January 28, 2010

Subject: RFP2M10-1: Request for Proposal – Drinking Water Quality Testing Laboratory Services for the City of Alhambra.

The City of Alhambra is requesting proposals from experienced and qualified laboratories to perform testing and reporting for the City of Alhambra's Drinking Water Quality Program. The services consist of three primary components: 1) providing sampling containers and delivery of samples to the laboratory; 2) analytical testing of samples; and 3) reporting sample results to the City and also to the DPH by Electronic Data Transmission.

A selection committee will review all proposals. Those laboratories whose proposals best meet the objectives of the City will be considered for an interview and/or site visit. In order to be considered for selection, the proposal must incorporate all of the information required in this document. Failure to incorporate all of the requested information may result in disqualification of the proposal.

In accordance with State Law, selection of a company will be based upon qualifications. The City will determine the most qualified company and enter into negotiations on a final contract price. The Cost Proposal must be submitted in a clearly stated not-to-exceed total dollar amount and contained in a sealed and separate envelope.

Proposals must be received no later than 4:00 PM on Friday, March 26, 2010.
Indicate on the Sealed Envelope –
"Do Not Open with Regular Mail: RFP2M10-1".

Send or hand-deliver proposals to:

City of Alhambra Utilities Department
111 South First Street
Alhambra, CA 91801
Attn: Claudine Meeker, Deputy Director of Utilities

If you have any specific questions regarding this Request for Proposals, please call Lou Vargas at (626) 570-3259.

Sincerely,

Claudine Meeker
Deputy Director of Utilities

2010

City of Alhambra

Utilities Department

LABORATORY TESTING SERVICES

RFP NO. : RFP2M10-1

LABORATORY TESTING SERVICES

PROJECT DESCRIPTION

The City of Alhambra (the "City") is soliciting proposals from qualified commercial laboratory to provide requested analytical and reporting services for the Utilities Department's routine and special projects, water and wastewater samples. The City is seeking these services to comply with a number of monitoring and reporting programs required by the California Department of Public Health (DPH), the United States Environmental Protection Agency (U.S. EPA), the Los Angeles County Sanitation Districts sewage service contract, National Pollutant Discharge Elimination System (NPDES) permits, and the State Water Resource Control Board, for the period of July 1, 2010 through June 30, 2011. This proposal may be extended for an additional two-year term pending satisfactory performance.

The company submitting a proposal must be certified through the **National Environmental Laboratory Accreditation Program (NELAP)** to analyze drinking water samples.

Included in the proposal price should be analytical testing services, sample bottles, applicable preservatives, traveling blanks, ice chests, coolant materials, and pick up of samples and delivery of materials to and from the Alhambra Groundwater Treatment Plant located at 512 South Granada Avenue, Alhambra, CA, 91801. Samples must be picked up at a mutually agreed upon schedule between the hours of 7 a.m. and 5 p.m., Monday through Friday. Currently, we have samples requiring routine pick up on Monday, Tuesday, and Wednesday. Sample pick up can occur on any day of the week due to special sampling requirements.

Written or e-mail copies of data reports must be delivered in the time frame as specified on the **Cost Proposal and Information Form**. All written reports shall comply with California DPH standard written format. As applicable, many of the sample results will need to be transmitted electronically (EDT) to DPH.

PROPOSED SCHEDULE

The City has the option to amend, delete, or correct any of the following dates or elements as necessary:

RFP Distribution	Beginning January 26, 2010
Submittal of Proposals	4:00 PM on March 26, 2010
Interviews/Site Visit	April 2010
Consultant Selection/Negotiation	April 26-30, 2010
City Council Award of Contract	May 10, 2010
Execution of Contract	June 1, 2010
Contract Start Up / Notice To Proceed	July 1, 2010

CUSTOMER SERVICE

A chemist, microbiologist, or other qualified person must be available to the City of Alhambra during normal business hours, Monday through Friday, 7 a.m. to 5 p.m. An emergency contact list for after hours must be provided for after hours, weekend, and holiday contacts.

