

CITY OF DINUBA

Request for Proposal

**Consultant Services for a Study of the
City's Compensation Plan**



Deadline to Submit:

September 20, 2013

By 5:00 p.m.

STUDY OF THE CITY'S COMPENSATION PLAN

REQUEST FOR PROPOSAL (RFP)

BACKGROUND

The City of Dinuba is located in the Central San Joaquin Valley in Tulare County, approximately 30 miles southeast of Fresno, CA, and 15 miles north of Visalia, CA. Its current population is approximately 23,000.

The City of Dinuba, incorporated in 1906, is full service Charter City. The City operates under a City Council/City Manager form of government. There are 118 full-time employees and the following departments:

- City Manager (includes City Clerk, Human Resources and Vocational Center)
- Finance Services
- Parks and Community Services
- Public Works (includes Engineering)
- Fire
- Police

PURPOSE

A compensation study conducted externally by a consulting firm has not been performed at the City for at least 30 years. Staff has maintained and retained the Compensation Plan through annual surveys conducted with comparator cities and as needed with reclassifications and new classification development. The new Compensation Plan should recognize changes in service performance levels by City staff, ensure salaries that are commensurate with assigned duties, provide justifiable pay differential between individual classes, and maintain parity with relevant labor markets.

SCOPE OF SERVICES

The City of Dinuba requests proposals from highly qualified and experienced consulting firms to design and conduct a comprehensive compensation study and analysis for the City's full time employees. The City of Dinuba anticipates that the study will involve, but not be limited to the following:

- Review of current compensation (including all benefits) practices and related issues;
- Review of current listing of comparable cities and recommendation of appropriate changes as necessary;
- Meetings with Department Directors to explain philosophy and components of study and processes used;
- Orientation and briefing sessions as needed for the study;
- Recommended salary survey benchmarks in conjunction with relevant benchmark classifications;
- Internal salary relationship analysis including the development of appropriate internal relationship guidelines (internal equity);
- Assessment of compensation systematically in relation to other Tulare County comparable cities, as appropriate;
- Written documentation of methods, techniques, and data used for the study for the assessment of each position;

- Meetings with City Council, employee groups, and the public in order to present information and recommend findings;
- Training of city staff in the methodology used to systematically assess job classifications in order to maintain internal compensation equity in the future when adding, changing or deleting classifications;
- A manual and electronic version of the final copy of the compensation study;
- Documentation of procedures for appropriate implementation and maintenance manuals;
- Periodic status reports on progress, as requested.
- Recommend amendments to City Compensation Plan

CONSULTANT QUALIFICATIONS/REQUIRED PROPOSAL CONTENT

The Consultant shall be responsible for preparing an effective, clear, and concise proposal. All proposals must contain the following information:

- A brief cover letter describing the firm's organization and services. Include the primary contact. Address any qualifying statements or comments regarding the proposal. The signed letter should include a paragraph stating that the firm is unaware of any conflict of interest in performing the proposed work;
- Number of years the company has been conducting classification and compensation studies for municipalities;
- Consultant's understanding of the services to be provided;
- Summary of five similar studies conducted for public agencies of similar size during the past five years. Include names, addresses, email addresses and phone numbers of a contact person at the client agency for reference checking purposes;
- Resumes of experience and education for all staff to be assigned to this project;
- Complete description of compensation methodology including study objectives, end products, processes, steps and procedures;
- Detailed work plan. Include a step-by-step study process, which includes an itemization of tasks to be performed, an estimated number of hours, and the timeline for completing each step. Include also the plan for communications and the employee appeal process;
- A statement indicating any information consultant may require from City staff and any other City staff assistance that may be needed;
- Description, if applicable, of how City support staff and services are expected to be used in the project;
- Project timing. A project schedule should be supplied identifying beginning and end dates for each phase of work and an integrated timeline;
- Fee proposal and reimbursable expenses. The fee schedule shall include the hourly rate for each personnel category and any other additional charges to complete the services required of this contract. Provide a list of any reimbursable expenses that may apply. The City will use the fee proposal in the selection process, reserves the right to negotiate the final fee with the consultant, and will not consider any additional expenses or fees not identified in the proposal.
- The successful consulting firm shall be required to present proof of insurance and indemnify the City in accordance with the enclosed "Standard Agreement for Consultant Services" form (Attachment A);
- The consultant shall coordinate activities through and report to the Assistant City Manager or designee. A schedule for the completion of key components of the project and the project as a whole based on a start date of the date the agreement is entered into.

The City will not be liable for any costs associated with the preparation or transmittal of any proposal or material submitted in response to this RFP. All responses and documentation become the property of the City of Dinuba.

PERIOD OF PERFORMANCE

The Compensation Study shall be completed and copies of the final report prepared and presented to the Assistant City Manager no later than three (3) months from the date the agreement is entered into.

CONSULTANT SELECTION PROCESS AND PROPOSAL EVALUATION

The Contract award will be made after selection of one (1) respondent’s proposal from among all respondents with implementation of services to follow. However, this RFP does not indicate a commitment by the City to award a contract to any successful respondent. The City intends to evaluate the proposed services based upon the data presented in response to the RFP. The proposals will then be reviewed based on qualifications, specific experience, references, familiarity with the services and pricing, and then rated according to which company best meets the city’s requirements.

