



City of San Marcos

Request for Proposals

224-185

for

**SMTXU WASTEWATER TREATMENT FACILITIES
OPERATION, MAINTENANCE, & MANAGEMENT**

Issued: Sunday, September 1, 2024

ISSUED BY:

City of San Marcos
Purchasing & Contracting Division
630 East Hopkins Street, Building 4
San Marcos, Texas 78666

RESPONSES DUE:

**Thursday, October 17, 2024
Prior to 2:00 PM, Local Time**

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I. REQUESTS FOR PROPOSALS

The City of San Marcos (“the City”) requests Proposals from interested, qualified Respondents capable of providing full-service operations, maintenance, and management for the San Marcos Utilities Wastewater Treatment Facilities located at 720 River Road, San Marcos, Texas, in accordance with the terms and Scope of Services specified herein.

The terms “Respondent”, “Contractor”, “Vendor”, “Supplier”, “Firm” and “Company” have the same meaning and shall be used interchangeably.

This solicitation complies with applicable City Policy and state of Texas law, including Local Government Code 252. The City will select the successful Respondent that is determined to provide the best value to the City of San Marcos based on the published Evaluation Criteria and its final ranking.

The initial term of the resulting Agreement, subject to approval by the City Council, will be ten (10) years with two (2) five (5)-year renewal options. While the City plans to enter into a long-term agreement with the selected Contractor, the City reserves the right to choose not to renew the contract at the end of each renewal period, (Years 10 and 15) with the Contractor providing a one (1) year transition period. Renewals will be subject to City Council approval.

II. SCOPE OF SERVICES AND RESPONSIBILITIES

1.0 Introduction - The successful Respondent will provide full-service operations, maintenance, and management for the San Marcos Utilities Wastewater Treatment Facilities located at 720 River Road, San Marcos, Texas. Services may include, but are not limited to, the following:

1.1 Purpose of Solicitation - In issuing this RFP, the City is seeking to partner with a Contractor having the technical and financial resources to perform the required operation, maintenance, and management services for existing and future wastewater facilities. Additionally, the selected contractor will provide a strong technical support team, operate safely and in compliance with all regulatory requirements, implement sustainable and effective maintenance programs, and provide efficiencies in labor and materials.

Request for Proposals submitted by Firms in response to this RFP will be evaluated in accordance with the criteria outlined in **Section III. EVALUATION CRITERIA** of this document. Based on the City’s evaluation, the Contractor providing the “best value” will be selected by the City for contract negotiations. A response to this RFP is mandatory for consideration.

1.2 Overview of Services - The existing San Marcos Wastewater Treatment Facility is a 9.0 million gallons per day (MGD) advanced treatment facility with influent screening, grit removal, biological nutrient removal (BNR) secondary treatment, tertiary and filters, ultraviolet (UV) disinfection followed by post aeration before discharging into the San Marcos River with potential expanded capacity per the City of San Marcos Wastewater Master Plan. Residual biosolids are dewatered via centrifuge and hauled to an approved landfill. A biological odor control system captures and treats odors generated by the wastewater treatment process.

Additionally, construction for a proposed 2.0 million gallons per day (MGD) wastewater treatment plant, with expansion capacity to 8 MGD, is scheduled for completion during the initial 10-year term. The proposed design will include conventional wastewater treatment system utilizing advanced treatment processes and biological nutrient removal. As with the existing facility, biosolids will be hauled to the landfill after the final dewatering process. Provide the most economical approach to handling sludge transitioning from package plant to operations of new plant.

The City is seeking qualified Firms capable of providing operations, maintenance, and management for the existing wastewater treatment facility, and effectively start-up, commission and fully operate the future facility once construction is complete.

It is understood that the City cannot list every generally acceptable practice that should be associated within a scope of work of this magnitude. As such the City has an expectation that the selected contractor will perform the necessary scoping items that are reasonable and rational. The City does not expect to receive out of scope change orders because a single specific item was not discussed in this scope. Services may include, but are not limited to, the following:

2.0 Operation, Maintenance, & Management

2.1 Scope of Work

The contractor is responsible for Operation, Maintenance, and Management of the existing Wastewater Treatment Facility and the future wastewater facility once construction is complete during the initial 10-year term. This scope includes, but is not limited to the following:

- Personnel administration required to staff the project with a minimum of two (2) personnel at all times providing coverage of 7 days/week, 24 hours/day for the existing facility. All personnel should possess the experience, qualifications, skills, and wastewater certifications required to perform proper and effective operations and maintenance activities.
- Provide standard employee benefits plan to promote employee retention and recruiting.
- Provide employee incentive program to promote continuous training and wastewater certification accreditation.
- Staff must respond to callouts 24 hours/day and within 45-minutes of notification.
- Furnish and maintain a minimum of 3 light-duty service trucks to perform daily operations and maintenance activities.

2.1.1 Minimum personnel qualifications for management/supervisory positions include:

- Principal-in-charge must have substantial experience in wastewater operation and maintenance and possess either a Texas Class A Wastewater Operator's license or equivalent from another state with reciprocity. The principal-in-charge must attend all meetings required to update City officials of the operation of the facility. The principal-in-charge must be responsible for contract administration, reporting and all aspects of operations and maintenance performance.
- On-site Operations Manager/Supervisor must have at least ten (10) years of experience in wastewater treatment including significant experience with chemical and biological phosphorus removal, biological nutrient removal, and water reuse / reclamation, and possess a Texas Class A Wastewater Operator's License or equivalent from another state with reciprocity.
- Onsite Maintenance Manager/Supervisor must have at least ten (10) years of experience in wastewater facility maintenance and repair with qualifications and expertise in performing routine and corrective maintenance activities according to manufacture recommendations.