SUBMITTAL REQUIREMENTS

Please submit an original and three (3) copies of your proposal for the City's review. Your proposal must include, but not limited to, the following (the proposal must be prepared and submitted in the following order):

1. Cover letter summarizing your proposal.
2. Relevant firm experience providing analytical testing, regulatory reporting (EDT), and familiarity with the regulatory requirements of a municipal water system, sanitation wastewater and brine, and NPDES.
3. Resumes of key managerial personnel and identify the primary contact person.
4. Client list and summary of project, including contact information for at least three (3) clients.
5. List of any subcontractors and description of work to be performed.
6. Copy of NELAP certification listing approved fields of analyses.
7. Current NELAP audit (site visit) assessment information and corrective action response (CAR)
8. Detailed description of laboratory equipment and facilities verifying the capabilities to competently handle the volume of work this contract would provide, along with other work being handled.
9. Description and certifications for any secondary laboratories that might be used for the analyses of Alhambra samples
10. A detailed description of the laboratory's quality assurance program ensuring accuracy of analyses and fulfillment of customer service.
11. Sample reports, protocol, procedures, and spreadsheets or electronic files representative of those that will be provided to the City.
12. A Statement that the bidder is an Equal Opportunity Employer.
13. A Statement indicating the consultant's acceptance of all conditions listed in this Request for Proposal document. Any exception on the consultant's behalf must be stated in the proposal.
14. A completed **Cost Proposal and Information Form** stating cost per analyses, as well as total anticipated annual cost based on the volumes and turnaround times provided by the City of Alhambra. This is to be submitted in a separate sealed envelope clearly marked with name of bidder and "Cost Proposal"
15. A fee schedule for services not listed on **Cost Proposal and Information Form**

Proposals must be signed by an official of the consulting firm who is authorized to enter into a binding agreement with the City on behalf of the firm.

Submit Cost Proposal and Information Form in a sealed envelope clearly marked on the outside with your company name and "RFP2M10-1 Cost Proposal for Analytical Laboratory Services" – "DO NOT OPEN WITH REGULAR MAIL."

Submit proposals no later than 4:00 PM on Friday, March 26, 2010 to:

Claudine Meeker
Deputy Director of Utilities
City of Alhambra
111 South First Street
Alhambra, CA 91801

E-Mail and Fax submittals <u>will not</u> be accepted.

SCOPE OF WORK

The selected company shall be responsible for providing their own equipment, hardware and software, sample bottles, ice chests, sampling and handling instructions, chain of custody procedures and forms required for completion of analyses, with the exception of any materials that are requested, and agreed to be supplied by the City of Alhambra.

SELECTION CRITERIA

The City intends to retain the bidder whose proposal it believes is most advantageous to the City. Evaluation of the proposal will be based primarily on qualifications of the respondents, services to be provided, and quality of facilities and systems. Cost per service will be secondary consideration in the review of the proposal as the city wishes to hire a firm with significant professional credentials. Selection will be made on the following factors:

1. Total proposed program and unit costs.
2. Project references.
3. Qualifications of relevant staff.
4. Ability of the laboratory to provide accurate analytical results in a timely manner, including electronic data transmission to the California Department Public Health.
5. Quality of proposal response and adherence to required format.

6. The top three bidders could be required to provide an on-site tour and explanation of services.
7. The City of Alhambra reserves the right to select the proposal judged to be in the best interests of the City. Final approval will be made by the Alhambra City Council.

DISCRETION AND LIABILITY WAIVER

The City reserves the right to reject all proposals or to request and obtain, from one or more of the consulting firms submitting proposals, supplementary information as may be necessary for City staff to analyze the proposals pursuant to the Consultant selection criteria contained herein. The City reserves the right to waive irregularities in a submitted proposal.

The City is not liable for the costs incurred by the bidders for the preparation and submittal of the proposals.

A company or consultant, by submitting a response to this Request for Proposal, waives all rights to protest or seek any legal remedies whatsoever regarding any aspect of this Request for Proposal.

All proposals shall be binding for a period of ninety (90) days after the delivery date and may be retained by the City for examination and comparison.

INSURANCE AND BUSINESS LICENSE REQUIREMENTS

Upon award of contract, the Consultant shall provide the City with required Certificates of Insurance evidencing minimum coverage of $1,000,000 in Public Liability, Professional Liability, Contractual General Liability and Automobile Liability coverage, naming the City as Additional Insured. The insurance requirements are clearly described in the Sample Agreement for Consultant Services, included herein as the last section. The Consultant must also obtain a City Business License prior to start of work, and maintain said License throughout the term of the agreement.

