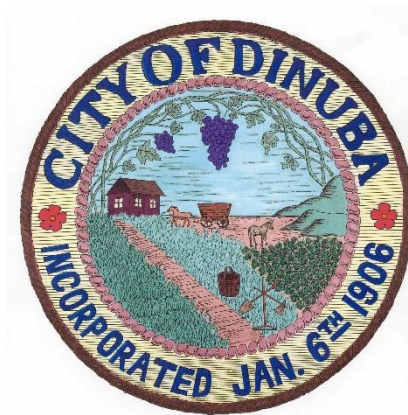


# REQUEST FOR PROPOSALS

FOR  
**JANITORIAL SERVICES**

FOR THE  
CITY OF DINUBA, CALIFORNIA

Issued: July 12, 2019



PROPOSAL DUE:  
**Monday, August 12, 2019 by 4:00 PM**

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## SECTION 1

### SUBMITTAL REQUIREMENTS

#### 1.01 GENERAL DESCRIPTION

The City of Dinuba ("City") is requesting proposals for professional janitorial services to be performed at various City facilities. Selection will be based on overall price, experience, understanding of scope of work, interview assessment, and professional references. The scope of work requested by the City is outlined in the following Request for Proposal ("RFP").

#### 1.02 SUBMITTAL REQUIREMENTS

Each Contractor shall submit a complete proposal package that must include at least the following:

- COST PROPOSAL FOR JANITORIAL SERVICE (SECTION 3)
  - Including Contractor's billable rates
- CONTRACTORS QUALIFICATIONS AND REFERENCES (SECTION 5)
- CONTRACTORS CERTIFICATIONS (SECTION 6)
- IF APPLICABLE, PROPOSED CHANGES TO "SAMPLE AGREEMENT FOR JANITORIAL SERVICES (SECTION 7)

Contractor shall identify the contact person(s) by full name and title, contact information including: mailing address, telephone, and email address. Contractor shall also acknowledge, sign and submit copies of addenda, if any, to this Request for Proposal issued after its release.

*Please note that any questions regarding this RFP must be submitted in writing to Ismael Hernandez, Public Works Director, 1088 E. Kamm Avenue, Dinuba, CA 93618, [ihernandez@dinuba.ca.gov](mailto:ihernandez@dinuba.ca.gov) on or before Wednesday, July 24, 2019 at 4:00 p.m.*

All materials submitted or provided as part of this Proposal process will belong to the City of Dinuba and will not be returned to Proposer nor will Proposer bill the City for any costs associated with the preparation of this Proposal.

#### 1.03 DEADLINE FOR SUBMITTAL

Three (3) hard-copies and one PDF copy on an external hard-drive (i.e. thumb drive) of a complete proposal must be submitted to the City of Dinuba **no later than 4:00 p.m. on Monday, August 12, 2019.** There will be no public bid opening. Proposals received after the deadline will be rejected. Proposal package shall be submitted in a sealed envelope with the words "**City of Dinuba, Janitorial Services Proposal – DO NOT OPEN**" written

clearly and visibly on the front of the envelope and addressed as follows:

Ismael Hernandez  
Public Works Director  
City of Dinuba  
1088 E. Kamm Avenue  
Dinuba, CA 93618

#### **1.04 EVALUATION OF PROPOSALS**

Proposals will be evaluated based on the selection criteria identified in Section 2.23 and the information provided by the Proposer in Section 3 (Cost Proposal). As indicated, proposal price will not be the sole determining factor in the selection of the contractor for this work. The City reserves the right to reject any and all proposals determined to be non-responsive.

Proposals will be reviewed by a selection committee, which may or may not be comprised of representatives from other agencies. The committee will review each Proposal and make a recommendation to the City Manager. If City Manager accepts the recommendation of the selection committee, the recommendation will be referred to the City Council for final approval. The selected contractor will be asked to enter into an agreement with the City. The City wishes to use the sample agreement provided in Section 7, "Sample Agreement for Janitorial Services". If Proposer has any objections to the terms defined in the sample Agreement, objections must be identified and fully described in the proposal package submitted to the City.

END OF SECTION

## SECTION 2

### SCOPE OF WORK AND DEFINITIONS

#### 2.1 GENERAL PROVISIONS

The City of Dinuba owns approximately 42,000 square feet of space within six separate City facilities. The City wishes to secure timely, reliable, and cost-effective janitorial services, to ensure clean and safe facilities for employees and persons doing business with the City and its staff. Issuance of this Request for Proposals (RFP) shall not obligate the City of Dinuba to award a contract, nor is the City liable for any costs incurred by the Proposer in the preparation and submittal of proposals for the subject work. The City of Dinuba retains the right to award all or parts of this contract to several bidders, to not select any bidder, and/or to re-solicit proposals.