2.1.2 Maintain all land, buildings, improvements, and permanent equipment. Equipment maintenance shall be performed in accordance with the manufacturer's recommendations, and the Contractor will be required to

provide proof thereof to the satisfaction of the City.

- Provide and document all preventive maintenance and corrective maintenance with approved computerized maintenance management system (CMMS).
- Maintain aesthetics of all facilities associated with this RFP to include but not limited, to landscaping, exterior painting, security entrance gate and fencing, etc. If unacceptable to the City, successful Contractor will be notified and given 5 business days to remedy.
- Responsible for rodent and other vector control at all facilities as needed.

2.1.3 Implement Safety and Emergency Response Programs. The contractor shall perform services in a safe, secure, effective, and efficient manner. Workplace safety shall be maintained at both facilities according to best practices for facilities of similar size and scope within the Region.

2.1.4 Responsible for compliance with the State of Texas regulatory requirements and all other applicable local, state, and federal laws and regulations. Prepare all NPDES permit reports pertaining to the facilities in accordance with industry standards and NPDES reporting requirements to the City of San Marcos, TCEQ, and other appropriate regulatory agencies for the following:

- NPDES Permit #WQ0010273002
 - Reclaimed Type I & Type II wastewater reuse permit.
 - TCEQ and Storm Water Pollution Prevention Plan.

Contractor shall be liable for fines or civil penalties which may be imposed by a regulatory agency for violations of the effluent quality requirements that are a result of Contractor's negligent operation. Contractor shall be liable for all judgments, liabilities, damages, claims, and other costs precipitated by violations of the plant's wastewater discharge permit, caused by Contractor's negligence. Should the City be assessed fines as a result of Contractor negligence in performance of its contractual obligations, Contractor will reimburse the City for such fines within thirty (30) days of payment/due date.

2.1.5 Biosolids Management: Contractor shall prepare, implement, monitor, and report information for the Biosolids Management Plan required by the City. This can include but is not limited to:

- Processing, monitoring, transporting, and disposing of all solids (including screenings and biosolids) generated at the wastewater treatment facilities to a City approved disposal facility.
- Prepare and submit annual biosolids reports and regulatory sampling requirements.
- Retain all biosolids records and provide copies of all reports to the City.

2.1.6 Perform all laboratory and analytical services required for process control and permit reporting for the facilities and beneficial use sites.

2.1.7 Provide a Communications Plan to include the following reports:

- Discharge monitoring reports (DMR) as submitted to TCEQ.
- Monthly Operation and Maintenance reports (MOR)
- Annual Operations and Maintenance Report.

2.1.8 Operate all processes and facilities in such a manner to minimize odors.

- 2.1.9 Provide access for periodic inspection of all facilities as requested by the City during normal hours of operation.
- 2.1.10 Sponsor and participate in community events annually.
- 2.1.11 Provide a Capital Improvement Plan estimate and Operations and Maintenance Fee (including chemicals and utilities) for incorporation into the City's annual budget process.
- 2.1.12 Perform start-up, operations, and maintenance of a new wastewater plant with expected completion during the initial 10-year term.
- 2.1.13 Coordinate and work with the City to explore alternative delivery methods to implement capital improvements in the most cost-effective manner.
- 2.1.14 Cooperate and assist with the City and any consultants and contractors retained by the City for any planning, design, and construction related to the Facilities or project equipment.

2.2 Additional Services

On a periodic basis, the Contractor may be asked to provide or coordinate additional and/or out-of-scope services. These services are apart from the base services. The City, at its option, may award separate task orders for the additional and/or out-of-scope services. Each task order shall be separately negotiated based upon a fee schedule or cost proposal provided by the Contractor.

3.0 Description of Procurement Process

3.1 Pre-Proposal Meeting and Site Tour (Attendance to this meeting is optional.)

The City will conduct an **optional** pre-proposal meeting and site tour on **September 16, 2024, 10:00AM-12:00PM.** The pre-proposal meeting/tour may last up to two (2) hours and will be held in the San Marcos Wastewater Treatment Facility Conference Room located at 720 River Road, San Marcos, TX. **This will be your only opportunity to tour the Facilities.** Please dress accordingly.

The purpose of the pre-proposal meeting is to provide an opportunity for Respondents to view the facility with a site tour included. Questions will not be addressed during this Meeting/Tour but should be documented and submitted in writing by the question deadline per the instructions in Section VIII. Subsection 18. All questions and answers will be documented and provided in an Addendum per Section VIII. Subsection 19.

Interested Contractors should ensure that they meet or exceed the Minimum Operational Requirements set forth in this document prior to attending.

III. EVALUATION CRITERIA

The City will evaluate and rank each Response based on the following factors. The City reserves the right to request additional information or clarifications from all Respondents and to allow corrections of errors or omissions.

EVALUATION CRITERIA		Maximum Number of Points Per Criteria
The following point values are assessed per evaluation criteria by each evaluation team member. See detail of evaluation criteria below in Section IV. REQUIREMENTS FOR RESPONSE, SubSections 1-5.		
1	FIRM'S PRIOR EXPERIENCE WITH PROJECTS OF SIMILAR SIZE, SCOPE, AND SCALE	30 points
2	PRIOR EXPERIENCE OF FIRM'S KEY PERSONNEL MANAGING PROJECTS OF SIMILAR SIZE, SCOPE, AND SCALE	30 points
3	PROJECT APPROACH AND SCHEDULE	10 points
4	COMPLETENESS OF RESPONSE	10 points
5	REFERENCE CHECKS	20 points
TOTAL POINTS		100 points
The following point values are assessed by the Purchasing Division and added to the cumulative evaluation team total for the above criteria.		
6	PRICE PROPOSAL The lowest price receives twenty (20) points, with others receiving a percentage of points based on a percentage comparison with the lowest price.	20 points
8	LOCAL PRESENCE Principal place of business or a satellite office for at least one (1) year in the incorporated limits of the City of San Marcos. (Not for RFQ)	10 points

Optional Interviews: The shortlisted Respondents **may** be requested to participate in an interview and provide a presentation that is worth up to an additional thirty (30) points. Any additional points earned through the interview process will be added to the points the Respondent received in the first round of the evaluation.