PAYMENT

Upon execution of the contract, a Purchase Order for the contract amount will be issued. A monthly itemized invoice from the contract laboratory shall be submitted to the City. Payment shall be made within 30 days of receipt of original invoice. Payment for each item will be based on actual monthly quantities of analyses. All tests shall be performed and results reported in accordance with California Department of Public Health requirements.

EQUAL OPPORTUNITY CLAUSE

Contractors shall ensure against discrimination in employment practices on the basis of race, color, national origin, ancestry, sex or religion.

The City of Alhambra hereby ensures that minority business enterprises will be afforded full opportunity to submit proposals in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, sex, or religion in any consideration leading to the award of contract.

DISCREPANCIES AND MISUNDERSTANDINGS

Bidders must understand the scope of the project by personal review of the work to be performed. No consultant will at any time after submission of a proposal make any claim or assertion that there was any misunderstanding or lack of information regarding the nature or amount of work necessary for the satisfactory completion of the job. Any errors, omissions, or discrepancies called to the attention of the City of Alhambra will be clarified by the City in writing to all proposers prior to the submission of proposals.

LEGAL RESPONSIBILITIES

All proposals must be submitted, filed, made, and executed in accordance with State and Federal laws relating to proposals for contracts of this nature whether the same or expressly referred to herein or not. Any proposer submitting a proposal will by such action thereby agree to each and all of the terms, conditions, provision, and requirements set forth, contemplated, and referred to in the Specifications, and other contract documents, and to full compliance therewith.

Each proposer will fully acquaint himself/herself with the conditions relating to the project so that he/she may fully understand the requirements, difficulties, and restrictions attending the execution of the work under the contract. Proposer will thoroughly examine and be familiar with the specifications. The submission of a proposal will be taken as prima facie evidence of compliance with this section.

SAMPLE CONTRACT

Included herein for review is a “Sample Consultant Agreement”. Each proposer shall be responsible for careful review of the language of the agreement and requirements listed therein.

INTERPRETATION OF DOCUMENTS

A proposer in doubt as to the meaning of any part of the project description, selection criteria, or submittal requirements, may submit to the City a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. *Any interpretation or correction of the contract documents will be made only by addendum duly issued and a copy of such addenda will be mailed or delivered to each person receiving a set of the contract documents.* No oral interpretation of any provision in the contract will be made to any proposer.

Attachments:

A. Designation of Subcontractors
B. References
C. Cost Proposal and Information Form
D. Sample Consultant Agreement

Specific questions about the RFP can be answered by calling Lou Vargas, Environmental Compliance Specialist at (626) 570-3259.

ATTACHMENT A

DESIGNATION OF SUBCONTRACTORS

Proposer proposes to subcontract certain portions of the work which are in excess of one-half of one percent of the bid as follows:

NAME, ADDRESS AND PHONE NUMBER OF SUBCONTRACTORS	PORTION OF WORK
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

ATTACHMENT B

REFERENCES

The following is accurate information for three (3) CLIENTS for which proposer has performed similar water testing services and project management work within the past three years.

