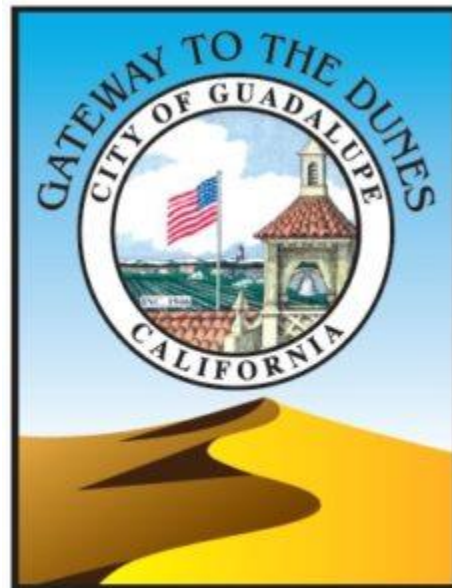


November 2020



CITY OF GUADALUPE

REQUEST FOR PROPOSAL

2020 Comprehensive Utility Rate Study

No. 2020-09

ATTN: SHANNON SWEENEY
CITY OF GUADALUPE
ssweeney@ci.guadalupe.ca.us
918 OBISPO STREET
GUADALUPE, CA 93434

Proposals due by 2:00 December 15, 2020

REQUEST FOR PROPOSAL

2020 Comprehensive Utility Rate Study

PROJECT DESCRIPTION: The City of Guadalupe is seeking professional consulting services to perform a Water and Sewer Rate Study. The complete Request for Proposal (RFP) is available on the City's website (ci.guadalupe.ca.us).

The Proposer's team for this project shall include expertise in all appropriate areas of water and sewer rates modeling and planning.

The services to be performed by the successful respondent are described in the RFP in the Scope of Work section.

Questions regarding this RFP shall be emailed to ssweeney@ci.guadalupe.ca.us before the end of day, Wednesday, November 25, 2020 to receive a response. Answers will be communicated to all known interested Consultants and posted on the City's website after the deadline for receipt of questions. Questions received after this deadline will not be answered.

All proposals shall be submitted to the City of Guadalupe on or before Tuesday, December 15, 2020 at 2:00 p.m. Please submit one (1) original and four (4) copies and one (1) electronic copy or flash drive containing the proposal to: City of Guadalupe, 918 Obispo Street, Guadalupe, CA 93434. Proposals shall not exceed 15 pages.

All responses shall be reviewed and evaluated by the City to determine which proposer best meets the City's needs for service.

The City reserves the right to reject any or all proposals or waive any irregularities in any proposal or the proposal process.

Proposals must be valid for 90 days and must be signed by an official authorized to bind the Consultant.

Shannon Sweeney, Public Works Director

Email: ssweeney@ci.guadalupe.ca.us

SECTION 1 Project Description

The City of Guadalupe, California (the “City”) was incorporated as a general law City in 1946 and is located in northwest Santa Barbara County along the Santa Maria River, eight miles west of the City of Santa Maria. The City provides water and sewer services to a 1.3 square mile service area serving a disadvantaged population of approximately 7,800 people. Water service and sewer service are accounted for separately as enterprise funds.

The water utility obtains its water supply from two wells in the adjudicated Santa Maria Groundwater Basin, and from purchased State Water obtained from the Central Coast Water Authority. The water and sewer capacity evaluation in Attachment A shows water and wastewater supply and use.

Water production for the City in 2019, including purchased water, totaled 1,045 ac-ft. Storage facilities presently include three above ground water tanks with a storage capacity of approximately 2.1 million gallons. The transmission and distribution system includes over 19 miles of pipeline, 1,800 meters, and over 260 public fire hydrants.

The sewer utility consists of a collection system of 19 miles of sewer pipe and four lift stations, used to collect the City’s wastewater. The wastewater treatment plant has a capacity of 0.96 MG, but is in the process of expansion to 1.5 MG.