Final Decision: In responding to this Solicitation, the Respondents understand that the decision of the selection committee is final. All Responses will be reviewed and ranked according to the criteria above, and Respondents may be selected for interviews or oral presentations as may be necessary. The City makes no commitment to any Respondent to this Solicitation beyond consideration of the Response.

IV. REQUIREMENTS FOR RESPONSE

The following items are required to be submitted with the Response. The term “region” is used relative to the geographic region of the City of San Marcos, Texas. In order to expedite the evaluations, interested **Respondents will organize their Responses in the sequence provided below. These instructions are designed to ensure the submission of information essential to the understanding and comprehensive evaluation of the Response.**

1) **Cover Letter:**

The proposal must include a letter of transmittal attesting to its accuracy. The cover letter should provide the name, address, telephone number, and email address of the submitting Firm along with the name, title, address, telephone number, and email address of the executive that has the authority to contract with the City.

2) **Executive Summary:**

Provide an Executive Summary of the major features of the Response, including any conclusions, assumptions, and general recommendations the Respondent desires to make. In addition, provide the following information.

- The name of the project lead who will work on the contract and relevant project experience. Identify a Point of Contact and/or Project Manager and provide contact information for questions, notice of selection/non-selection, etc.
- Verification statement that the proposed team individuals are currently employed by the Respondent.
- Confirmation that the general liability insurance, workers' compensation, and professional liability insurance will be provided *before contract execution* within ten (10) calendar days of the Contract Award.
- Brief statement providing assurances that the Respondent will be cognizant of, comply with, and enforce all applicable Federal, State, and local laws, regulations, and ordinances, and a description of your Respondent's methodology for handling errors and omissions in the materials developed as part of this Project.
- Acknowledgment of Addenda.

3) **Technical Approach:**

In this section, Contractors will address their approach to operating, maintaining, and managing the facilities. This section must provide the following information:

- Management team who will be accountable for the project and the technical personnel that will support the project.
- Individuals for key positions. Provide resumes and summarize technical abilities and experience of the proposed Principal in Charge, Project Manager, and key supervisory staff that would manage and operate the wastewater treatment facilities. Discuss the management plan for overseeing the ongoing operation of the facilities.
- Describe training and certification programs for operations and maintenance personnel to maintain and upgrade professional licensure and certifications. Explain internal employee training program(s).
- Describe the plan for ongoing recruiting and development of operation and maintenance personnel. Provide the companywide O&M employee turnover rate and average longevity per employee.
- Provide a Transaction Approach should the City elect not to renew a contract for this project.
- Provide an operating Plan including the existing facility as well as the proposed 2.0 MGD facility to be completed during the initial ten (10) year term.
- Demonstrate technical understanding of all permit requirements.
- Demonstrate technical understanding of wastewater treatment methodologies that apply to treated wastewater effluent entering the San Marcos River.
- Demonstrate technical approach to biosolids treatment and dewatering.
- Describe maintenance and asset management programs.
- Provide an example of monthly and yearly reporting applicable to local, state, and federal laws and regulations.
- List the Contractor's Experience Modification Rate (EMR) for each of the last three (3) years for contract operations organization only. Summarize the Contractor's Total Incident Rate (TIR) from the Contractor's OSHA 200 log and the results of any OSHA audits from the last five (5) years for contract operations and

maintenance organizations only.

- List approach and audit method to achieve excellence in environmental performance, including approach to meeting exceptionally low permit requirements. Provide any additional details that will assist the City in understanding the Contractor's approach and commitment to maintaining environmental compliance at the facility. Describe how you maintain competence and current understanding of environmental regulatory statutes.
- Describe the Contractor's use of any quality management system for optimizing delivery of O&M projects.
- Provide examples of successful programs or ideas the Contractor has implemented at municipal wastewater treatment facilities currently operated by the Contractor, and indicate results including:
 - Capital or cost savings/efficiency improvements.
 - Examples of pollution prevention or source reduction ideas initiated.
 - Examples of energy and cost saving measures that the Contractor has implemented.
- Discuss the Contractor's approach to community outreach, including sponsorships, volunteerism, and in-kind services. Provide examples of such service projects in the region.
- Technical approach of Wastewater Operation, including understanding of current facility operations.
- Dedicated resources and engineering capability within the region to support staff and the project as needed.
- Detailed proactive and preventative maintenance plan for the Wastewater Facilities with an ability to leverage regional subject matter experts to perform additional services as requested by the City.
- Ability to provide additional services including start-up, commissioning, and long-term operations and maintenance of a new 2.0 MGD wastewater facility with an expansion capacity up to 8.0 MGD.
- Experience and approach in performing start-up, commissioning, and full operation of a new plant during the initial term while simultaneously servicing the existing wastewater treatment facility.

4) Qualifications:

Contractors will demonstrate their ability to undertake the City's project by providing the technical qualifications of the Contractor, individual team members, and principal subcontractors, as applicable.

