



**CITY OF GUADALUPE
REQUEST FOR PROPOSALS (RFP)**

Development opportunity for the
Royal Theater Building

Release Date: FRIDAY, APRIL 16, 2021

Deadline for Submission: Monday, May 17, 2021 at 2:00 pm

Contact person: Todd Bodem, City Administrator

1. Request for Proposals

Introduction/Invitation

The City of Guadalupe (the City) is pleased to offer an opportunity to qualified development teams to respond to this invitation for development proposals for the reuse of the City-owned Royal Theater building located at 848 Guadalupe Ave. Guadalupe, CA 93434. The opportunity consists of the 5,084 sq. ft. Royal Theater and an additional 19,134 sq. ft. vacant land. The total site is approximately 0.61 acres. The project's objective is to create a high quality, commercial or mixed-use project consistent with the City's General Plan and market conditions. The City's Long-Range Property Management Plan calls for the inclusion of a community arts facility as part of any future disposition of the property. The site is currently zoned as General Commercial (GC). The project proposal must include how it will meet the National and State Historical building standards as the City will be applying for Historical designation. Please see attached historical report dated February 2021.

The City is seeking a Design-Build team to undertake a design-build proposal that include will include at minimum of two phases: phase one being shovel ready plans and spec under planning, and a second phase under development (how the design-build team will get the Royal Theatre open for public use. The team will



Figure 2: Royal Theater Front Facade

Royal Theater Location Map



Figure 1: A Map of the Royal Theater and Related Activities

outline potential financing options and work with the City on applications for funding both phases. Additional points will be given for design-build teams that have a proposal for the third phase of the project: operating. The team is expected to include members that have expertise to design, construct and operating the project and should include a firm with experience in designing adaptive reuse and projects with historical designations.

Based upon the selection process as described in this Request for Proposals (RFP), the City anticipates selecting a preferred Design/Build Team and entering into an Exclusive Negotiating Rights Agreement (ENRA) leading to development of a project.

Property Description

The property that is being offered consists of three parcels. The Royal Theater building is located on APN 115-101- 001. The vacant lot southeast of the theater is APN 115-101-011 and the vacant parcel south of the theater is APN 115-113-001. The theater building is 5,084 square feet and was constructed in 1939.

Additional details about the property and its features including as-built drawings and property evaluations are available online at: <http://www.ci.guadalupe.ca.us>

About Guadalupe

The City of Guadalupe is located in Northwest Santa Barbara County, approximately eight miles west of Santa Maria. California Highway 1 (the Pacific Coast Highway) runs through the city and it is also served by Amtrak’s Surfliner service making it a highly accessible location within the region and for visitors to California’s Central Coast. The community is the gateway to the Guadalupe-Nipomo Dunes. The city has a population of 7,350 and is part of the greater Santa Maria regional market with a population of over 108,000