Normal working business hours are between the hours of 8:00 a.m. to 5:00 p.m., (Monday through Friday), except for 11 observed holidays. Cleaning hours shall take place after normal business hours.

The objectives of the City with this RFP are as follows:

- A. Clean buildings. The definition of clean means “free of dirt, pure, spotless, sanitary, sterile, and uncontaminated”.
- B. To contract for cost efficient and effective janitorial services.
- C. Timely removal of trash, dirt, dust, cobwebs, and other waste.
- D. Minimal interruptions to City operations.
- E. To be served by a hard-working, dependable, and responsive janitorial crew that’s effectively managed by third-party contractor.
- F. To ensure consistent and reliable janitorial services for all identified City-owned/leased facilities.

#### 2.2 ESTIMATED RFP SCHEDULE

Issue Request for Proposals (RFP)	July 12, 2019
Questions and Answers Period	July 15 – 24, 2019
<b>RFP Due Date</b>	<b>August 12, 2019 @ 4:00 PM</b>
Proposal Evaluation Period	August 13 – 16, 2019
Contractor Interviews	August 19 – 23, 2019
Contract Negotiations	August 26 – 30, 2019
Anticipated City Council Approval	September 10, 2019
Estimated Contract Start Date	October 1, 2019

## 2.3 SCOPE OF WORK

The contractor shall perform the duties, functions and all other work described in the below schedule of duties in a consistent and professional manner. The contractor shall furnish, at its own expense, all labor, janitorial supplies, materials, machinery and appliances that may be necessary or appropriate for the performance of the work, including all related management, supervisory and administrative services. The City shall provide all consumable supplies (e.g. toilet paper, seat covers, soap, paper towels, tissue paper etc.)

The following duties shall be performed Monday through Friday (except on observed holidays):

### Daily Tasks:

1. Maintain adequate floor appearance by vacuuming or sweeping with chemically treated dust mops
2. Spot-mop hard surface floors to remove soil and spillage
3. Dust cleared surfaces of desks, telephones, chairs, tables, filing cabinets, and other office furniture
4. Empty all wastebaskets and recycling containers in designated bins
5. Remove smudges and unsightly appearances on push plates, light switches, desks, and counters
6. Sanitize and polish all drinking fixtures
7. Ensure that office and office furniture is neat and orderly
8. Maintain the appearance and sanitation of restrooms and control odor
9. Mop restroom floors with selected germicide
10. Polish restroom mirrors and bright metal
11. Clean and sanitize all restroom urinals, toilets, and sinks
12. Ensure that restroom dispensers, receptacles, fixtures, and floor tile are cleaned thoroughly and in good condition
13. Refill soap, paper seat covers, toilet paper, deodorant containers and any other restroom dispenser
14. Ensure adequate inventory of consumable supplies and maintain supply room in neat and orderly fashion
15. Provide a report of unusual occurrences, malfunctions, or damages to City property when applicable

### Monthly Tasks:

1. Vacuum upholstered furniture
2. Dust chair rungs, wheel bases, low moldings, wills, picture frames
3. Sanitize office telephones
4. Wipe, clean and/or remove any visible dust from heating/air conditioning vents and ceiling fans
5. Dust blinds and any other window treatments

**Semi-Annual Tasks (to be proposed as an additive alternate bid):**

1. Machine scrub and refinish (re-wax) all composition floors
2. Steam clean all carpeted areas
3. Power wash all exterior facility entry areas
4. Clean all interior and exterior windows

**FACILITYS AND LOCATIONS:**

1. City Hall; 405 E. EL Monte Way
2. Public Works Facility; 1088 E. Kamm Avenue
3. Transit Center; 180 E. Merced Street
4. Community Center; 1390 E. Elizabeth Way
5. Dinuba Sportsplex; 201 N. Uruapan Way
6. Senior Center; 437 Eaton Avenue

**2.4 WORK LEVEL EXPECTATIONS**

All work will be performed in accordance with the Best Management Practices.

**2.5 LICENSE AND PERMITS**

The Contractor shall have a valid Janitorial Contractor's license. Contractor must obtain or agrees to apply prior to performing any services under this Agreement to City's Public Works Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments shall be made to Contractor until such business license(s) has been obtained.

**2.6 SAFETY**

Contractor shall be responsible for providing a safe work place, and compliance with standards and regulations of the California Occupational Safety and Health Act (CalOSHA), Federal Occupational Safety and Health Act (OSHA), California Division of Industrial Safety Orders (CDIS), State of California Manual of Traffic Controls, California Department of Food and Agriculture (CDFA) Laws and Regulations, and any other applicable governmental law or City risk management standards. Non-Compliance with previously mentioned standards and regulations will result in cancellation of this agreement.