The City reserves the right to conduct an independent investigation of the Contractor's technical qualifications by contacting project references, accessing public information, inspecting facilities, or contacting independent parties. Additional information may be requested during the evaluations of technical qualifications. The Contractor will provide the following information to demonstrate its technical qualifications:

- Corporate Profile:
 - Provide a description of the Contractor that will serve as the contracting party. Include the history and overall organization structure, including relationships with parent companies and subsidiaries as well as other relevant background of the Contractor.
 - Describe the Contractor's capabilities to provide full contract operations, maintenance, and management of wastewater treatment facilities, and how many years it has engaged in providing contract operations, maintenance, and management services.
 - Identify when the Contractor was organized, and if a corporation, where incorporated.
 - If the Contractor is a joint venture, the required information will be submitted for each member of the joint venture Contractor. The Contractor will describe the history of the relationships among team members, including a description of past working relationships.
 - Provide a description of the circumstances, if any, related to any City of San Marcos employee, City of San Marcos Councilmember or other officer, employee, or person who is payable in whole or in part from the City that has or has had any director or indirect personal interest in the Contractor.
 - The proposal will also identify which portions of the work, if any, will be subcontracted. If subcontractors are proposed, the proposed contractual relationships between the Contractor and all major partners and subcontractors relative to the project will be outlined in the proposal. Describe the

- respondent's depth and resources which would also be available for benefit of the City.
- Demonstration of experience in capital planning aspect of wastewater systems. Identify specific projects where such services are provided and the results of such service.
- Describe any pending litigation or litigation that has been settled in the last ten (10) years and how it might affect the Contractor's ability to fulfill its obligations for this contract/for the City.
- If the Contractor has ever been terminated or fired on an O&M project, name the facility owner and describe the circumstances.
- Describe the Contractor's company position regarding the treatment and respect of employees and/or public. What is the Contractor's company position in respect to business ethics? Explain where this is documented in the Contractor's policies.
- List the awards and recognition the Contractor has received in the past five (5) years, particularly within the region. Discuss additional relevant awards and recognition for quality, business leadership, and operations standardization. The Contractor may provide a more comprehensive list of awards in other geographic areas as a supplement or appendix to its submittal.

5) **Financial Qualifications:**

Provide a summary of the Contractor's financial stability and strength over the past three (3) years. Submit audited financial statements for the past three (3) years. The financial statements must include income statements, balance sheets, and statements of cash flow.

6) **Relevant O&M Experience and References:**

Provide the following information:

- Relevant O&M experience and existing client satisfaction in the region.
- Provide information about the Contractor's overall experience with operating wastewater treatment facilities of similar size and scope in the region.
- Present a summary of the Contractor's existing client base, the renewal rate, and any problems experienced with past clients in the region. Also, describe the average life of the Contractor's existing contracts with these clients. Specifically, provide the facility size, duration of relationship, and processes utilized on representative treatment facilities the Contractor operates under a private and/or public-private contract operations and maintenance arrangement in the region. Describe experience operating an interim package plant during construction of a new wastewater facility.
- Describe the Contractor's experience performing start-up and operation of a new wastewater plant in the region while operating existing facilities.
- Describe the Contractor's experience and capacity to serve communities in the region.
- Describe the Contractor's local presence and ability to provide additional resources within seventy-five (75) miles of the facility to support emergency or unexpected operating conditions.
- Provide a minimum of five (5) relevant project references within the last ten (10) years. Include, at a minimum, a brief description of the project, length of time services were provided, size of relevant facilities. Identify any claims associated with the project. Provide owner information, contact person, and their current telephone number. Pictures of the treatment facilities are recommended. **NOTE: Compliance history and safety record will be considered.**
- Describe the Contractor's experience operating plants during capital upgrades and replacements.
- Describe the Contractor's experience operating recycled water systems with preference to Type 1 reclaim water systems of similar size.
- Provide a list of the Contractor's contracts that have been terminated in the last five (5) years.
- Provide a list of the Contractor's contracts with regulatory issues from the last five (5) years.
- Describe any Contractor's operating permit violations for facilities in the last three (3) years. Include an explanation of the cause(s) and the means/timeframe required to resolve them.

- Provide details about your liability coverage for environmental fines and liability as well as any costs resulting from negligent operations that resulted in plant upsets or equipment failures and permit violations. Describe specifically how that coverage would apply to the City's projects.

7) Additional Capabilities:

- Detail the Contractor's engineering resources to perform as a General Contractor for Capital Improvement Projects. Explain how these resources are sourced (i.e., from affiliate companies, subcontractors) and whether these services are provided as part of the services offered under the base operating fee (as opposed to hourly billing).
- Highlight other capabilities of the Contractor that could be brought to bear on this project.

8) Information Questionnaire and Assurances:

- Submit Vendor Information Questionnaire and Assurances (Attachment "A") with the Response.

9) Price Proposal:

- Submit proposed annual personnel costs in Section One of the attached Price Proposal Form (Attachment "B").

NOTE: Section Two of the Cost Proposal Form will not be evaluated for point assignment.

10) Local Business Presence:

- Document if your firm does or does not have a principal place of business or a satellite office for at least one (1) year in the incorporated limits of the City of San Marcos. Provide the physical address of the business/office if located in the City of San Marcos.

11) House Bill 89 Verification Affidavit:

- Submit the completed and notarized House Bill 89 Verification Affidavit (Attachment "C") with the Response, if applicable.

12) Conflict of Interest Questionnaire (CIQ):

- Submit the completed and notarized Conflict of Interest Questionnaire (Attachment "D") with the Response.

