

A G R E E M E N T
(Contract No. C95-89)

THIS AGREEMENT is made and entered into this 13th day of NOVEMBER, 1995, by and between the City of Alhambra, a municipal corporation, hereinafter referred to as CITY, and the ALHAMBRA CHAMBER OF COMMERCE, a California nonprofit corporation, hereinafter called CHAMBER.

W I T N E S S E T H :

For and in consideration of the premises 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 there is a growing need to keep the citizens and members of the business community better informed in regards to the many activities and the significant progress occurring within the City of Alhambra; and, that while some events are reported in existing newspapers serving Alhambra, their distribution and market penetration has not been satisfactory, nor do they meet the community's needs; and,
- B. That there also exists a real demand for an advertising medium to better serve Alhambra businesses; consequently, a community newspaper would provide the business people of Alhambra with almost total saturation advertising vehicle that does not exist today; and,
- C. That currently, the CITY, the Alhambra School District and the CHAMBER are spending substantial dollars each year to reach the same common base of readers; and by combining the efforts of these three entities, the targeted constituencies could be reached with a greater frequency and at a significant cost savings; and,
- D. That CHAMBER has offered to manage the publication of a joint monthly community newspaper, hereinafter called the PROJECT, with the CITY and the Alhambra School District; and, the CITY has elected to participate in said PROJECT with the CHAMBER and the Alhambra School District; and,
- E.. That CHAMBER is qualified to provide those certain managerial services to the

CITY necessary for said PROJECT; and, therefore, the Alhambra CITY Council has elected to engage the services of CHAMBER upon the terms and conditions hereinafter set forth.

2. **DEFINITION.** As used herein the term PROJECT shall mean a community newspaper published jointly by the CITY, CHAMBER and the Alhambra School District on a monthly basis which is mailed to both residents and members of the business community of the City of Alhambra.

3. **SERVICES.** CHAMBER shall perform those certain managerial services necessary for said PROJECT, which such services shall include, but are not limited to, 1) design and creation of the concept of the Community Newspaper, 2) coordination of said PROJECT by assisting with the story lists, copy preparation, draft revisions and proofs; 3) printing of the newspaper; 4) distribution vis U.S. mail of approximately 28,000 to 29,000 copies to each postal patron within the City of Alhambra; and 5) provision of approximately four (4) pages of newspaper dedicated solely to CITY issues.

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

4. **SCOPE.** The services to be performed by CHAMBER under this Agreement shall include, but not be limited to, those services specified in Paragraph 3 hereof.

5. **FEE.** Compensation to CHAMBER for the total services to be rendered pursuant to this Agreement shall be in an amount of not to exceed FIFTY THOUSAND DOLLARS (\$50,000.00) per year. Said amount shall be billed by said CHAMBER to CITY on a time and material basis and shall be paid in monthly installments as services are rendered, and shall be totally due and payable upon the completion thereof.

6. **EXTRA SERVICES.** No extra services shall be rendered by CHAMBER under this Agreement unless such extra services first shall have been authorized in writing by the CITY.

7. **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 CHAMBER, and shall be paid by CITY within twenty (20) days after receipt of same.

8. **CITY SUPERVISION.** The City Manager of CITY, or his designee, shall have the right of general supervision of all work performed by CHAMBER and shall be the CITY's agent with respect to obtaining CHAMBER's compliance hereunder. No payment for any services rendered under this Agreement shall be made without the prior approval of the City Manager, or his designee.

9. **TERM.** The term of this Agreement shall be on a month-to-month basis, commencing on November 1, 1995 and continuing monthly thereafter until such time as it is canceled by either party giving the other thirty (30) days' advance written notice of such cancellation.

10. **AUDIT & EXPENDITURES.** The books of account of CHAMBER shall be subject to audit upon the order of the Alhambra CITY Council. The expenditures herein contemplated are intended to be and shall be only for such uses and purposes as may come within the definition of a public purpose; that is, for such purposes as may directly or indirectly benefit the entire community rather than individuals or corporations.

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

12. **NONASSIGNMENT.** This Agreement is not assignable either in whole or in part by CHAMBER without the written consent of CITY.

13. **INDEMNIFICATION.** CHAMBER 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 CHAMBER's negligent acts, errors or omissions under this Agreement. CHAMBER 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 CHAMBER which it may have by reason of the aforesaid hold-harmless agreement because of the acceptance by CITY or the deposit with CITY by CHAMBER, of any of the insurance policies hereinafter described in this Agreement.