**2.7 DRESS CODE AND APPEARANCE**

All Contractors' personnel shall be required to wear uniforms bearing company and employee name while on the job. Sufficient uniform changes shall be provided to present

a neat and clean appearance of personnel at all times. Uniform shall consist of a shirt or jacket with company and employee name.

## **2.8 HOLD HARMLESS CLAUSE**

All officers, agents, employees, subcontractors, their agents, officers, and employees who are hired by or engaged by the Contractor in the performance of this Agreement shall be deemed officers, agents, employees, and subcontractors of the Contractor and the City shall not be liable or responsible to them for anything whatsoever other than the liability to the Contractor as set forth in this Agreement.

The Contractor shall defend and hold harmless the City and its officers, employees or agents from all claims, lawsuits, causes of action, damages, penalties, attorney's indemnify fees, consultants' and experts' fees and costs arising directly or indirectly as a result of the Contractor's performance or nonperformance of the project, regardless whether any act or omission complained of is authorized, allowed, or prohibited by the Specifications in the Contract, except to the extent such damages or penalties arise out of or are caused by the intentional act or omission of the City, or its officers, employees or agents. Upon demand of the City, made by and through the City Attorney, the Contractor shall appear in and defend the City and its officers, employees, and agents in any legal action, whether judicial, administrative or otherwise arising out of the performance or nonperformance of the project.

## **2.9 SPECIAL REQUESTS**

When required by City Representative to perform extra work, an estimate of cost will be submitted by the Contractor for approval prior to work being completed. The Contractor shall maintain records sufficient to distinguish the direct cost of other operations. He shall furnish reports of extra work on forms furnished by the Contractor, itemizing all costs for labor, materials, and equipment rental. The report shall include hours worked. The following procedure will govern such extra work:

- A. Work will be executed under the direction of the City on a time-and materials basis or an agreed lump sum price depending on the nature of the work.
- B. City will issue a work request for such extra work to be performed.
- C. Extra work will not be initiated without written authorization, except in emergency call-out situations.
- D. The City of Dinuba reserves the right to either do the work using City staff or seek multiple bids with regards to non-emergency work.



## **2.10 QUALITY ASSURANCE SOFTWARE**

Contractor shall provide secure and encrypted software technology that would allow the City to submit special requests via a web-based portal. This portal would allow City Staff to track the progress of each submitted request in real-time. Software would also contain current and past inspection records and shall serve as a tool for transparency and clear communication. A representative from each City facility shall have a unique username and password.

## **2.11 PROJECT INSPECTIONS**

Upon request, the Contractor or his representative will walk the project with the City representative for the purpose of determining compliance with the Specifications or to discuss required work. Contractor representative must be authorized to sign documents and effect changes to the job.

## **2.12 THE CITY'S RIGHT TO DO WORK**

The City reserves the right to do work as required within the contract area. If such alterations affect the provision of this Agreement, the Contractor will be asked to submit a cost as a result of the alterations.

## **2.13 COOPERATION AND COLLATERAL WORK**

The Contractor shall recognize that during the course of the contract other activities and operations may be conducted by the City and other contractors. The Contractor may be required to modify or curtail certain operations and shall promptly comply with any request by the City Representative to cooperate.

## **2.14 NON-PERFORMANCE**

If the City Representative does not approve of the performance of the Contractor, a formal written report will be required from the Contractor. Based upon the formal written report and such other facts the Director/representative may gather, it may be determined that the Contractor has not performed the work satisfactorily under the provision of this contract.

In case of termination by the City for non-performance, the City may contract or cause to be done any work not completed at the time of the termination, and the Contractor shall pay for such work.

If a noncredit status is imposed due to the Contractor's non-performance and/or non-compliance to the Specifications and requirements and provisions contained herein or any other work applicable under this contract, it is agreed that the City withhold payment or

partial payment of any and all invoices submitted by the Contractor for such period. This provision shall have no effect on any other rights the City may have under this contract, including liquidated damages.

#### **2.14 NOTICE REQUIREMENTS**

Notice shall be deemed to have been given by either party by sending a registered letter to the business address of the other party.

#### **2.15 CONTRACTOR NEGLECT**

Any damage to property, which has been determined to be due to the Contractor's neglect, shall be corrected at no additional cost to the City.

#### **2.16 EQUAL OPPORTUNITY CLAUSE**

Contractor shall not discriminate in his recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Agreement and shall comply with the provisions of the State Fair Employment Practices Act as set forth in part 4.5 of the Division 2 of the California Labor Code; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352.