V. SUBMISSION OF RESPONSE

Interested and qualified Respondents or teams are invited to submit one (1) original and one (1) copy of their Response, and one (1) USB flash drive containing the Response in a single file PDF document. **Documentation should be limited to page limits as specified in each section.** The page limits do not include tabs or other document portions unless the tabs or other document portions provide information noted in this solicitation (photos, client testimonials, etc.). Responses must be written entirely on 8 ½" X 11" paper and may be spiral, staple, or clip bound. Responses must be submitted in a manner that does not carry any benefit, keepsake, or value for members of the evaluation committee.

To the extent permitted by law, all documents pertaining to this Solicitation will be kept confidential until a contract is awarded. Any information deemed confidential by the submitted Respondent must be clearly marked as such. No

information about any Response will be released to the public until a contract is awarded. The City is under no obligation to return Responses.

It is the sole responsibility of the Respondent to ensure that its submittal reaches the Office of the Purchasing Manager, Purchasing & Contracting. Deliver Responses, unless otherwise specified, to the address on the label no later than the submittal deadline. Therefore, if your Response is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the address below. **The City is not responsible for deliveries made to any place other than the Office of the Purchasing Manager, for reasons including the lack of or improper labeling of the outermost sealed shipping container to indicate the Solicitation number, title, and deadline.**

Responses may be dropped off in-person in the Bid/Proposal drop box at the Office of the Purchasing Manager, Purchasing & Contracting, Building 4 (behind the Municipal Building), prior to the submittal deadline. Responses received after the submittal deadline will not be accepted.

Responses shall be mailed or delivered to:

**City of San Marcos
Office of the Purchasing Manager
630 East Hopkins Street, Building 4
San Marcos, Texas 78666**

The outermost envelope/container must be sealed and will be labeled as such to ensure delivery to the Office of the Purchasing Manager prior to the submission deadline:

SEALED RESPONSE - DO NOT OPEN	
SEALED PROPOSAL NO.:	224-185
PROPOSAL TITLE:	SMTXU WASTEWATER TREATMENT FACILITIES OPERATION, MAINTENANCE, & MANAGEMENT
DUE DATE/TIME:	October 17, 2024, No later than 2:00PM Local Time
SUBMITTED BY:	_____
	(Name and City/State of Respondent)

Acknowledgement of Responses will be broadcast live via video conference by reading aloud the Respondent's name, city, and state in the Conference Room, Building 4, 630 East Hopkins Street, San Marcos, Texas 78666, at 2:00 PM, on the Due Date. Requests for access to the video conference must be submitted to mkruzelock@sanmarcostx.gov and COSMPurchasing@sanmarcostx.gov at least thirty (30) minutes prior to 2:00 PM Acknowledgement of Responses. Requests made later than thirty (30) minutes prior to the time of opening are not guaranteed access to the video conference.

VI. AWARD OF CONTRACT

1) Negotiations: After evaluation and ranking based on the evaluation criteria, the City may then enter into negotiations with the top ranked Respondent as to the terms of the agreement and all aspects of the project to reach an agreement.

2) **Inability to Reach an Agreement:** In the event the negotiations between the top ranked Firm and the City cannot be completed as a result of an inability to reach agreement, the City may formally end negotiations with that Firm and attempt to negotiate a contract with the next ranked Respondent until a contract is entered.

3) **Successful Firm's Documents:** The successful Respondent will provide its Response and any negotiated amendments to the Office of the Purchasing Manager as an electronic Microsoft Office Word file.

4) **Contract Award:** The selection of a Respondent and the execution of a contract, while anticipated, are not guaranteed by the City. The City reserves the right to determine which Response is in the City's best interest and to award the contract on that basis, to reject any and all Responses, and waive any irregularities of any Response.

5) **City Council Approval:** The City Council will consider the final contract for approval in the event the final contract amount is anticipated to exceed \$100,000.

6) **Final Contract:**

a. The selected Respondent will assume responsibility for all services offered in its Response, whether or not such services are provided by a subconsultant or joint venture arrangement. The successful Respondent will be considered the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

b. The successful Respondent will be required to enter into a written contract with the City, Attachment "E", which includes the City's Standard Terms and Conditions found at sanmarcostx.gov/termsandconditions. Where conflicts exist between the provisions of Attachment "E" and the provisions of this Solicitation, the provisions imposing greater responsibility on the successful Respondent will control.

c. This Solicitation and the successful Response, or any part thereof, may be incorporated into and made a part of the final contract. The City reserves the right to negotiate the terms and conditions of the contract with the successful Respondent.

d. Respondents are advised that exceptions to any portion of the Solicitation, the City's Agreement, and/or the City's Standard Terms and Conditions may jeopardize acceptance of your Response. If any exceptions are taken, those exceptions will be clearly indicated and a full explanation given for each exception within the proposal submitted. It is required that the Response enumerate the specific document and specific clauses that the Respondent wishes to amend or delete and suggest alternative wording in the Response. If no exceptions are included in the Response, it will be understood the Respondent accepts the City's Standard Terms and Conditions. In view of the length of time involved in obtaining the approval of legal counsel, Respondents are cautioned not to state that the Respondent's Response is subject to the Respondent's standard terms and conditions or that the final terms and conditions are subject to negotiation after award. This may result in the Response being deemed non-responsive, in which no further consideration or evaluation will be made.

VII. INSURANCE AND LIABILITY

During the period of the resulting contract, the Respondent will maintain, at its expense, insurance with limits not less than those prescribed below. Insurance underwriters will be acceptable to the City. With respect to required insurance, the Respondent will:

1) Name the **City of San Marcos, c/o Purchasing & Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666** as an additional insured.