PROPOSED TIMELINE

The tentative selection schedule is as follows:

DATE	ACTION
September 20, 2013	RFP responses must be received by 5:00 p.m. at the City of Dinuba, 405 E. El Monte Way, Dinuba, CA 93618, ATTN: Jayne Anderson
September 25, 2013	Initial screening/short-listing
October 7, 2013	Interview of Finalists
October 22, 2013	Selection of Finalist/Recommendation to City Council
October 23, 2013	Contract/Agreement for services executed
October 28, 2013	Initiation of study

PROPOSAL FORMAT

1. The proposal shall be typed.
2. Five (5) copies of the proposal shall be submitted in the same sealed envelope, clearly marked with the firm’s name, address, and phone number. Only one proposal per firm will be considered.
3. Proposals must be submitted no later than 5:00 p.m. on September 20, 2013 to the following:

City of Dinuba
405 E. El Monte Way
Dinuba, CA 93618
Attn: Jayne Anderson, Assistant City Manager

NO LATE SUBMITTALS WILL BE ACCEPTED

KEY CONSIDERATIONS & EVALUATION CRITERIA

The RFP responses will be evaluated based upon the following:

- Consultant's demonstrated expertise in classification and compensation studies on behalf of clients similar to the City of Dinuba;
- Perceived ability of consultant to meet the needs of the City of Dinuba including, but not limited to, ability of the consultant to perform high quality work, costs of services and ability to control costs;
- Consultant's availability and accessibility to work within the proposed schedule;
- The experience, professional credentials and references of those persons who will actually be conducting the study;
- Consultant's conceptual approach and process related to customer service as well as how the project will be managed and Consultant's ability to work effectively with City staff.

GENERAL INFORMATION

The City of Dinuba reserves the right to reject any and all proposals should it be deemed in its best interest to do so. All proposals and related materials become the property of the City of Dinuba and may be returned only at its option. The City of Dinuba is not obligated to accept any proposal or to negotiate with any respondent. All transactions are subject to the final approval of the City of Dinuba which reserves the right to reject any or all proposals without cause or liability.

It is recognized that the formal basis of any agreement between the City and the consultant is a contract rather than a proposal. In submitting price quotes, consultants must indicate that they are prepared to complete a contract containing all the information submitted in their price quote. The price quote will become part of the contract between the City and the successful consultant. All costs directly or indirectly related to responding to this RFP (including all costs incurred in supplementary documentation, information or presentation) will be borne by the proposer. The selected consultant will be required to enter into an agreement with the City of Dinuba utilizing the City of Dinuba's "Attachment A."

Sealed proposals may be submitted in person to Human Resources, or via US Mail, or express courier and must be received by **5:00 p.m. on September 20, 2013**. Submissions after this deadline will not be accepted. All inquiries and/or requests for clarification of the RFP shall be submitted by email to Jayne Anderson, at janderson@dinuba.ca.gov. All requests for clarification must be received no later than 5:00 p.m. on October 1, 2013. Requests for clarification received after this date will be discarded.

Any consulting firms downloading this Request for Proposal from the City of Dinuba website, or any other source, and desiring to be considered for selection shall contact the above City Representative prior to **September 20, 2013**, and provide contact information for any correspondence generated through the clarification process.

The City retains sole discretion to evaluate proposals and may make an award to the consultant the City deems to have the most responsive proposal. Receipt of proposals in response to its RFP does not obligate the City in any way to engage any consultant and the City reserves the right to reject any or all proposals, wholly or in part, at any time, without penalty. The City shall retain the right to abandon the proposal process at any time prior to the actual execution of a contract with no financial or other

responsibility in the event of such abandonment. The City reserves the right to negotiate all final terms and conditions of any agreements entered into.

The evaluation process shall include review of qualifications by a panel of City staff (RFP Team) assigned by the City Manager and any other person(s) designated by the City. The City reserves the right, where it may serve the best interest of the City, to request additional information and clarification from consultants. At the discretion of the City, consultants submitting proposals may be requested to make oral presentations as part of the evaluation process.

All quotes, inquiries, responses, or correspondence related to or in reference to this RFP, and all reports, charts, displays, schedules, exhibits, and other documentation submitted by the consultant will become property of the City and a matter of public record. Any changes to this RFP by the City will be sent to each consultant or individual to whom an RFP has been sent. Such changes become an integral part of the RFP for incorporation into any contract awarded pursuant to the RFP.

Upon final selection of the consultant, the scope of service may be modified and refined during negotiations with the City.

COMPENSATION AND REIMBURSEMENT

Compensation for the scope of work defined in this Request for Proposal (RFP) will be the total amount for the completion of the project culminating with the acceptance of the completed Compensation Plan. Due to fiscal considerations, the City is looking for a consulting firm that will utilize the City's Human Resources staff and resources during the project to maintain costs within budgetary constraints.