1. Name and address of organization

_____

Name and telephone number of person familiar with project

_____

Name of Project/Type of Work

_____

Final Contract Amount _____ Date Started _____

Date Completed _____

2. Name and address of organization

_____

Name and telephone number of person familiar with project

_____

Name of Project/Type of Work

_____

Final Contract Amount _____ Date Started _____

Date Completed _____

3. Name and address of organization

Name and telephone number of person familiar with project

_____

Name of Project/Type of Work

Final Contract Amount _____ Date Started _____

Date Completed _____

ATTACHMENT C

Parameter	Test Method	No. of Samples	Approximate Number of Annual Samples	Frequency	Priority	Unit Cost 48-hr Rush	Unit Cost Routine	Unit Cost Weekends & Holidays	Total Cost
Total Coliforms	***SM 9223***	24	1248	Weekly	Routine				
MPN 10	***SM 9221B***	24	576	Twice per Month	Routine				
		2	24	Monthly	Routine				
				Specials	Routine				
Heterotrophic Plate Count	***SM 9215B***	24	576	Twice per Month	Routine				
	SM 9215B	3	36	Monthly	Routine				
General physical - Distribution System									
Color	***SM 2120B***	6	312	Weekly	Routine				
Odor	***SM 2150B***	6	312	Weekly	Routine				
Turbidity	***EPA 180.1***	6	312	Weekly	Routine				
General Minerals/Physicals (29 different constituents including Langelier Index)		10	1 to 3 per year	Every 3 years	Routine				
Iron	***EPA 200.7***	4	208	Weekly	Routine				
Phosphate	***S4500PE/365.1***	4	208	Weekly	Routine				
Nitrates	***EPA 300.0***	12	624	Weekly	48-hr Rush				
		14	168	Monthly	Routine				
		1	104	Twice per Week	48-hr Rush				
		1	1	Annually	Routine				
Nitrites	***EPA 300.0***	1	24	Twice per Month	Routine				
Flouride	***SM 4500F-C***	3	36	Monthly	Routine				
Perchlorate (Low level)	***EPA 314.0***	5	60	Monthly	Routine				
		1	4	Quarterly	Routine				
		1	1	Annually	Routine				

Parameter	Test Method	No. of Samples	Approximate Number of	Frequency	Priority	Unit Cost	Unit Cost	Unit Cost Weekends	Total Cost

			Annual Samples			48-hr Rush	Routine	& Holidays	
Trichloroethylene (TCE)	***EPA 524.2***	9	480	Weekly	2-day rush				
		1	104	Bi-Weekly	2-day rush				
		22	264	Monthly	Routine				
		7	364	Weekly*	2-day rush				
1,2,3, TCP	***SRL 524M-TCP***	22	264	Monthly	Routine				
		7	364	Weekly*	2-day rush				
cis-1,2-DCE	***EPA 524.2***	19	228	Monthly	Routine				
		7	364	Weekly*	2-day rush				
1, 1-DCE	***EPA 524.2***	18	216	Monthly	2-day rush				
		7	364	Weekly*	2-day rush				
TRANS-1, 2-DCE	***EPA 524.2***	16	192	Monthly	2-day rush				
		7	364	Weekly*	2-day rush				
Tetrachloroethlylene (PCE)	***EPA 524.2***	17	204	Monthly	2-day rush				
		7	364	Weekly*	2-day rush				
*Weekly samples start after detection at 75% effluent Port.									
Carbon Tetrachloride	***EPA 524.2***	1	1	Every Six Months	Routine				
Cis-1,2-Dichloroethlyne	***EPA 524.2***	1	1	Every Six Months	Routine				
Tetrachloroethylene (PCE)	***EPA 524.2***	1	1	Every Six Months	Routine				
Trichloroethylene	***EPA 524.2***	1	1	Every Six Months	Routine				
1,2,3-Trichloroethylene (1,2,3-TCP)	***EPA 524.2***	1	1	Annually	Routine				
Epichlorohydrin	***EPA 524.2***	5	5	Annually	Routine				
Ter-Butyl alcohol (TBA)	***EPA 524.2***	5	5	Annually	Routine				
Ethyl Acetate	***EPA 8260B***	5	5	Annually	Routine				
Chlorate	***EPA 300.1***	5	5	Annually	Routine				
1,2-Diphenyhydrazine	***EPA 625***	5	5	Annually	Routine				
1,3-Dinitrobenzen	***EPA 8330A***	5	5	Annually	Routine				