- 2) Provide the City with a thirty (30) days' written notice to the Certificate Holder prior to cancellation or material change of any insurance referred to in the certificate.
 - a. Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.
- 3) Provide the City of San Marcos, Purchasing & Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666, a Certificate of Insurance evidencing required coverage before execution of contract.
- 4) Submit a Certificate of Insurance reflecting coverage as follows:

Business automobile liability insurance with minimum limits of liability for bodily injury and property damage combined of not less than \$1,000,000 per occurrence. Contractor will maintain a standard ISO version of Business automobile liability insurance or its equivalent providing coverage for all owned, non-owned and hired automobiles. Owner will be included as an additional insured party.

Commercial General Liability Insurance: Including Bodily Injury and Property Damage Liability, Independent Contractors Liability, Contractual Liability, Product Liability and Completed Operations Liability in an amount not less than \$1,000,000 combined single limit, per occurrence, and \$2,000,000 aggregate. City will be included as an additional insured party.

Umbrella or Excess Liability Coverage: Not less than \$5,000,000 per occurrence and in the aggregate. This coverage typically sits above the underlying General Liability, Automobile Liability and Professional Liability policies. Depending upon the scope and work to be performed in the proposed agreement, this policy may be required in order for the vendor to be able to meet the minimum insurance requirements.

Workers' compensation insurance in accordance with and as required by the Workers' Compensation Act of the State of Texas in amounts sufficient to satisfy statutory requirements or \$500,000.00/\$500,000.00 for Employer's Liability.

Certificate of coverage or certificate means a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

Professional Liability: Not less than \$1,000,000 per occurrence and aggregate to be maintained for the duration of the agreement and three years following its termination.

Cyber Security Insurance: Not less than \$1,000,000 per occurrence and aggregate to be maintained for the duration of the agreement and three (3) years following its termination.

Professional Pollution Insurance: Not less than \$1,000,000 per occurrence and aggregate to be maintained for the duration of the agreement and three (3) years following its termination.

VIII. SPECIAL PROVISIONS

- 1) **Selected Response:** The City reserves the right to include the selected Response or any part or parts thereof in the final contract.

- 2) **Reimbursement:** The City makes no commitment to any Respondent of this Solicitation beyond consideration of the written Response. The City will not reimburse Respondents for the costs incurred in response to this solicitation.
- 3) **Collusion:** By submission of a Response, the Respondent certifies, and in the case of a joint submission each party certifies as to its own organization, that in connection with any cost proposal submitted by the Respondent, the prices which are quoted are not the product, direct or indirect, of any collusion with any other Respondent, and have not been knowingly disclosed by the Respondent directly or indirectly to any other Respondent prior to submission to the City.
- 4) **Lobbying:** Respondents are prohibited from directly or indirectly communicating with City Council members regarding their qualifications or any other matter related to the eventual award of a contract for the services requested in this Solicitation. Respondents are prohibited from contacting City staff or evaluation committee members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff or committee member through the Purchasing Manager. **Any violation will result in immediate disqualification of the Respondent from the selection process.**
- 5) **City of San Marcos Artwork:** Use of the City seal or the City brand on Responses is **not** permitted on non-City-generated work product.
- 6) **Taxpayer Identification Form:** Prior to the execution of a contract for these services, the selected Respondent will complete a Request for Taxpayer Identification Number and Certification Form (IRS Form W-9). The City will not make payment against the contract until it has received the properly completed form. The selected Respondent will invoice the City for services rendered accompanied by the City's required documentation. The City's representative and the appropriate staff in the City's Finance Department must approve payments.
- 7) **"Green" Procurement:** It is the City's objective to be proactive with regard to the environment. The City encourages "Value Purchasing" of environmentally friendly products. Respondents are encouraged to clearly identify any green solution in their Responses, or a Respondent may propose a separate alternative "Green" solution in a separate envelope marked "Green Solution". The Green solution alternative Response will meet the minimum performance and delivery standards.
- 8) **Protest Procedures:** The purpose of the protest procedures is to protect the public interest in the purchasing process. This section is intended to give a bidder, proposer, respondent, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract the opportunity to protest. The City's objective is to resolve protests as soon as practical.

Any protest or complaint to the City's consideration must be submitted in writing and received by the Purchasing Manager no later than 5:00 PM on the fifth (5th) calendar day after the City notifies the bidder or proposer: 1) that it is deemed non-responsive; 2) that it is deemed not responsible; 3) the name of the apparent winning bidder; or 4) the City's intent to award a contract. If the protest or complaint does not contain the following information, it may be dismissed by the Purchasing Manager:

- Protestor's name, address, telephone number, and email address;
- The solicitation number;
- Identification of the statute or policy that is alleged to have been violated;
- A precise statement of the relevant facts;
- Identification of the issues to be resolved; and
- Supporting documentation.

The protest must be concise and presented logically and factually to help with the City's review and determination as to whether the grounds for the protest are sufficient. The Purchasing Manager will notify the protesting party that the protest has been received and make every effort to resolve the protest before contract award.

If it is determined that the grounds for the protest are insufficient and no violation of a statute or policy has occurred, the Purchasing Manager will provide a written decision to the protesting party setting forth the reasons for the determination.

If, after conferring with the City Attorney's Office, it is decided that the grounds for the protest are sufficient and it is determined that a violation of a statute or policy has occurred, the Purchasing Manager will inform the protesting party by letter setting forth the reasons for the determination and the remedial action that will be taken.

When a protest is filed, the City will not make an award until a decision on the protest is made except, as determined by the City Manager, when a delay would jeopardize urgently needed goods or services, or a delay in making an award will unduly delay delivery or performance of urgently needed services.