- (b) That the aforesaid hold-harmless agreement by CHAMBER 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 CHAMBER, or any subcontractor of CHAMBER, regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

14. **EQUAL OPPORTUNITY CLAUSE.** CHAMBER shall not discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Agreement and shall comply with the provisions of the State Fair Employment Act as set forth in Part 4.5 of Division 2 of the California Labor 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.

15. **UNAUTHORIZED ALIENS.** CHAMBER 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 CHAMBER 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, CHAMBER 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.

16. **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.

17. **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.

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

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

20. **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.

21. **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.

22. **MODIFICATION.** This Agreement shall not be modified except by written agreement of the parties.

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

24. **EFFECTIVE DATE AND EXECUTION.** This Agreement shall be effective from and after the date it is signed by the representatives of the CITY. This Agreement may be executed in counterparts.

25. **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: Mr. Julio J. Fuentes, City Manager
City of Alhambra
111 South First Street
Alhambra, CA 91801

CHAMBER: Mr. Owen Guenthard, Executive Manager

Alhambra Chamber of Commerce.
104 South Second Street
Alhambra, CA 91801

26. **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 emgargo, public regulated utility, or government statutes or regulations superimposed after the fact.

27. **INSURANCE.** CHAMBER shall not commence work under this contract until CHAMBER 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 CHAMBER allow any subcontractor of CHAMBER to commence work on any subcontract until all similar insurance required of the subcontractor of CHAMBER shall have been so obtained and approved.

(a) COMPENSATION INSURANCE - CHAMBER shall take out and maintain, during the life of this contract, Worker's Compensation Insurance for all of CHAMBER's employees employed at the site of improvement; and, if any work is sublet, CHAMBER shall require the subcontractor of CHAMBER similarly to provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by CHAMBER. If any class of employees engaged in work under this contract at the site of the PROJECT is not protected under any Workers' Compensation law, CHAMBER shall provide and shall cause each subcontractor of CHAMBER to provide adequate insurance for the protection of employees not otherwise protected. CHAMBER shall indemnify CITY for any damage resulting to it from failure of either CHAMBER or any subcontractor of CHAMBER to take out or maintain such insurance.

(b) COMPREHENSIVE GENERAL LIABILITY, PROFESSIONAL LIABILITY, COMPREHENSIVE AUTOMOBILE LIABILITY AND CONTRACTUAL GENERAL LIABILITY INSURANCE. CHAMBER 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 as shall protect CITY, its elective and appointive boards, officers, agents and employees, CHAMBER, and any subcontractor of CHAMBER 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 CHAMBER's or any subcontractor of CHAMBER's operations under this contract, whether such operations be by CHAMBER or by any subcontractor of CHAMBER, or by anyone directly or indirectly employed by either CHAMBER or any subcontractor of CHAMBER, and the amounts of such insurance shall be as follows:

- (1) Public Liability Insurance in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000);
- (2) Professional Liability Insurance in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000);
- (3) Comprehensive Automobile Liability Insurance in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000);
- (4) Contractual General Liability Insurance in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000).

A combined single limit policy with aggregate limits in an amount of not less than TEN MILLION DOLLARS (\$10,000,000) shall be considered equivalent to the said required minimum limits set forth hereinabove.

- (c) PROOF OF INSURANCE - The CITY of Alhambra shall be named as "additional insured" on all policies required hereunder, and CHAMBER 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 CHAMBER or any subcontractor to commence work under this Agreement until CHAMBER 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 the date first above written by their respective officers duly authorized in that behalf.

CITY OF ALHAMBRA, a Municipal Corporation

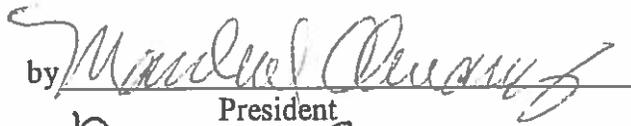
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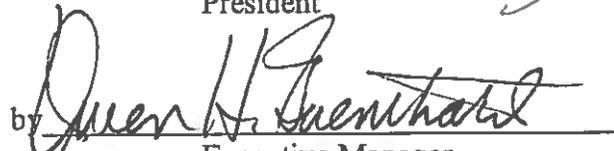
by 
MARK R. PAULSON, Mayor


FRANCES A. MOORE, City Clerk

CITY

ALHAMBRA CHAMBER OF COMMERCE, a California nonprofit corporation

by 
President

by 
Executive Manager

CHAMBER

APPROVED AS TO FORM:


LELAND C. DOLLEY, City Attorney