The City of Guadalupe last completed a water and wastewater rate study in 2014. Rate adjustments have been approved through January 2021 and this rate study is to inform the City of rate adjustments necessary starting January 2022, and is to be completed so that sufficient time is available to complete the Proposition 218 process before that date.

SECTION 2 Scope of Work

The City needs an updated water and sewer rate study, to inform the City of future rate adjustments necessary to continue operations, perform necessary capital improvements, and maintain adequate reserves per industry standards.

The City desires a ten-year pro forma, developed in a non-proprietary, Excel-based format, simplified to the extent that it can be maintained on an ongoing basis by City staff.

Task 1 – Review Current Water and Wastewater Fees and Rates

The first step in determining the long-term revenue requirement of each utility is to identify all capital improvements including annual replacements, additions and improvements and extensions to the system. Review master planning reports and other available information regarding needed replacements, improvements, and expansions of the water and wastewater systems, as well as existing fee structures.

Task 2 - Revenue Requirement Projections

The objective of this task is to project revenue needs for the five-year study period for each utility. Each utility's ability to meet projected revenue requirements will be analyzed. The level of revenue adjustments and additional financing requirements will be shown. The following subtasks will be completed:

2.1 Estimate revenues under current rate and fee levels based upon the projected number of customers and service requirements. Historical growth trends, quantity of service provided, and patterns in customer service characteristics should be considered.

2.2 Review and project revenue from miscellaneous sources such as interest earnings, miscellaneous service fees, or other sources.

2.3 Develop annual revenue requirements of the water and wastewater utilities recognizing historical data, current year's budgets, and anticipated future system service requirements and operational changes. Revenue requirements to be based on projected inflation and to include at least the following items:

- Operation and maintenance expenses.
- Major capital expenditures.
- Effects on revenue projections from water conservation program impacts.
- Debt service on existing and any proposed new financing methods including appropriate reserves.
- Other cash obligations.

2.4 Develop future cash flow analyses for a five-year study period for each utility, showing application of revenue under existing rate levels to meet the annual revenue requirements. Cash flows to be developed to maintain reserve fund balances and to meet debt service coverage requirements for each utility. Determine and present proposed water and sewer rates for a five-year period.

2.5 Prepare a survey of water and sewer rates charged by other public agencies in Santa Barbara County for the purposes of cost comparison.

2.6 Present water and sewer rate recommendations.

2.7 Consultant shall provide recommended strategies to minimize the potential impact of conservation on revenue.

Task 3 - Allocation of Costs

3.1 Allocate the costs of service to the various costs of service components which constitute a functional classification of the different types of service the City provides. For water, functional cost components will include base or volume related costs, extra capacity costs, fire protection costs, and customer costs. For wastewater, cost components include volume and customer costs, and wastewater strength if applicable.

3.2 Distribute the costs by functional components to the various customer classifications on the basis of the relative responsibility of each customer classification for the service provided, as determined from the customer classification units of service and the application of unit costs of service to the respective units.

3.3 Compare revenue under existing rates by each customer class with the allocated cost of service. Determine the adequacy of present revenue levels for each class to meet cost of service and determine the indicated adjustment in rates required.

3.4 Consider City policy, procedures, and all currently known federal, state, and local rules, regulations, and guidelines applicable to charges for water and wastewater service for determining rates.

Task 4 – Develop a simplified Excel-based 10-year Pro Forma

Provide the city with an Excel spreadsheet that City staff can maintain in future years to track the adequacy of rates based on revenue changes, increased cost of purchased water, and impact of capital project implementation. Clearly indicate cells designated as input data, and protect cells containing formulas. The spreadsheet should extend a minimum of 10 years into the future.

Task 5 – Determine a Storm Sewer Fee for Mandated Stormwater Regulations

Review and calculate all City expenses related to compliance with the National Pollutant Discharge Elimination System (NPDES) and State Water Resources Control Board regulatory mandates for storm water protection measures. The intent for collection and analysis of the City's related expenses is to prepare a recommendation for a potential fee to be paid by current and future rate payers to offset these mandated expenses. Specifically, the consultant will:

5.1 Itemize and calculate all City expenses for storm water protection measures including but not limited to; annual report preparation, storm water inspection costs, storm water preventative maintenance activities, related consultant costs and other related city expenses. This information will be provided to the consultant by City staff.