- 9) **Smoking Prohibition:** Pursuant to San Marcos Ordinance No. 2013-57, as amended, all City of San Marcos-owned and rented/leased properties are smoke-free properties. All contractors, vendors, subcontractors, and their employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within ten (10) feet of doors and windows of City-owned or rented buildings, all City parks and the grounds outside of any City building. This prohibition includes e-cigarettes and other inhaled vapor devices. The City may terminate the contract for noncompliance with this ordinance.
- 10) **Certificate of Interested Parties:** A contract greater than \$100,000 or that is approved by the City Council regardless of contract amount requires the vendor to electronically create a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission ("TEC") website (https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the City prior to the award of the contract. A contract, including a City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor.
- 11) **Prohibition on Contracts with Companies Boycotting Israel:** Pursuant to Chapter 2271 and 808, *Texas Government Code*, Contractor certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate. Vendors will submit the House Bill 89 Verification Affidavit with their Response. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 12) **2252 Compliance:** Section 2252 of the *Texas Government Code* restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Contractor hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 13) **Non-Discrimination:** The Respondent understands and certifies that it is an Equal Opportunity Employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation, gender identity, national origin, sex, age, disability, or economic condition and prohibits retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier.
- 14) **Conflict of Interest Questionnaire (Form CIQ):** In accordance with Chapter 176 of the Texas Local Government Code, "Disclosure of Certain Relationships with Local Government Officers," persons, or their

agents who seek to contract for the sale or purchase of property, goods, or services with the City, will file a Conflict of Interest Questionnaire (Form CIQ) with the City Secretary if the vendor has a business relationship as defined by Section 176.001(1-a) with the City and the vendor meets requirements under Section 176.006(a).

The Conflict-of-Interest Questionnaire (Form CIQ) is required to be filed within seven (7) business days of:

- a. Beginning of discussions or negotiations to enter into a contract with the City; or
- b. Submission of an application, response to a request for Responses or bids, correspondence or other writing related to a potential agreement with the City.

If the above is applicable in accordance with LGC Chapter 176, Bidder is requested to submit a completed Conflict of Interest Questionnaire (Form CIQ), with their bid in addition to submitting a completed Form CIQ to the City Clerk's Office, 630 E. Hopkins Street, San Marcos, Texas 78666.

By law, Form CIQ must be filed with the City Clerk no later than the seventh (7th) business day after the date the Vendor/Contractor becomes aware of facts that require the statement to be filed as per Section 176.006(a-1). A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Form CIQ is available from the Texas Ethics Commission by accessing the following web address:

<https://www.ethics.state.tx.us/data/forms/conflict/CIS.pdf>

- 15) Prohibition on Contract with Certain Foreign-Owned Companies:** Section 2274 of the Texas Government Code (SB2116) restricts the City from contracting with companies that do business with certain foreign-owned companies in connection with critical infrastructure if the company is granted direct or remote access; and if the company is owned by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a "designated country", or headquartered in China, Iran, North Korea, Russia, or a designated country. Designated country is Governor-designated country as a threat to critical infrastructure. By signing below as an authorized signer, the Bidder hereby certifies that it does not do business with certain foreign-owned companies in connection with critical infrastructure as described herein. Failure to maintain the requirements under this provision will be considered a material breach.
- 16) Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries:** Section 2274 of the Texas Government Code (SB19) restricts the City from contracting with companies that discriminate against firearm and ammunition industries. By signing below as an authorized signer, the Respondent certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate against the same during the term of this contract. (Only applies to companies with ten (10) or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.
- 17) Prohibition on Contracts with Companies Boycotting Certain Energy Companies:** Section 2274 of the Texas Government Code (SB13) restricts the City from contracting with companies that boycott energy companies. By signing below as an authorized signer, the Respondent certifies that it does not have a practice, policy, guidance, or directive boycotting energy companies, and will not discriminate against the same during the term of this contract. (Only applies to companies with ten (10) or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.
- 18) Inquiries and Other Information:** All questions and other communication from Respondents will be permissible until 5:00 P.M., twenty (20) business days prior to the solicitation due date. All responses to this Request for Responses, as well as any questions, clarifications, or requests for general information are to be directed to the

following Point of Contact in writing:

Mari Kruzelock, CTCM
Purchasing & Contracting Division
City of San Marcos
Email: mkruzelock@sanmarcostx.gov

COMMUNICATIONS OUTSIDE THIS PRESCRIBED PROTOCOL JEOPARDIZES THE INTEGRITY OF THIS PROCUREMENT PROCESS AND MAY DISQUALIFY YOUR RESPONSE.

- 19) Addenda:** Any changes resulting from the questions submitted affecting the scope of services, or which may require an extension to the solicitation due date will be reduced to writing in the form of an addendum to this solicitation. Addenda may only be viewed at www.sanmarcostx.gov/eprocurement. It is the Respondent's responsibility to check the above site to determine if the City has issued any addenda. Addenda will be issued no later than fifteen (15) business days prior to the solicitation due date.