ADDITIONAL SUBMISSION INFORMATION

The City assumes no responsibility for delays caused by delivery service. Postmarking by the due date will not substitute for actual receipt. All costs incurred during proposal preparation or in any way associated with the Consultant's preparations, submission, presentation, or oral interview shall be the sole responsibility of the Consultant. If awarded a contract, the consultant shall maintain insurance coverage, including errors and omissions and workers' compensation, reflecting the minimum amounts and conditions specified by the City.

UNDUE INFLUENCE

The consultant declares and warrants that no undue influence or pressure has been used against or in concert with any officer or employee of the City in connection with the award or terms of the Agreement that will be executed as a result of this RFP, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly, from the vendor, or from any officer, employee or agent of the vendor, in connection with the award of the Agreement or any work to be conducted as a result of the RFP. Violation of this Section shall be a material breach of the Agreement/Contract entitling the City to any and all remedies by law or in equity.

APPLICABLE LAWS

The contract awarded shall be governed in all respect by the laws of the State of California, and any litigation related to the contract or this RFP shall be brought in the State of California, with a venue of the Tulare County Superior Courts. The firm awarded the contract shall comply with all applicable Federal, State, and local laws and regulations.

Attachment A – Sample City of Dinuba Services Agreement

AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE CITY OF DINUBA AND _____

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

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

SECTION 1. TERM OF AGREEMENT.

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

SECTION 2. SCOPE OF SERVICES.

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

SECTION 3. ADDITIONAL SERVICES.

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

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

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

(b) Each month CONSULTANT shall furnish to CITY an original invoice for all work performed and expenses incurred during the preceding month. The

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

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

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

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

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

SECTION 6. OWNERSHIP OF DOCUMENTS.

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

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

(a) CONSULTANT shall maintain any and all documents and records

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

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

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

SECTION 8. STATUS OF CONSULTANT.

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

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

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

SECTION 9. STANDARD OF PERFORMANCE.

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

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

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

SECTION 11. NONDISCRIMINATION.

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

SECTION 12. UNAUTHORIZED ALIENS.

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

SECTION 13. CONFLICTS OF INTEREST.

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

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

SECTION 14. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

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

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

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

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents,

interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

SECTION 15. INDEMNIFICATION.

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

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under Section 16 shall ensure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

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

SECTION 16. INSURANCE.

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C"

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

SECTION 17. ASSIGNMENT.

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

SECTION 18. CONTINUITY OF PERSONNEL.

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

SECTION 19. TERMINATION OF AGREEMENT.

- (a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.
- (b) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY.
- (c) If either CONSULTANT or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT, or CITY may terminate this AGREEMENT immediately upon written notice.
- (d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY. CONSULTANT shall furnish to CITY a final invoice for work

performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

SECTION 20. DEFAULT.

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

SECTION 21. EXCUSABLE DELAYS.

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

SECTION 22. COOPERATION BY CITY.

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

SECTION 23. NOTICES.

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

To CITY:

City Manager

To CONSULTANT:

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

SECTION 24. AUTHORITY TO EXECUTE.

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

SECTION 25. BINDING EFFECT.

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

SECTION 26. MODIFICATION OF AGREEMENT.

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

SECTION 27. WAIVER.

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

SECTION 28. LAW TO GOVERN; VENUE.

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

SECTION 29. ATTORNEYS FEES, COSTS AND EXPENSES.

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

SECTION 30. ENTIRE AGREEMENT.

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

SECTION 31. SEVERABILITY.

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

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

CONSULTANT:

CITY OF

By _____
(Authorized Officer)

By _____
City Manager

By _____
APPROVED AS TO FORM:
(Authorized Officer)

City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

EXHIBIT "B"

COMPENSATION

EXHIBIT "C"

INSURANCE

A. Insurance Requirements. CONSULTANT shall provide and maintain insurance, acceptable to the City Manager or City Attorney, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. CONSULTANT shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - (1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).
 - (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.
 - (3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the CONSULTANT and all risks to such persons

under this AGREEMENT.

(4) Errors and omissions liability insurance appropriate to the CONSULTANT's profession.

2. Minimum Limits of Insurance. CONSULTANT shall maintain limits of insurance no less than:

(1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

(4) Errors and Omissions Liability: \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:

1. All Policies. Each insurance policy required by this paragraph 15 shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to _____.

2. General Liability and Automobile Liability Coverages.

(1) CITY, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities CONSULTANT performs; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, and their respective elected and appointed officers, officials, or employees.

(2) CONSULTANT's insurance coverage shall be primary insurance with respect to CITY, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by CITY, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONSULTANT's insurance.

(3) CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against CITY, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by CONSULTANT.

C. Other Requirements. CONSULTANT agrees to deposit with CITY, at or before the effective date of this contract, certificates of insurance necessary to satisfy CITY that the insurance provisions of this contract have been complied with. The City Attorney may require that CONSULTANT furnish CITY with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. CITY reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. CONSULTANT shall furnish certificates and endorsements from each subcontractor identical to those CONSULTANT provides.

2. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY or its respective elected or appointed officers, officials, employees and volunteers or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.

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