#### **2.17 UNAUTHORIZED ALIENS**

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101, et seq.), as amended; and, in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this contract, and should the Federal Government impose sanctions against the CITY for such use of unauthorized aliens, Contractor hereby agrees to, and shall, reimburse City for the costs, including attorney's fees, incurred by the City in connection therewith.

#### **2.18 BACKGROUND CHECK**

The contractor must arrange for criminal background checks of all personnel assigned to perform work or supervision in conjunction with this contract, to include fingerprinting. The contractor shall review the results of these security checks and persons employed by the contractor who are found unsatisfactory shall not perform work on this contract. This shall include any subcontractors.

#### **2.19 DISMISSAL OF UNSATISFACTORY EMPLOYEES**

Contractor shall only furnish workers who are competent and skilled for work under this contract. If, in the opinion of the City Representative, an employee of the Contractor is

incompetent or disorderly, refuses to perform in accordance with the contract specifications, threatens or uses abusive language while on City property, or is otherwise unsatisfactory, that employee shall be removed from all work under this contract. Contractor shall meet with the City Representative to consider the appropriate course of action with respect to such matters, and Contractor shall take reasonable measures under the circumstances to assure the Supervisor and City staff that the conduct and action of Contractor's employees will not be detrimental to the interest of the City of Dinuba or its facilities. In addition, the Contractor will exercise a zero tolerance policy for drug and alcohol use consistent with the City's policy on the Drug Free Workplace while its employees are on duty.

**2.20 EQUIPMENT AND VEHICLES**

The Contractor shall take all necessary precautions for safe operation of his equipment and the protection of the public from injury and damage from such equipment. All equipment deemed by City Representative to be unsafe, in disrepair, or unsatisfactory shall be repaired or replaced immediately. All vehicles shall have the Contractor's name clearly visible.

**2.21 COMMENCEMENT DATE**

The Contractor shall begin work within fifteen (15) working days from the date the City sends written Notice to Proceed.

**2.22 AWARD OF CONTRACT**

1. Proposal price alone will not be the sole determining factor in the selection of the contractor for this work.
2. The City of Dinuba reserves the right to delete or modify any of the identified tasks.
3. All cost proposal must be filled out legibly and submitted.
4. Proposals shall be valid for 180 days from RFP due date.

**2.23 SELECTION CRITERIA**

The following criteria will be considered in determining which firm will be recommended for award.

<b>CRITERIA</b>	<b>POINTS</b>
Understanding and Capacity to Perform Scope of Work	30
Costs	30
Experience and Reputation	20
Interview Assessment	20
References	15
Local Business	5
<b>TOTAL</b>	<b>120</b>

## **2.24 TERM OF CONTRACT**

Initial contract period shall be for five (5) years, renewable annually thereafter for two (2) consecutive one-year periods, at the City's option, and upon mutually agreeable terms. Contract shall begin no later than 15 days from the written Notice to Proceed issued to the awarded contractor.

## **2.25 CONTRACT PRICES**

Contract prices shall be clearly stated and must be presented in the format identified in Section 3 of this RFP. Beginning after the first fiscal year of this Agreement's execution (July 2020), Contractor may adjust the annual compensation rates by an amount commensurate to the national Consumer Price Index (CPI), but in no event shall exceed five percent (5%). 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.

## **2.26 ADDITIONS/DELETIONS TO CITY GENERAL MAINTENANCE REQUIREMENTS, SPECIFICATIONS AND LOCATIONS**

The City reserves the right to make additions, deletions, revisions, and/or otherwise modify the General Maintenance Requirements. Any changes in the Specification that causes the Contractor to suffer additional expenses may be negotiated upon written justification. Any and all such changes shall only be made upon written notification in the form of a Change Order which shall clearly state the effective date of the change.

## **2.27 OBSERVED HOLIDAYS**

The Contractor shall adjust his schedule to compensate for the following City-observed holidays:

1. January 1 New Year's Day
2. Third Monday in January - Martin Luther King's Birthday
3. Third Monday in February - President's Day
4. Last Monday in May - Memorial Day
5. July 4 - Independence Day
6. First Monday in September - Labor Day
7. November 11 - Veteran's Day
8. Fourth Thursday in November - Thanksgiving Day
9. Friday after Thanksgiving
10. December 24 – Christmas Eve
11. December 25 – Christmas Day

**SECTION 3**

**COST PROPOSAL**

Bidders will be required to submit bids for janitorial services (including providing necessary equipment and janitorial supplies) for the facilities indicated below; City will furnish consumable supplies. The semi-annual tasks identified in Section 2.3 (Scope of Work) shall be bid as additive alternates. Amounts shown in the table below shall be annual costs for first contract year.