Parameter	Test Method	No. of Samples	Approximate Number of Annual Samples	Frequency	Priority	Unit Cost 48-hr Rush	Unit Cost Routine	Unit Cost Weekends & Holidays	Total Cost
1,4-Dioxane	***EPA 8270M***	5	5	Annually	Routine				
2,2',4,4',5,5' Hexabromobiphenyl (HBB)	***EPA 521***	5	5	Annually	Routine				
2,2',4,4',5,5' Hexabromobiphenyl Ether (BDE 153)	***EPA 521***	5	5	Annually	Routine				
2,2',4,4',5,- Pentabromobiphenyl Ether (BDE -100)	***EPA 521***	5	5	Annually	Routine				
2,2',4,4', Tetrabromobiphenyl Ether (BDE -47)	***EPA 521***	5	5	Annually	Routine				
2,4,6-Trinitrotoluene (TNT)	***EPA 8330A***	5	5	Annually	Routine				
Acrylamine	***EPA 8316***	5	5	Annually	Routine				
cis-1,2,3-Trichloropropane		5	5	Annually	Routine				
Ethylene Glycol	***EPA 8015B***	5	5	Annually	Routine				
Formaldehyde	***EPA 8315A***	5	5	Annually	Routine				
Cyclotetramethylenetetranitramine (HMX)	***EPA 8330A***	5	5	Annually	Routine				
N-Nitrosodithlylamine (NDEA)	***EPA 521***	5	5	Annually	Routine				
N-Nitrosodimethlylamine (NDMA)	***EPA 521***	5	5	Annually	Routine				
N-Nitros-Di-N- Butylamine (NDBA)	***EPA 521***	5	5	Annually	Routine				
N-Nitroso-Methylethylamine (NMEA)	***EPA 521***	5	5	Annually	Routine				
N-Nitroso-Pyrrolidine (NPYR)	***EPA 521***	5	5	Annually	Routine				
Hexahydro-1,3,5-Trinitro-1,3,5-Triazine (RDX)	***EPA 8330A***	5	5	Annually	Routine				
NPDES									
Total Suspended Solids	***SM 2540C***	1	12	Monthly	Routine				
Turbidity	***EPA 180.1***	1	12	Monthly	Routine				
Biochemical Oxygen Demand	***SM5210B***	1	12	Monthly	Routine				
Oil and Grease	***EPA 1664A***	1	12	Monthly	Routine				
Settleable Solids	***SM2540F***	1	12	Monthly	Routine				
Dissolved Sulfide	***SM 4500S2 D***	1	4	Quarterly	Routine				
Phenols	***EPA 420.4***	1	4	Quarterly	Routine				
Total Dissolved Solids	***SM 2540C***	1	12	Monthly	Routine				
Sulfate	***EPA 300.0***	1	12	Monthly	Routine				
Chloride	***EPA 300.0***	1	12	Monthly	Routine				
NO2+NO3-N	***EPA 353.2***	1	12	Monthly	Routine				
Tetrachloroethylene	***EPA 524.2***	1	12	Monthly	Routine				
Trichloroethylene	***EPA 524.2***	1	12	Monthly	Routine				
Acute Toxicity	***EPA 821-R-02-012***	1	12	Monthly	Routine				

Parameter	Test Method	No. of Samples	Approximate Number of Annual Samples	Frequency	Priority	Unit Cost 48-hr Rush	Unit Cost Routine	Unit Cost Weekends & Holidays	Total Cost
WASTEWATER									
Brine Line									
Alkalinity	***SM 2320B***	1	4	Quarterly	Routine				
Calcium	***EPA 200.7***	1	4	Quarterly	Routine				
Chemical Oxygen Demand	***EPA 410.4***	1	4	Quarterly	Routine				
Chloride	***EPA 300.0***	1	4	Quarterly	Routine				
Volatile Organic Compounds	***EPA 624***	1	4	Quarterly	Routine				
Semivolatile Organic Compounds	***EPA 625***	1	4	Quarterly	Routine				
Magnesium	***EPA 200.7***	1	4	Quarterly	Routine				
Perchlorate	***EPA 314.0***	1	4	Quarterly	Routine				
pH	***SM 4500 H B***	1	4	Quarterly	Routine				
Dissolved Sulfide	***SM 4500S2 D***	1	4	Quarterly	Routine				
Total Suspended Solids	***SM2540D***	1	4	Quarterly	Routine				
Sewer Line									
1,4-Dioxine	***GCMS***	1	4	Quarterly	Routine				
Chemical Oxygen Demand	***EPA 410.4***	1	4	Quarterly	Routine				
Volatile Organic Compounds	***EPA 624***	1	4	Quarterly	Routine				
Semivolatile Organic compounds	***EPA 625***	1	4	Quarterly	Routine				
pH	***SM 4500 H B***	1	4	Quarterly	Routine				
Dissolved Sulfide	***SM 4500S2 D***	1	4	Quarterly	Routine				
Total Suspended Solids	***SM2540D***	1	4	Quarterly	Routine				

***Please define "Routine" turnaround time:**

_____

_____

_____

TOTAL ANNUAL COST: _____

Total cost is a "not to exceed" amount for the volume of samples indicated. Quantities shown are annual estimates based on the City's Title 22 requirements and internal monitoring programs. Variation in the actual quantity of samples is possible. The total annual cost will be used to determine the contract amount for the period of July 1, 2010 through June 30, 2011.