Regional Map

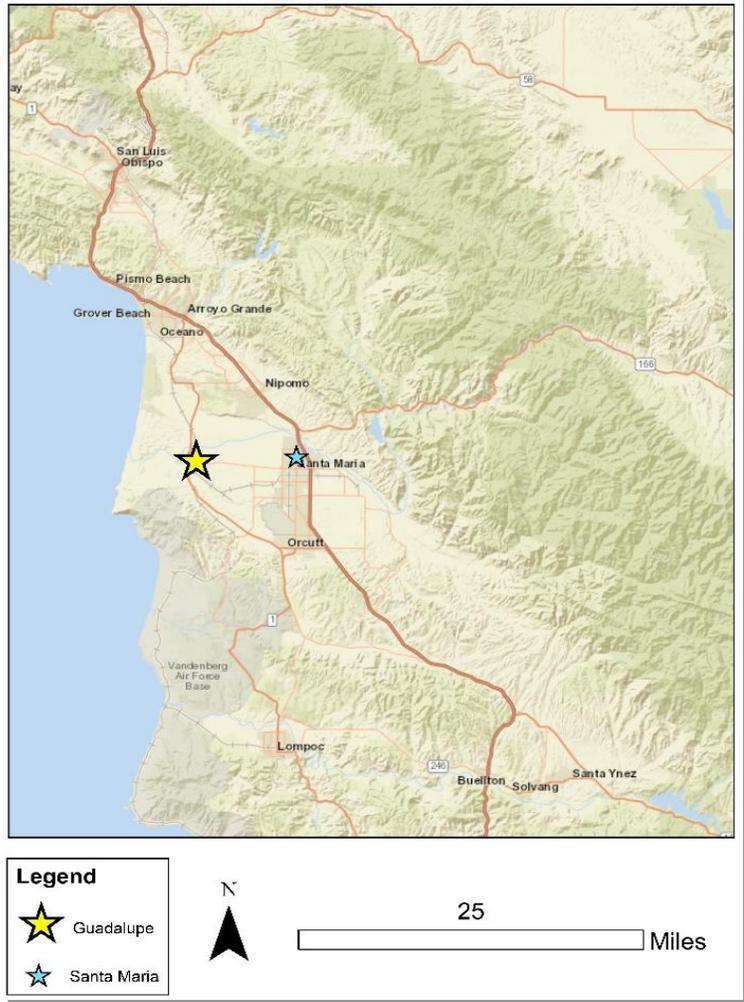


Figure 3: Guadalupe and Santa Maria Regional Map

Long-Term Operating

The City wishes to maintain ownership of APN 115-101-001 and the adjoining two city owned parcels. The City intend, as part of a phase three, is to enter into a long-term lease of the Royal Theatre along with an MOU for the operating of the theatre by a nonprofit. The City will score the submitted proposals with their likelihood of supporting this long-term operating goal.

Information for respondents

Optional Site Visit & Tour with Staff: Friday, April 30, 2021 at 2:00 PM.
Please RSVP to tbodem@ci.guadalupe.ca.us

Proposals Due: Monday, May 17, 2021 at 2:00PM to:

City of Guadalupe
Attn: Todd Bodem
918 Obispo Street
Guadalupe, California 93434
tbodem@ci.guadalupe.ca.us

Tentative Selection Date for ENRA: June 9, 2021

Contact for Information:
Todd Bodem
City of Guadalupe
918 Obispo Street
Guadalupe, CA 93434
tbodem@ci.guadalupe.ca.us

2. City of Guadalupe Objectives

A successful proposal will accomplish the following objectives:

- Renovates the Royal Theater building in a manner that brings vitality to Downtown Guadalupe.
- Addresses the requirement to meet the State and National Historic Building requirements.
- Develops the entire property to become a catalyst project that will appeal to residents, as well as attracting regional customers and visitors to Guadalupe.
- Meets the requirement to use a portion of the site as a community arts facility as required by the City’s Long-Range Property Management Plan. This can include the ability for community groups to use a portion of the property for performance or presentation and exhibition in addition to community-based events, meetings and gatherings.
- Proposes a design that recognizes the historic character of the property and is to be developed in a manner that is beneficial to the built environment of Downtown Guadalupe.
- Addresses the long-term use of all three City owned parcels, two adjoining the parcel noted in this document.

3. Request for Proposal (RFP) Content

The following table provides a summary of applicable sections to include in the RFP. Relevant information pertaining to each section can be found below. Proponents are expected to provide a narrative description of their planned use for the property along with conceptual imagery. In addition to a description of the proposed project, proposers should also provide the following information:

1. Team Summary
2. Description of Relevant Experience
3. Demonstration of Financial Capacity
4. Preliminary Development Concept & Pro Forma
5. References

Requested information for each section is as follows:

1. Development Team Summary

Please describe the roles of key team members that will be involved with this project. Identify, if known, outside consultants/advisors that will assist in the planning, design, negotiations, or other aspects of the project, as a design-build project.