<b>Facility</b>	<b>Address</b>	<b>Janitorial Cleaning Service</b>	<b>Semi-Annual Floor Scrub and Refinish</b>	<b>Semi-Annual Carpet Steam Clean</b>	<b>Semi-Annual Entry Way Power Wash</b>	<b>Semi-Annual Window Cleaning</b>
City Hall	405 E. El Monte Way	\$	\$	\$	\$	\$
Public Works	1088 E. Kamm Avenue	\$	\$	\$	\$	\$
Transit Center	180 E. Merced Street	\$	\$	\$	\$	\$
Community Center	1390 E. Elizabeth Way	\$	\$	\$	\$	\$
Dinuba Sportsplex	201 N. Uruapan Way	\$	\$	\$	\$	\$
Senior Center	437 Eaton Avenue	\$	\$	\$	\$	\$
	<b>TOTAL</b>	\$	\$	\$	\$	\$

**3.01** By completing and submitting this Cost Proposal to the City of Dinuba, Proposer certifies the following:

- 1 Proposer will operate in accordance with all applicable California State and Federal laws, regulations and statutes.
- 2 That the terms, conditions, warranties, and representations made within this RFP and the submitted Proposal shall be binding upon Proposer and shall be considered a part of the contract as if incorporated therein.
- 3 That the Proposal submitted is a firm and irrevocable offer good for 180 days from RFP due date.
- 4 That Proposer has made examinations and verifications, and is fully conversant with all conditions under which services are to be performed for the City of Dinuba.
- 5 That negligence in the preparation or presentation of, errors in, or omissions from Proposal shall not relieve Proposer from fulfillment of any and all obligations and requirements in the resulting contract.

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

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Website URL: \_\_\_\_\_

Name of Authorized Representative: \_\_\_\_\_

Title of Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative

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

END OF SECTION

**SECTION 4**  
**COMPENSATION**

4.01 INVOICES

Each invoice submitted by Contractor will include a breakdown of costs by facility every month. If the City chooses to award any additive alternates, these expenses will be shown separately and also by facility. All invoices shall be inclusive of Tulare County sales tax and any other applicable governmental charges. Itemized billings shall be submitted upon completion. Monthly statements shall be submitted by the 30th of each month.

4.02 PAYMENTS

Payment by the City for the services will only be made after the services have been performed. The City requires that all its vendors have a Department of Treasury Internal Revenue Service Form W-9 on file with the City to accommodate payment. Payment will be made thirty (30) days after receipt of monthly statement.

END OF SECTION

**SECTION 5**

**CONTRACTORS QUALIFICATIONS AND REFERENCES**

Name of Contractor: \_\_\_\_\_

**THE CONTRACTOR SHALL COMPLETE THE FOLLOWING STATEMENTS (Attach additional sheets if necessary):**

1. The Contractor has been engaged in the contracting business for janitorial services, under the present business name for \_\_\_\_ years.
2. If applicable, name and explain any and all instances where satisfactory janitorial service contract compliance or completion has not been achieved.

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3. The following maintenance contracts have been satisfactorily completed in the last three (3) years for the persons, firms or authorities indicated:

	<b>YEAR</b>	<b>TYPE OF WORK</b>	<b>CONTRACT AMOUNT</b>	<b>LOCATION AND FOR WHOM PERFORMED</b>
(a)	_____	_____	_____	_____
(b)	_____	_____	_____	_____
(c)	_____	_____	_____	_____



4. The following person may be contacted for information concerning the contract work listed above (list a reference for each contract named):

	<b>NAME/TITLE</b>	<b>ADDRESS</b>	<b>TELEPHONE</b>
(a)	_____	_____	_____
(b)	_____	_____	_____
(c)	_____	_____	_____

(Attach additional sheets as necessary)

5. All of the above statements as to experience and financial qualifications are submitted in conjunction with the proposal, as a part thereof and the truthfulness and accuracy of the information is guaranteed by the Contractor.

Signature of Contractor: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

END OF SECTION

**SECTION 6**  
**CONTRACTORS CERTIFICATIONS**

Proposer must be licensed in the State of California with a valid license to perform the services included in this RFP.