5.2 Prepare a proposed Storm Sewer fee to be paid by current and future rate payers to offset the City's annual expenses for storm water protection regulatory measures. The potential Storm Sewer fee shall be determined on a basis that takes into consideration differences in impacts on storm water such as parcel size. The consultant will propose and discuss the fee determination methodology in advance of the draft report.

Task 6 – Meetings

The consultant should schedule and attend four on-site (computer based as appropriate during COVID) meetings with the City as well as other telephonic or remote meetings as needed. These meetings are intended to provide communication, discuss findings, and make decisions regarding rates that meet the requirements of the City. The meeting/presentation dates depend upon receipt of data requested and timely review of the draft and final reports by the City.

Meeting 1. Initial meeting with City staff/data collection and scheduling. Consultant is to organize and lead a “kick-off” meeting to include all identified project participants. The purpose of the meeting will be to identify the Project Committee, verify needs, schedules, and goals of the work to take place. Consultant shall define all targets, meetings, reviews, and deliverables on a master schedule. Consultant will report to the City’s Project contact. The Consultant shall prepare and distribute minutes of all meetings and shall prepare a Master Project Schedule for review and approval by the City. Consultant shall base the initial schedule upon information developed by Consultant and provided by the City. Consultant shall then be responsible for maintaining and updating the schedule during the course of the project.

Meetings 2 and 3. Two interim meetings with City staff to discuss the draft report and preview rate study.

Meeting 4. Prepare slide show and present preliminary findings and recommendations at an evening Public Workshop.

Meeting 5. Present Final Report to City Council.

Task 7 – Reports (Deliverables)

The consultant shall deliver the following;

1. Five (5) hard copies of the draft Water and Wastewater Rate Study update report for comment and review prior to final printing.
2. Five (5) hard copies of the final Water and Wastewater Rate Study update report.
3. Electronic copy of the final report in Adobe PDF format.
4. Presentation materials or power point used at the City Council for the Final Update Report. Consultant will provide in advance, a copy of the Council presentation for review.

All written and electronic documents, including but not limited to data compilations, studies, and reports which are prepared in the performance of this Project, shall remain the property of City of Guadalupe and will be delivered before final payment to Consultant.

SECTION 3 SCHEDULE OF EVENTS

The following are the anticipated schedule of events for this project:

Issue RFP	Friday, November 13, 2020
Deadline for RFP Questions/Comments.....	Wednesday, November 25, 2020
Proposals due to the City by 5:00 p.m.	Tuesday, December 15, 2020
Consultant Ranking and Selection	Tuesday, January 5, 2021
Finalize Contract Negotiations	Tuesday, January 12, 2021
City Council Awards Contract	Tuesday, January 26, 2021
City Issues Notice to Proceed.....	Friday, January 29, 2021
City Council Final Update Report Presentation	Tuesday, June 21, 2021

SECTION 4 Proposal Contents

The Proposal package shall be organized to include the following sections. The contents for each section are listed below, and must be presented in the same order. The Proposer shall be responsible for preparing an effective and clear proposal. Concise proposals without needless duplication are encouraged.

1. Executive Summary

Provide an executive summary emphasizing the firm's strengths, qualifications and relevant experience signed by a representative with official authority to bind the contract. The executive summary shall also contain the name, address, telephone number, title and signature of the firm's contact person for this proposal. Be sure to include a declaration that the submittal is valid for 90 days. Include why your firm is particularly suited to address the City of Guadalupe's needs.

2. Key Personnel

Provide an organizational chart displaying the names and responsibilities of key personnel. Be sure to include the Principal-in-Charge (one who will have the ultimate authority to bind the contract), senior staff members and any other additional support staff that will be a contributing member of the project. Personnel involved in preparing the Study must have the necessary background, experience and qualifications to complete the project. Provide resumes documenting the staff members' qualifications. The City reserves the right to request the consultant to replace staff members assigned to the contract should the City consider such a replacement to be necessary and in the best interest of the City. There can be no change of key personnel once the proposal is submitted, without prior approval of City.