Company Name: _____

Submitted By (Signature):_____

Print Name : _____

Title: _____

Date: _____

Telephone: _____ FAX: _____

Please submit this **Cost Proposal and Information Form** in a sealed envelope clearly marked with the name of your company and "Cost Proposal".

ATTACHMENT D

"SAMPLE CONTRACT AGREEMENT"

AGREEMENT
FOR PROFESSIONAL SERVICES

Contract No.

THIS AGREEMENT is made and entered into effective as of the _____ day of _____, 2010, by and between the CITY OF ALHAMBRA, a municipal corporation, located in the County of Los Angeles, State of California, hereinafter referred to as CITY and_____., a California corporation with principal offices at _____, hereinafter referred to as CONSULTANT.

W I T N E S S E T H :

For and in consideration of the promises and of the mutual covenants and agreements herein contained, said parties hereby agree as follows:

1. **RECITALS**. This AGREEMENT is made and entered into with respect to the following facts:

(a) That in order for the CITY to move forward with the _____; and,

(b) That one such project is for_____, hereinafter referred to as the PROJECT; and,

(c) That CITY issued a Request for Proposals to obtain consulting services for_____.

(d) That CONSULTANT is qualified to provide those certain consultant and engineering services to the CITY necessary for said PROJECT; and, therefore, the Alhambra CITY Council has elected to engage the services of CONSULTANT upon the terms and conditions hereinafter set forth.

2. **SERVICES.** CONSULTANT shall perform those services described in CONSULTANT's Qualifications and Proposal to Provide_____, consistent with the CITY's Request for Proposal _____, dated_____, (hereinafter referred to as "RFP") attached as Exhibits "A" and "B" respectively and hereby incorporated by reference.

Performance of the work specified herein is made an obligation of CONSULTANT under this AGREEMENT, subject to any changes made subsequently upon the mutual written agreement of the parties.

3 **SCOPE.** The services to be performed by CONSULTANT under this AGREEMENT shall include, but not be limited to, those services specified in Paragraph 2 hereof.

4. **FEE.** Compensation to CONSULTANT for the total services to be rendered pursuant to this AGREEMENT shall be in an amount not to exceed _____to be billed in a manner described in CONSULTANT's PROPOSAL, consistent with the CITY's RFP. Said compensation shall be paid in monthly installments as services are rendered, and shall be totally due and payable upon the completion thereof.

5. **EXTRA SERVICES.** No extra services shall be rendered by CONSULTANT under this AGREEMENT unless such extra services first shall have been authorized in writing by the CITY. Any such services so authorized shall be paid by the CITY at the rates set forth in Paragraph 4 of this AGREEMENT.

6. **PAYMENT BY CITY.** The billings for all services rendered pursuant to this AGREEMENT shall be submitted monthly, based upon the services rendered at the time of submission, to CITY by CONSULTANT, and shall be paid by CITY within thirty (30) days after receipt of same.

7. **CITY SUPERVISION.** The Director of Utilities of CITY, or her designee, shall have the right of general supervision of all work performed by CONSULTANT and shall be the CITY's agent with respect to obtaining CONSULTANT's compliance hereunder. No payment for any services rendered under this AGREEMENT shall be made without the prior approval of the Director of Utilities or her designee.

8. **TIME.** The term of this AGREEMENT shall be for a period of twelve (12) months from after the said date on which the CITY issues CONSULTANT a Notice to Commence Work. CONSULTANT shall complete all those services set forth in its PROPOSAL by that certain date set forth in said Notice to Commence Work or until such time as the services have been completed by the CONSULTANT and accepted by the CITY, whichever occurs first. The CITY may extend said time of completion for delays caused by circumstances beyond the control of either party to this AGREEMENT. Should the consulting contract extend beyond the estimated time for completion of said services, CITY hereby reserves the right to continue CONSULTANT's services hereunder with any and all fees for such additional services to be compensated by the CITY in accordance with Paragraph 4 of this AGREEMENT.