2. Description of Relevant Experience

Please describe previous relevant projects by the team. For each project, please include the following:

- Project name, location & square footage of commercial space (please include descriptions and photos)
- Current status of the projects (i.e., construction status or number of years since completion)
- Describe your role in the development projects

3. Demonstration of Financial Capacity

This information will be used solely for purposes of evaluation and kept confidential to the fullest extent allowed by law.

- Financial statements for the prior three years for the design-build team or development entity
- Other financial information demonstrating your ability to deliver a project

4. Preliminary Development Concept & Pro Forma

Please include the following information:

- Architectural renderings showing your proposed development concept (no need for detailed architectural drawings)
- Explanation and approach for community arts programming
- Estimated development schedule, including predevelopment activities, for phase one and phase two
- Experience of team to support the City in acquiring the funding for both phase of the project.
- Additional consideration will be given to the design-build team that includes a third, operating phase.

5. References

Please provide three references with company/organization names & titles, phone numbers, and e-mail addresses for individuals who can provide information about your development and business experience. These might include lenders and investors, civic or non-profit organizations and public sector entities.

Both electronic and hard copies are due no later than **Monday, May 17, 2021 at 2:00PM**

Please submit a one (1) electronic copy and two (2) hard copies and one (1) reproducible unbound hard copy of your response to:

City of Guadalupe
Attn: tbodem@ci.guadalupe.ca.us
918 Obispo Street
Guadalupe, California 93434
(805) 356-3891

4. Design-Build Selection Criteria

The City will evaluate responses using the following selection criteria:

- Team qualifications and financial capacity
- Meets the community's desire for activation of the Downtown
- Quality of the proposed community benefits
- Proposer's record in completing projects
- Project Timing – realistic time line of completing both phases of this design-build project, including milestones for each phase.

5. Additional information

The City expects to select a design-build team to enter into a Memorandum of Understanding or an Exclusive Right to Negotiate Agreement, which, if successfully completed, would result in a Disposition and Development Agreement for consideration by the Guadalupe City Council.

The City will be the final decision-maker regarding selection of the development team, and it reserves the absolute right to reject any or all proposals. Individual submittals will not be returned, and the City will bear no cost associated with responses

The City retains the right to reject all proposals and resolicit if deemed to be in its best interests. Selection is also dependent upon the negotiation of a mutually acceptable contract with the successful proponent and readiness to enter into a binding contract by July 2021.

Proposals must be signed by a duly authorized official of the bidding firm. Consortiums, joint ventures, or teams submitting proposals, although permitted and encouraged, will not be considered responsive unless established that all contracts responsibly rest with one contractor or one legal entity.

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 _____ 2021, 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.

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.

Section 33: Conflict of Interest. Subrecipient will comply with all conflict of interest laws and regulations including, without limitation, the City's Conflict of Interest Code (on file in the City Clerk's Office). All officers, employees and/or agents of Subrecipient who will be working on behalf of the City pursuant to this Agreement, may be required to file Statements of Economic Interest. Therefore, it is incumbent upon the Subrecipient to notify the City of any staff changes relating to this Agreement.

- A. In accomplishing the scope of services of this Agreement, all officers, employees and/or agents of Subrecipient, unless as indicated in Subsection B, will be performing a very limited and closely supervised function, and, therefore, unlikely to have a conflict of interest arise. No disclosures are required for any officers, employees, and/or agents of Subrecipient, except as indicated in Subsection B.

Initials

- B. In accomplishing the scope of services of this Agreement, Subrecipient(s) will be performing a specialized or general service for the City, and there is substantial likelihood that the Subrecipient's work product will be presented, either written or orally, for the purpose of influencing a governmental decision. As a result, the following Subrecipient's shall be subject to Disclosure Category "1" of the City's Conflict of Interest Code.

CITY:

CONSULTANT:

CITY OF GUADALUPE

By: _____
Ariston Julian, Mayor

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Phillip Sinco, City Attorney

Title: _____