3. Fee

Provide a fee schedule based on the Scope of Services including an itemized breakdown of each task to be performed by the consultant or sub-consultant. The schedule should also outline all individual team members, the hourly billable rates and the hours allocated to the project based on their contribution per the Scope of Services provided by the consultant. Compensation will be based on the submitted fee schedule including reimbursable expenses if applicable and authorized by the City's Finance Department.

4. Work Schedule

Provide a work schedule with benchmark dates and completion date.

5. Qualifications

Provide your firm's qualifications and experience.

6. References

Provide at least three public agency references with whom the firm has provided similar services. The City is interested in references from public agencies of similar size and demographics as the City of Guadalupe.

7. Form of Agreement

Firm agrees to the use of the City's standard form of agreement (Attachment B). Any required deviations or edits to this agreement shall be documented in this section.

8. Insurance

Provide a copy of the firm's current insurance certificate, and a statement that the firm will provide an additional insured endorsement consistent with the City's standard agreement.

SECTION 5 SELECTION PROCESS AND EVALUATION CRITERIA

Each proposal will be reviewed by a Selection Committee to determine if the minimum proposal requirements outlined herein are met. The City of Guadalupe may reject any proposal that fails to meet the requirements set forth in this RFP. Proposals meeting the RFP requirements will be evaluated and ranked by the Selection Committee utilizing the following criteria:

- Understanding of the work to be performed
- Experience with similar assignments, including size of agency
- Assigned Project Manager/team
- Ability to complete the project on schedule
- Overall value to the City

The decision to award a contract will be based many factors including but not limited to service, cost, experience, and innovation. No single factor, such as cost, will determine the final decision to award.

ATTACHMENT A

Water Availability		assumed variables					
Legal							
Source	Amount AF	Long term Reliability	Annual AF	Comments			
State Water	605	52%	315	2019 final DWR delivery capability report			
Twitchell Yield, orig	1,300	1	1,300	Stipulation, exhibit F			
Twitchell Yield, DJ Farms	29.78	1	30	email from L. Speer 10/30/2020			
GW Appropriative rights		1	299	see table			
Total			1,944	surplus native groundwater from stormwater percolation Avg rain =17 inches. Assume 25% permeable, 1.32 sq mi.			
Calculated GW appropriative rights							
Size			1.32	sq mi			
Size			36,799,488	sq ft			
Rain			17	in			
Rain			1.4	ft			
Permeability			25%				
GW			299	AF			
Production capability							
Source	Capacity gpm	Availability	Annual AF				
Obispo Well	1,000	0.8	1,290				
Pasadera Well	1,000	0.8	1,290				
State Water			315				
Total			2,896				
Extrapolated demand, water supply							
Current Population	Estimated Demand	Comments					
7,783	1,045 AF	2019 water production report					
Future Population	Extrapolated demand						
14,475	1,944 AF						
Extrapolated wastewater treatment							
Current Population	Est. treatment used	Comments					
7,783	908 AF	2019 wastewater annual report					
Future Population	Extrapolated treatment available						
14,400	1,680 AF	Approved expansion will achieve 1.5 MGD capacity					
Water supply needed, calculated from 2014 water master plan				Water supply needed, calculated with 100 gpcd			
Water User	Use AFY	Comments		Water User	Use AFY	Comments	
Curation	373	341,388 gpd		Curation	373	341,388 gpd	
Beachside Cooler	28			Beachside Cooler	28		
Residential, 10,000	1,344	120 gpcd assumed		Residential, 10,000	1,120	100 gpcd assumed	
Residential, 11,000	1,479			Residential, 11,000	1,232		
Residential, 12,000	1,613			Residential, 12,000	1,344		
Residential, 13,000	1,748			Residential, 13,000	1,456		
Commercial (-curation, bc)	173			Commercial (-curation, bc)	173		
Total demand	1,918	Residential, 10,000		Total demand	1,694	Residential, 10,000	
Total demand	2,053	Residential, 11,000		Total demand	1,806	Residential, 11,000	
Total demand	2,187	Residential, 12,000		Total demand	1,918	Residential, 12,000	
Total demand	2,322	Residential, 13,000		Total demand	2,030	Residential, 13,000	
				100 gpcd considered reasonable due to impacts of long-term drought, 2016 UPC And implication of MWEL0 restrictions on outdoor landscaping			

