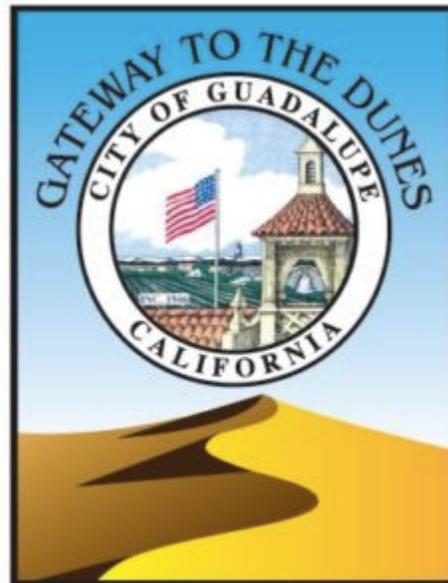


June 2, 2022



**CITY OF GUADALUPE  
REQUEST FOR PROPOSAL  
Preparation of  
2023-2031 Housing Element**

ATTN: Larry Appel, Contract Planning Director  
Guadalupe City Planning Department  
P.O. Box 908  
918 Obispo Street  
GUADALUPE, CA 93434

[smlarry@aol.com](mailto:smlarry@aol.com)

**Proposals due by 2:00 p.m., June 30, 2022**

# **REQUEST FOR PROPOSAL**

## **Preparation of Updated 2023-2031 Housing Element**

**PROJECT DESCRIPTION:** The City of Guadalupe is releasing a Request for Proposals (RFP) to update the City's 2019-2031 Housing Element. The adopted Housing Element can be found on City's website ([ci.guadalupe.ca.us](http://ci.guadalupe.ca.us)).

The consultant selected for this project shall include expertise in all appropriate areas to address the updating of the Housing Element, per California Housing and Community Development standards.

Questions regarding this RFP shall be emailed to [smlarry@aol.com](mailto:smlarry@aol.com) before 5:00 p.m., Tuesday, June 28, 2022 to receive a response within a day. Questions received after this deadline may not be answered.

To be considered, your Proposal shall be submitted to the City of Guadalupe on or before 2:00 p.m. Thursday, June 30, 2022. Please submit one (1) electronic copy or flash drive containing the Proposal to: City of Guadalupe, 918 Obispo Street, Guadalupe, CA 93434, and email an electronic copy to Planning Director Larry Appel at [smlarry@aol.com](mailto:smlarry@aol.com).

Your proposal will be reviewed and evaluated by city staff to determine if it meets the city's needs for service.

The city reserves the right to reject the proposal or request clarification and revisions prior to determining if the Proposal is satisfactory. Your Proposal must be valid for 90 days and must be signed by an official authorized to bind the Consultant.

**Larry Appel, Contract Planning Director**  
**Guadalupe City Planning Department**  
Email: [smlarry@aol.com](mailto:smlarry@aol.com)

## **SECTION 1 Project Description**

The City of Guadalupe, California (“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 has approximately 19 miles of street centerline, and at the time of writing has no traffic signals. The City serves a disadvantaged population of approximately 8,100 people.

The city prepared and adopted a 2019-2027 Housing Element which currently is in effect. Staff recently learned that a new 6<sup>th</sup> Cycle Housing Element will need to replace the current document. According to HCD, cities within the County of Santa Barbara are required to have an approved 2023-2031 Housing Element by February 15, 2023. We know this timeline is not doable, but we would like to expedite the update as much as possible. The updated Element must meet all current standards, as determined by HCD on their Housing Element web pages. The Los Amigos de Guadalupe conducted a public workshop earlier this year to solicit input from the public regarding low income housing. This was a first step in the process to submit for a State CDBG planning grant. That application is due no later than June 20, 2022.

The city requests that the selected consultant prepare a general or categorical exemption for the updated Housing Element, similar to what was acceptable to HCD and the City Council in 2019.

## **SECTION 2 - Scope of Work**

The goal of this contract will be to prepare an update to the 2019-2027 Housing Element that satisfies all current requirements identified by HCD on their Housing Element web pages. The new Element must include the new RHNA numbers and explain how the city is in a position to meet those goals, similar to the work done recently in the Draft Land Use Element. The Element shall be prepared such that Goals, Policies, and Programs are not in conflict with the recently prepared Draft General Plan.

### **Reports (Deliverables)**

**The consultant shall deliver the following and provide a timeline to address the tasks:**

1. Three (3) hard copies and one electronic version of the Administrative Draft Housing Element shall be delivered to the city for comment and review.
2. Following review of the Administrative Draft Housing Element, a consolidated copy of comments from the city will be provided to the selected consultant.
3. Two hard copies of the Draft Housing Element shall be provided to the city that highlight the changes made (from the Admin Draft) either within the document (Track Changes) or with an accompanying letter.

4. Once the city has made any final changes and prior to the first public hearing with City Council, Twenty (20) hard copies of the Draft Housing Element in English and ten (10) copies in Spanish plus include the same number of CDs or thumb drives also in English and Spanish. Additional hard and electronic copies in English shall be provided in sufficient number to satisfy HCD requirements for agency review, following the first hearing with City Council.
5. Following comments received by HCD (generally 90 days after receipt), staff shall meet with the selected consultant (Zoom acceptable) to determine how to address the comments. Those final edits will be incorporated into a Final Housing Element to present to the City Council for the adoption hearing. The selected consultant shall provide fifteen (15) copies each of the Final EIR in English and Spanish along with the same number of CDs or thumb drives. A photo-ready version of the Final EIR shall be provided on a thumb drive for future copying of the document by the City.
6. The consultant shall hold as many meetings as needed to provide a comprehensive Housing Element that will ultimately be approval by the City Council.

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**

Following is the anticipated schedule of events for this project:

Issue RFP .....	Thursday, June 2, 2022
Deadline for RFP Questions/Comments.....	Tuesday, June 28, 2022
Proposals due to the City by 2:00 p.m. ....	Thursday, June 30, 2022
Complete Proposal Review to determine adequacy.....	Friday, July 8, 2022
Special Council Hearing on Funding H.E. ....	Tuesday, July 26, 2022
Finalize Contract Negotiations .....	Friday, July 29, 2022
City Council Awards Contract .....	Tuesday, August 9, 2022
City Issues Notice to Proceed.....	Friday, August 12, 2022

### **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 EIR 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 fee schedule shall include not to exceed percentages of the total for each milestone (project description, admin draft Housing Element, draft Housing Element, second draft Housing Element based on HCD comments, and final Housing Element). 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.

## **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, preferably for whom an EIR was prepared.

## **7. Form of Agreement**

Firm agrees to the use of the City's standard form of agreement (Attachment A). 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**

Your proposal will be reviewed by the Planning Director or designee(s) to determine if the minimum proposal requirements outlined herein are met. The City of Guadalupe may reject your proposal if it fails to meet the requirements set forth in this RFP

The decision to award a contract will be based on 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  
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: \_\_\_\_\_

\_\_\_\_\_

Philip F. Sinco, City Attorney

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