be so construed as to effectuate the intent and purposes of this AGREEMENT and any amendments thereto.

#### **XXIII. NOTICES**

All notices, requests and communications provided hereunder shall be in writing and hand delivered or mailed by United States Registered, Certified or Express Mail, return receipt requested, and addressed to the party's principal place of business as set forth in this AGREEMENT adjacent the signature of each party (or to such other address provided in writing by such party).

#### **XXIV. WAIVER**

The waiver by either party hereto of a breach of any term or provision of this AGREEMENT shall not operate or be construed as a waiver of a

subsequent breach of the same provision by any party or of a breach of any other term or provision of this AGREEMENT.

## **XXV. FORCE MAJEURE**

Either party shall be excused from performing its obligations under this AGREEMENT during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; acts of the Government; war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants, or facilities by the federal, state, or local government; national fuel shortage; or a rational act or omission by the other party, when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the party not performing.

## **XXVI. TERMINATION**

### **A. Termination for Convenience (General Provision)**

When it is in the CITY'S best interest, the CITY reserves the right to terminate this AGREEMENT, in whole or in part, at any time by providing a TEN (10) DAY WRITTEN NOTICE to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the CITY. If the CONTRACTOR has any property in its possession belonging to the CITY, the CONTRACTOR will account for the same, and dispose of it in the manner the CITY directs.

### **B. Termination for Default (General Provision)**

If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the CITY may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the CITY that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, the CITY, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

C. Mutual Termination

The PROJECT may also be terminated if the CITY and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

This agreement is duly executed this \_\_\_\_ day of \_\_\_\_\_, 2019.

City of Dinuba

XXXXXXXXXXXXXXXXXXXX

xxx

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)