**ATTACHMENT B
CITY STANDARD AGREEMENT**

AGREEMENT FOR CONSULTANT SERVICES

BETWEEN

THE CITY OF GUADALUPE

AND

THIS AGREEMENT FOR CONSULTANT SERVICES (the "**Agreement**") is made and entered into this _____ day of _____ 20xx, by and between the CITY OF GUADALUPE, a municipal corporation ("**City**") and _____, a California ("**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, unless such additional services are authorized in advance and in writing by the City Council or City Administrator 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 Administrator.

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.

(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 subcategory), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. City shall independently review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement and Scope of Services. 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 City

disputes any charges or expenses, City shall return the original invoice to Consultant with specific items in dispute identified for correction and re-submission. All undisputed charges shall be paid in accordance with this Agreement and Scope of Services.

(c) Except as to any charges for work performed or expenses incurred by Consultant, which are disputed by City, City will cause Consultant to be paid within forty-five (45) 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.

(e) Consultant shall have the right to suspend services if not paid in accordance with this Agreement.

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, if the work is found to be defective or not in compliance with the defined Scope of Services. Acceptance of any of the 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. Consultant agrees to cooperate in any such inspection.

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. Reuse of any materials outside the scope of this Agreement shall be at the sole risk of the City.

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 completed 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 (3) years from the date of execution of this Agreement and to the extent required by laws relating to the 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, upon reasonable notice 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. The City shall compensate the Consultant for all costs associated with providing these materials to the City.

(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 destroyed 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 during the terms of this Agreement remain a wholly independent Consultant 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, 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 applicable to Consultant. 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, disability, marital status or sexual orientation 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. sections 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens for the performance of work and/or services covered by this Agreement, and should 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 attorney's fees, incurred by City.

Section 13. Conflicts of Interest. Consultant agrees to at all times avoid conflicts of interest with the interests of the City in the performance of this Agreement.

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 Administrator, except as may be required by law.

(b) Consultant, its officers, employees, agents or subconsultants, shall not, without prior written authorization from the City Administrator or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories or other information concerning the work performed under this Agreement. A 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 subconsultant of Consultant, provides any information or work product in violation of this section, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub consultants 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. Consultant shall be compensated for all costs associated with complying with this section.

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 attorney's 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 Consultant's performance of or failure to perform any services under this Agreement or by the negligent or willfully wrongful acts or omissions of Consultant, its agents, officers, directors, sub consultants 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 willfully wrongful acts or omissions.

(d) City agrees to indemnify Consultant for any such neglect or willfully wrongful acts committed by City or its officers, agents or employees.

Section 16. Insurance. CONTRACTOR agrees to obtain and maintain in full force and effect during the term of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work provided by CONTRACTOR, its agents, representatives or employees in performance of this Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII. 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 City Administrator. CONTRACTOR agrees to provide City with copies of required policies upon request. Prior to the beginning of and throughout the duration of the Work, CONTRACTOR and its subcontractors shall maintain insurance in conformance with the requirements set forth below. CONTRACTOR will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth herein, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so. CONTRACTOR acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CONTRACTOR or its subcontractors in excess of the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to CITY.

CONTRACTOR shall provide the following types and amounts of insurance. Without limiting CONTRACTOR's indemnification of CITY, and prior to commencement of Work, CONTRACTOR shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to CITY:

A. 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 No. CA 0001 covering Automobile Liability, including code 1"any auto" and endorsement CA 0025, or equivalent forms subject to written approval of City.