## SECTION 7

### SAMPLE CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT For JANITORIAL SERVICES

This Contract for Professional Services ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ in Dinuba, California, by and between the City of Dinuba, a municipal corporation ("City"), and \_\_\_\_\_ hereinafter referred to as "Contractor", who agree as follows:

- 1. Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City janitorial services as specified in the Scope of Work attached hereto as Exhibit A and pursuant to the specifications identified in the Request for Proposals dated July 12, 2019 issued by the City of Dinuba and included herein by reference.
- 2. Payment.** City shall pay Contractor for services rendered pursuant to this Agreement at the times and in the manner as set forth in Exhibit B, entitled "Compensation." The payments specified in Exhibit B shall be the only payments to be made to Contractor for services rendered pursuant to this Agreement.
- 3. Term.** The term of this Agreement shall commence on the date this Agreement is fully executed by all parties and will be effective for a period of five (5) years. At the City's option and upon mutually agreeable terms, this Agreement may be extended twice for a period of one (1) year.
- 4. Facilities and Equipment.** Contractor shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.
- 5. Indemnification.** Contractor shall indemnify, defend (with independent counsel approved by the City), and hold harmless the City, its officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, Contractor's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Contractor's operations, or any subcontractor's operations, to be performed under this Agreement, to the fullest extent permitted by law, with the exception of the sole active negligence or willful misconduct of the City. The provisions of this section shall survive the expiration or termination of this Agreement and are not limited by any provisions relating to insurance in this Agreement.
- 6. Insurance Requirements.** Contractor agrees to comply with all of the Insurance Requirements set forth in Exhibit C, entitled "Insurance Requirements for Contractor." Failure to maintain required insurance at all times shall constitute a default and a material breach of this Agreement. Prior to commencement of services, Contractor shall file with

the City Clerk evidence of required insurance as set forth in Exhibit C.

**7. Accident Reports.** Contractor shall immediately report (as soon as feasible, but not more than 24 hours) to the City Manager any accident or other occurrence causing injury to persons or property during the performance of this Agreement. The report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

**8. Conflict of Interest.** Contractor warrants and represents that to the best of its knowledge, there exists no actual or potential conflict between Contractor's family, business, real property or financial interests and the services to be provided under this Agreement. Contractor shall comply with the City of Dinuba's Conflict of Interest Code and not enter into any contract or agreement during the performance of this Agreement which will create a conflict of interest with its duties to City under this Agreement. In the event of a change in Contractor's family, business, real property or financial interests during the term of this Agreement that creates an actual or potential conflict of interest, Contractor shall disclose such conflict in writing to City. Failure to comply with the City's Conflict of Interest Code shall be a material breach of this Agreement.

**9. Independent Contractor.** Contractor is an independent contractor. Neither Contractor nor any of Contractor's officers, employees, agents or subcontractors, if any, is an employee of City by virtue of this Agreement or performance of any services pursuant to this Agreement. City shall have the right to control Contractor only insofar as the results 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 pursuant to this Agreement.

**10. Licenses, Permits, Etc.** Contractor represents and warrants to City that all Contractor services shall be provided by a person or persons duly licensed by the State of California to provide the type of services to be performed under this Agreement and that Contractor has all the permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice its profession. Contractor represents and warrants to City that it shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Contractor to practice its profession.

**11. Business License.** Contractor, and its subcontractors, has obtained or agrees to obtain, prior to performing any services under this Agreement, from City's Public Works Department a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement. The failure to obtain such license shall be a material breach of this Agreement and grounds for termination by City. No payments shall be made to Contractor until such business license(s) has been obtained.

**12. Standard of Performance.** Contractor shall provide products and perform all services required pursuant to this Agreement in accordance with generally accepted practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by similar contractors in California. Contractor is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations. Contractor's responsibilities under this section shall not be delegated. Contractor shall be responsible to City for acts, errors, or omissions of Contractor's subcontractors, if any.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review is solely for the purposes of administering this Agreement and determining whether the Contractor is entitled to payment for such any such additional work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Contractor of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor.

Contractor shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified and shall be kept readily accessible. Contractor shall provide access to such records upon request of the City for purposes of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

**13. Force Majeure.** Neither party shall be considered in default of this Agreement to the extent performances are prevented or delayed by any cause by circumstances beyond either party's reasonable control, such as war, riots, strikes, lockouts, work slowdowns or stoppage, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts. In the event that the Contractor is unable to meet the completion date or schedule of services, Contractor shall inform the City Representative of the additional time required to perform the work and the City Representative may adjust the schedule.

**14. Time is of the Essence.** Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

**15. Personnel.** Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement. The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor

Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

**16. Prevailing Wages for Public Works Projects.** For public works projects, Contractor shall comply with all provisions of California laws dealing with prevailing wages, apprentices, and hours of work. Contractor shall also comply with provisions of Labor Code section 1720 as applicable. Contractor shall maintain certified payroll records evidencing such payment of prevailing wages as required by law.