9. **TERMINATION OF AGREEMENT.** The CITY shall have the right to terminate this AGREEMENT upon giving a ten (10) day advance written notice of such termination to CONSULTANT. In the event of such termination, the CITY Manager, or his designee, based upon work accomplished by CONSULTANT prior to notice of such termination, shall determine the amount of fees to be paid to CONSULTANT for such services based upon accepted engineering practices, and such finding by the CITY

Manager, or his designee, and approved by the Alhambra CITY Council shall be final and conclusive as to the amount of such fee.

10. **INDEPENDENT CONTRACTOR.** CONSULTANT shall act as an independent contractor in the performance of the services provided for in this AGREEMENT and shall furnish such services in CONSULTANT's own manner and method and in no respect shall CONSULTANT be considered an agent or employee of the CITY.

11. **NONASSIGNMENT.** This AGREEMENT is not assignable either in whole or in part by CONSULTANT without the written consent of CITY.

12. **INDEMNIFICATION.** CONSULTANT hereby agrees to and shall hold CITY, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from CONSULTANT's negligent acts, errors or omissions under this AGREEMENT. CONSULTANT agrees to, and shall defend CITY and its elective and appointive boards, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid negligent acts, errors or omission; provided

(a) That CITY does not, and shall not, waive any rights against CONSULTANT which it may have by reason of the aforesaid hold-harmless AGREEMENT because of the acceptance by CITY or the deposit with CITY by CONSULTANT, of any of the insurance policies hereinafter described in this AGREEMENT.

(b) That the aforesaid hold-harmless AGREEMENT by CONSULTANT shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of CONSULTANT, or any subcontractor of CONSULTANT, regardless of whether or not such insurance policies shall have

been determined to be applicable to any of such damages or claims for damages.

13. **NON-DISCRIMINATION.** CONSULTANT shall not discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, martial status, sex, age, or sexual orientation in the performance of this AGREEMENT and shall comply with the provisions of the California Fair Employment and Housing Act as set forth in Part 2.8 of Division 3, Title 2 of the California Government Code; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations issued pursuant to such acts and order.

14. **UNAUTHORIZED ALIENS**. CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 USCA 1101, *et seq.*), as amended; and, in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should the Federal Government impose sanctions against the CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to, and shall, reimburse CITY for the cost of all such sanctions imposed, together with any and all costs, including attorney's fees, incurred by the CITY in connection therewith.

15 **WAIVER**. Waiver by any party hereto of any term, condition, or covenant of this AGREEMENT shall not constitute the waiver of any other term, condition or covenant hereof.

16. **ATTORNEY'S FEES.** If litigation is reasonably required to enforce or interpret the provisions of this AGREEMENT, the prevailing party in such litigation shall be entitled to an award of reasonable attorney's fees, in addition to any other relief to which it may be entitled.

17 **BINDING EFFECT**. This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

18. **PROVISIONS, CUMULATIVE.** The provisions of this AGREEMENT are cumulative and in addition to and not in limitation of any rights or remedies available to CITY.

19. **NO PRESUMPTION RE: DRAFTER.** The parties acknowledge and agree that the terms and provisions of this AGREEMENT have been negotiated and discussed between the parties and their attorneys, and this AGREEMENT reflects their mutual AGREEMENT regarding the same. Because of the nature of such negotiations and discussions it would be inappropriate to deem any party to be the drafter of this AGREEMENT; and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this AGREEMENT.

20. **ASSISTANCE OF COUNSEL.** Each party to this AGREEMENT warrants to each other party as follows:

(a) That each party either had the assistance of counsel or had counsel available to it, in the negotiation for, and execution of, this AGREEMENT, and all related documents; and,

(b) That each party has lawfully authorized the execution of this AGREEMENT.

21. **MODIFICATION**. This AGREEMENT shall not be modified except by written agreement of the parties.

22. **GOVERNING LAW.** This AGREEMENT shall be interpreted and construed according to the laws of the State of California.