(3) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers' Liability insurance and covering all persons providing services on behalf of the CONTRACTOR and all risks to such persons under this Agreement, along with a waiver of subrogation endorsement.

(4) Errors and omission liability insurance appropriate to the CONTRACTOR's profession.

B. Minimum Limits of Insurance: CONTRACTOR shall maintain limits of insurance no less than:

(1) General Liability Insurance: 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 \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, and a \$2,000,000 completed operations aggregate. The policy shall provide or be endorsed to provide that CITY and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. This insurance and any umbrella or excess liability insurance shall be maintained for a minimum of three years or as long as there is a statutory exposure to completed operations claims, with the City and its officers, officials, employees, and agents continued as additional insured.

(2) Automobile Liability: CONTRACTOR shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the CONTRACTOR arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(3) Workers' Compensation and Employer's Liability: CONTRACTOR shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) for CONTRACTOR's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, CONTRACTOR shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees. CONTRACTOR shall submit to CITY.

(4) Errors and Omissions Liability: \$1,000,000 per claim as appropriate for the profession.

(5) Umbrella or excess liability insurance (if needed): CONTRACTOR shall obtain and maintain an umbrella or excess liability insurance that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages

set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

(6) Pollution liability insurance. Environmental Impairment Liability Insurance shall be written on a CONTRACTOR's Pollution Liability form or other form acceptable to CITY providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

C. Other Provisions: Insurance policies required by this Agreement shall contain the following provisions:

(1) Notice of Cancellation: Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, canceled by the insurer or other party to this Agreement, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to City.

(2) Primary/noncontributing: Coverage provided by CONTRACTOR shall be primary and any insurance or self-insurance procured or maintained by CITY shall not be required to contribute with it. The limits of insurance required herein 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 CITY before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

(3) City's Rights of Enforcement: In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONTRACTOR or CITY will withhold amounts sufficient to pay premium from CONTRACTOR payments. In the alternative, CITY may cancel this Agreement.

(4) Waiver of Subrogation: All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against CITY, and shall require similar written express waivers.

(5) Enforcement of Contract Provisions (non estoppel): CONTRACTOR acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform CONTRACTOR of non-compliance with any requirement imposes no additional obligations on the CITY nor does it waive any rights hereunder.

(6) Requirements not Limiting: Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the CONTRACTOR maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

(7) Prohibition of Undisclosed Coverage Limitations: None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.

(8) Separation of Insureds: A severability of interests provision must apply for all additional insureds ensuring that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(9) Pass through Clause: CONTRACTOR agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONTRACTOR, provide the same minimum insurance coverage and endorsements required of CONTRACTOR. CONTRACTOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONTRACTOR agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to CITY for review.

(10) City's Right to Revise Requirements: The CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONTRACTOR a ninety (90) day advance written notice of such change. If such change results

in substantial additional cost to the CONTRACTOR, the CITY and CONTRACTOR may renegotiate CONTRACTOR's compensation.

(11) Self-insured Retentions: Any self-insured retentions must be declared to and approved by CITY. CITY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by CITY.

(12) Timely Notice of Claims: CONTRACTOR shall give CITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONTRACTOR's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(13) Additional Insurance: CONTRACTOR shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

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 the 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 sub consultants.

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 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 the 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 and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in Exhibit A, 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 United States mail, postage prepaid, addressed as follows:

To City: City Administrator
 City of Guadalupe
 918 Obispo Street
 Guadalupe, CA 93434

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 the Consultant represents and warrants that they 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 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 Santa Barbara. 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. Attorney's 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 any 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, 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 a 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).

Section 32. Preparation of Agreement. This Agreement is the product of negotiation and preparation by and among the parties and their respective attorneys. The parties, therefore, expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or any party's attorney, and will be construed accordingly.

CITY:

CONSULTANT:

CITY OF GUADALUPE

By: _____

Ariston Julian, Mayor

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Phillip Sinco, City Attorney

Title: _____