**17. City's Right to Inspect.** City may make unannounced inspections at any and all times during work hours to determine if Contractor's services comply with the terms of this Agreement. Any adverse findings shall be reported to Contractor for correction. Inspections shall be documented and corrections completed within 48 hours of Contractor's receipt of corrections. Repeated adverse findings may be deemed a material breach by City.

**18. Contractor Not Agent.** Except as authorized under this Agreement or as City may authorize in a letter of authorization signed by the City Manager or his or her designee, Contractor shall have no authority, express or implied to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, under this Agreement, to bind City to any obligation whatsoever.

**19. Termination or Abandonment by City.** The City has the right, at any time and in its sole discretion, to immediately terminate or abandon any portion or all of the services to be provided under this Agreement by giving 30 days' notice to Contractor. Upon receipt of a notice of termination, Contractor shall perform no further work except as specified in the notice. Before the date of termination, Contractor shall deliver to City all work product, whether completed or not, as of the date of termination and not otherwise previously delivered.

The City shall pay Contractor for services performed in accordance with this Agreement before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by City and Contractor for the portion of work completed in conformance with this Agreement before the date of termination. In addition, the City will reimburse Contractor for authorized expenses incurred and not previously reimbursed. The City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

**18. Cooperation by City.** City shall, to the extent reasonable and practicable, assist and cooperate with Contractor in the performance of Contractor’s services hereunder.

**19. Assignment and Subcontracting.** Contractor shall not subcontract, assign or transfer, voluntarily or involuntarily, any of its rights, duties or obligation under this Agreement without the express written consent of the City Manager or his or her designee in each instance. Any attempted or purported assignment of any right, duty or obligation under this Agreement without said consent shall be void and of no effect.

If subcontracting of work is permitted, Contractor shall pay its subcontractor within ten (10) days of receipt of payment by City for work performed by a subcontractor and billed by the Contractor. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Contractor to use subcontractors for performance of any service under this Agreement. The City is an intended beneficiary of any work performed by Contractor’s subcontractor for purposes of establishing a duty of care between the subcontractor and City.

**20. Successors and Assigns.** All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this section is intended to affect the limitation on assignment.

**21. Non-Discrimination/Fair Employment Practices.** Contractor shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination and non-harassment in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, sexual orientation, medical condition or physical handicap.

**22. Official Notices.** All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to:

If to City:

Ismael Hernandez  
Public Works Director  
City of Dinuba  
1088 E. Kamm Avenue  
Dinuba, CA 93618

If to Contractor:

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Any party may change its address for receiving notices by giving written notice of such change to the other party in accordance with this section.

**24. Integration Clause.** This Agreement, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

**25. Severability Clause.** Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

**26. Law Governing.** This Agreement shall in all respects be governed by the law of the State of California without regard to its conflicts of law rules. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Tulare County in the State of California or in the United States District Court, Eastern District of California, Fresno Division, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

**27. Waiver.** Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

**28. Ambiguity.** The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

**29. Gender.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neutral, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

**30. Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

**31. Compliance with Laws.** Contractor will comply with all statutes, regulations and ordinances in the performance of all services under this Agreement.

**32. Confidentiality.** Contractor shall treat all records and work product prepared or maintained by Contractor in the performance of this Agreement as confidential and shall not at any time, either directly or indirectly, divulge, disclose or communicate in any



manner any City records on information to any third party, other than its own employees, agents or subcontractors who have a need for the City records or information for the performance of services under this Agreement. A violation by Contractor of this section shall be a material violation of this Agreement and will justify legal and/or equitable relief. Contractor agrees and acknowledges that this confidentiality provision does not limit the City's disclosure as required by law, pursuant to a subpoena, the California Public Records Act, or Order of the Court.

**33. News and Information Release.** Contractor agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from City through an authorized City Representative.

**34. Counterparts.** The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

**35. Authority.** The person signing this Agreement for Contractor hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Contractor.

**36. Exhibits.** The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A, entitled "Scope of Work," including any attachments.

Exhibit B, entitled "Compensation," including any attachments.

Exhibit C, entitled "Insurance Requirements".

THE PARTIES, having read and considered the foregoing provisions, indicate their agreement by their authorized signatures below.

CITY OF DINUBA

By: \_\_\_\_\_  
City Manager

ATTEST:

LINDA BARKLEY

\_\_\_\_\_  
City Clerk

CONTRACTOR

By: \_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Title)

Approved as to Form:

\_\_\_\_\_  
Nancy A. Jenner  
City Attorney

**EXHIBIT A  
SCOPE OF WORK**

**1. Representatives**

City Representative:

Ismael Hernandez  
Public Works Director  
1088 E. Kamm Avenue  
Dinuba, CA 93618  
(559) 591-5924  
[ihernandez@dinuba.ca.gov](mailto:ihernandez@dinuba.ca.gov)

Contractor Representative

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All routine administrative communications between the parties will be between the above named representatives or their designees and may be by personal delivery, mail, electronic mail or as agreed between the Contractor Representative and City's Representative.