23. **NOTICE.** Whenever it shall be necessary for either party to serve notice on the other regarding this AGREEMENT, such notice may be furnished in writing by either party to the other and shall be served by personal service as required in judicial proceedings or by certified mail, postage prepaid, return receipt requested, addressed to the parties as follows:

CITY: Mary Swink, Director of Utilities
City of Alhambra
111 South First Street
Alhambra, CA 91801

CONSULTANT:

24. **FORCE MAJEURE.** Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include, but not be limited to, acts of God, fire, flood, earthquake, or other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or government statutes or regulations superimposed after the fact.

25. **INSURANCE.** CONSULTANT shall not commence work under this contract until CONSULTANT shall have obtained all insurance required by this AGREEMENT and such insurance shall have been approved by CITY as to form, amount and carrier, nor shall CONSULTANT allow any subcontractor of CONSULTANT to commence work on any subcontract until all similar insurance required of the subcontractor of CONSULTANT shall have been so obtained and approved.

(a) <u>COMPENSATION INSURANCE.</u> CONSULTANT shall take out and maintain, during the life of this contract, Worker's Compensation Insurance for all of CONSULTANT's employees employed to perform the SERVICES as described section 2 of the AGREEMENT;

and, if any work is sublet, CONSULTANT shall require the subcontractor of CONSULTANT similarly to provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by CONSULTANT. If any class of employees engaged in work under this AGREEMENT is not protected under any Workers' Compensation law, CONSULTANT shall provide and shall cause each subcontractor of CONSULTANT to provide adequate insurance for the protection of employees not otherwise protected. CONSULTANT shall indemnify CITY for any damage resulting to it from failure of either CONSULTANT or any subcontractor of CONSULTANT to take out or maintain such insurance.

(b) <u>COMPREHENSIVE GENERAL LIABILITY, PROFESSIONAL LIABILITY, COMPREHENSIVE AUTOMOBILE LIABILITY AND CONTRACTUAL GENERAL LIABILITY INSURANCE</u>. CONSULTANT shall take out and maintain during the life of this contract such comprehensive general liability, products/completed operations hazard, comprehensive automobile liability and contractual general liability insurance and shall protect CITY, its elective and appointive boards, officers, agents and employees, CONSULTANT, and any subcontractor of CONSULTANT performing work covered by this contract, from claims for damage for personal injury, including death, as well as from claims for property damage which may arise from CONSULTANT's or any subcontractor of CONSULTANT's operations under this contract, whether such operations be by CONSULTANT or by any subcontractor of CONSULTANT, or by anyone directly or indirectly employed by either CONSULTANT or any subcontractor of CONSULTANT, and the amounts of such insurance shall be as follows:

(1) Commercial General Liability Insurance in an amount of not less than ONE MILLION DOLLARS ($1,000,000);

(2) Professional Liability Insurance in an amount of not less than ONE MILLION DOLLARS ($1,000,000);

(3) Comprehensive Automobile Liability Insurance in an amount of not less amount of not less than ONE MILLION DOLLARS ($1,000,000).

A combined single limit policy with aggregate limits in an amount of not less than TWO MILLION DOLLARS ($2,000,000) shall be considered equivalent to the said required minimum limits set forth hereinabove.

(c) PROOF OF INSURANCE. The insurance required by this Agreement shall be with insurers which are Best A+ rated, and California-Admitted, or better. The CITY of Alhambra shall be named as "additional insured" on all policies required hereunder, except for Professional Liability Insurance, and CONSULTANT shall furnish the CITY Clerk, concurrently with the execution hereof, with satisfactory proof of carriage of the insurance required, and adequate legal assurance that each carrier will give CITY at least thirty (30) days' prior notice of the cancellation of any policy during the effective period of the contract.

(d) NOTICE TO COMMENCE WORK. The CITY will not issue any notice authorizing CONSULTANT or any subcontractor to commence work under this

AGREEMENT until CONSULTANT has provided to the CITY Clerk the proof of insurance as required by subparagraph (c) of this article.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed on its effective date by their respective officers duly authorized on their behalf.

CITY OF ALHAMBRA, a Municipal Corporation

ATTEST:

By_____
Steven Placido, Mayor

_____
Lauren Myles, City Clerk

CONSULTANT.
a California Corporation

By_____

APPROVED AS TO FORM:

by_____
JOSEPH M. MONTES, CITY ATTORNEY