- 2. Services.** The services referenced in this Agreement shall be as set forth in Attachment 1 of Exhibit A, attached hereto and incorporated herein by reference.
- 3. Additional Services.** Additional services are those services related to the scope of Services of Contractor as set forth herein but not anticipated at the time of execution of this Agreement ("Additional Services"). Additional Services shall be provided only when authorized by an amendment to this Agreement and approved by the City Manager, or his or her designee. City reserves the right to perform any Additional Services with its own staff or to retain other Contractors to perform said Additional Services. Any costs incurred due to the performance of Additional Services prior to the execution of an amendment will not be reimbursed under this Agreement or an amendment.

Contractor's compensation for Additional Services shall be based on the total number of hours spent on Additional Services multiplied by the employees' appropriate billable hourly rate as identified in Attachment 2 of Exhibit B. City, at its option, may negotiate a fixed fee for some or all Additional Services as the need arises. Where a fixed fee for Additional Services is established by mutual agreement between City and Contractor, compensation to Contractor shall not exceed the fixed fee amount.

## **EXHIBIT B COMPENSATION**

### **1. Contractor's Compensation**

City agrees to pay Contractor, the compensation for the subject services as set forth in Attachment 1 of Exhibit B.

Beginning after the first fiscal year of this Agreement's execution, Contractor may adjust the annual compensation rates by an amount commensurate to the national Consumer Price Index (CPI), but in no event shall exceed five percent (5%). 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.

### **2. Appropriate Billable Hourly Rates for Services and Additional Services**

Contractor's billable hourly rates shall be as identified in Attachment 2 of Exhibit B, attached herein.

### **3. Contractor's Reimbursable Expenses**

Reimbursable Expenses shall be limited to actual reasonable expenditures of Contractor for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City.

### **4. Payments to Contractor**

A. Payments to Contractor shall be made within thirty (30) days after receipt of Contractor's invoice, said payments to be made in proportion to services performed. Contractor shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of City.

B. All invoices submitted by Contractor shall contain the following information:

1. Description of services billed under this invoice billed separately by facility, if awarded, additive alternates shall also be billed separately by facility.
2. Date of Invoice Issuance
3. Sequential Invoice Number
4. City's Purchase Order Number (if issued)
5. Social Security Number or Taxpayer Identification Number
6. Amount of this Invoice (Itemize all Reimbursable Expenses)

7. Total Billed to Date

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to Contractor for correction. City shall not be responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described above.

5. **Accounting Records of Contractor.** Contractor shall maintain for three (3) years after completion of all services hereunder, all records under this Agreement, including, but not limited to, records of Contractor's direct salary costs for all Services and Additional Services performed under this Agreement and records of Contractor's Reimbursable Expenses, in accordance with generally accepted accounting practices. Contractor shall keep such records available for audit, inspection and copying by representatives of the City's Administrative Services Department or other government agencies during regular business hours upon twenty four (24) hours' notice. The obligations of Contractor under this section shall survive this Agreement.
6. **Taxes.** Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request. Contractor hereby agrees to indemnify and defend City for any claims, losses, costs, fees, liabilities, damages or injuries suffered by City arising out of Contractor's breach of this section pursuant to the Indemnification provisions of this Agreement.
7. **Taxpayer Identification Number.** Contractor shall provide City with an IRS Form W-9, Request for Taxpayer Identification Number and Certification, containing an original signature and any other State or local tax identification number requested by City.

## Exhibit C INSURANCE REQUIREMENTS

### I. TYPES OF INSURANCE

- A. General Liability: Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Contractor's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies.
- B. Auto Liability: Contractor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident.
- C. Workers' Compensation: Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

### II. ADDITIONAL REQUIREMENTS

- A. Broader Insurance Coverage: In the event that Contractor maintains broader coverage and/or higher limits than the City's minimum requirements, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor.
- B. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance shall be called upon to protect it as a named insured.
- C. Verification of Coverage: Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this

clause). All certificates and endorsements are to be received and approved by the City Attorney's Office at least five days before Contractor commences work to be performed pursuant to the agreement.

- D. Notice of Cancellation: Contractor shall provide thirty (30) days' notice, in writing, to the City, at 405 E. El Monte Way, Dinuba CA 93618, of any pending change or cancellation of the policy.
- E. Deductibles or Self-Insured Retentions: Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by City.
- F. Breach: In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.