IX. ANTICIPATED SCHEDULE

The following is the anticipated schedule for the selection process:

- **September 1, 2024** – Advertise, mail, or email Solicitation
- **September 16, 2024** – Pre-Submittal Meeting/Site Tour
- **September 26, 2024** – Deadline for submission of questions to MKruzelock@sanmarcostx.gov
- **October 3, 2024** – Deadline for addendum to be posted at www.sanmarcostx.gov/eprocurement
- **October 17, 2024** – Deadline for receipt of responses
- **December 17, 2024** – City Council for consideration and contract



VENDOR INFORMATION QUESTIONNAIRE AND ASSURANCES

Name of Company:	
Primary Office Address (City/State/Zip):	
Telephone Number:	
Email Address:	
DUNS Number (if applicable):	
Company has been in business since:	

Form of Ownership (check one):

- ☐ State Incorporated/Registered _____ / Date Incorporated/Registered _____
☐ LLC
☐ Joint Venture
☐ Partnership: If Partnership, select one: ☐ Limited or ☐ General
☐ Individual

List of Partners, Principals, Corporate Officers or Owners:

Name	Title

List of Corporate Directors:

Name	Title

1. Have you had any contracts terminated for default or other performance reasons? ☐ Yes ☐ No If yes, explain:

--

2. Has your company been convicted of a criminal offense involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official? ☐ Yes ☐ No If yes, has the conviction occurred within three (3) years immediately preceding either the date of submission of a bid/proposal, or the date of award of the contract?

If yes, explain:

--

3. Is your company involved in pending investigation or criminal prosecution of a criminal offense involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official?

☐ Yes ☐ No If yes, explain:

4. Does your company have pending claims, investigations, or civil litigation involving allegations of fraud, misrepresentation, or conversion?

☐ Yes ☐ No If yes, explain:

5. Does your company have previous final judgments against the City for breach of contract, fraud misrepresentation or conversion?

☐ Yes ☐ No If yes, explain:

6. Has your company failed to timely pay/remit sales tax, property tax, or utility payments to the City of San Marcos?

☐ Yes ☐ No If yes, explain:

7. Has your company refused to execute a contract following an award by the San Marcos City Council?

☐ Yes ☐ No If yes, explain:

8. Has your company violated the anti-lobbying provisions in a current or previous City of San Marcos procurement process by contacting a member of the San Marcos City Council prior to the award of a contract?

☐ Yes ☐ No If yes, explain:

9. Has your company furnished unauthorized substitutions of materials not meeting contract specifications in a current or previous contract with the City of San Marcos?

☐ Yes ☐ No If yes, explain:

10. Non-Collusion Certification: By signing below as an authorized signer, the Bidder certifies that ALL items below are true and correct concerning its bid.

- 1) You are fully informed of the contents of the bid and the circumstances of its preparation.
- 2) Your bid is genuine and is not a collusive or sham bid.
- 3) Neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other bidder, firm, or person to submit a collusive or sham bid, or to refrain from bidding, or sought by communication or conference with any other bidder, firm, or person to fix the prices, overhead, profit, or any cost element in your bid or in any other bid, or to secure through any collusion, conspiracy, or agreement any advantage against the City of San Marcos or any other bidder.
- 4) The prices quoted in your bid are fair and proper and are not affected by any collusion, conspiracy, connivance, or unlawful agreement on the part of your company or anyone acting on its behalf.

11. Prohibition on contracts with companies that boycott Israel. Chapter 2271 and 808, Texas Government Code restricts the City from contracting with companies that boycott Israel. By signing below and submission of the HB89 Verification form, the Bidder certifies that it does not boycott Israel and will not during the term of this contract. Failure to maintain the requirements under this provision will be considered a material breach. (HB89 Verification form required if contract value is greater than \$100,000.)

12. Prohibition on contracts with companies that do business with Iran, Sudan, or a foreign terrorist organization. Section 2252 of the Texas Government Code restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. By signing below as an authorized signer, the Bidder certifies that it does not do business with Iran, Sudan, or a foreign terrorist organization. Failure to maintain the requirements under this provision will be considered a material breach.
13. Prohibition on contracts with certain foreign-owned companies. Section 2274 of the Texas Government Code (SB2116) restricts the City from contracting with companies that do business with certain foreign-owned companies in connection with critical infrastructure if the company is granted direct or remote access; and if the company is owned by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a “designated country”, or headquartered in China, Iran, North Korea, Russia, or a designated country. Designated country is Governor-designated country as a threat to critical infrastructure. By signing below as an authorized signer, the Bidder hereby certifies that it does not do business with certain foreign-owned companies in connection with critical infrastructure as described herein. Failure to maintain the requirements under this provision will be considered a material breach.
14. Prohibition on contracts with companies that discriminate against firearm and ammunition industries. Section 2274 of the Texas Government Code (SB19) restricts the City from contracting with companies that discriminate against firearm and ammunition industries. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate against the same during the term of this contract. *(Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.)* Failure to maintain the requirements under this provision will be considered a material breach.
15. Prohibition on contracts with companies boycotting Certain Energy Companies. Section 2274 of the Texas Government Code (SB13) restricts the City from contracting with companies that boycott energy companies. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive boycotting energy companies, and will not discriminate against the same during the term of this contract. *(Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.)* Failure to maintain the requirements under this provision will be considered a material breach.
16. I hereby certify that our business is an Equal Employment Opportunity (EEO) employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation, gender identity, national origin, sex, age, disability or economic condition. I further attest that this policy is documented in our Employee Handbook. As an EEO employer, we prohibit retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier.

I, _____, as _____
Name of Individual Title & Authority

of _____, declare under oath
Company Name

that the above Statements, including any supplemental responses attached hereto, are true and correct, and that the representations made herein are accurate to the best of my knowledge and are based upon a diligent search of records. I further acknowledge that any failure to conduct a diligent search or to make a full and complete disclosure may result in cancellation of my contract by the City of San Marcos, and possibly debarment.

Signature



ATTACHMENT “B”

PRICE PROPOSAL FORM

If this document is not submitted with the bid/proposal, it may be considered non-responsive.

Name of Company:	
Contact Person:	
Primary/Principal Office Street Address:	
Primary/Principal Office City/State/Zip Code:	
Telephone Number:	
Email Address:	

SECTION ONE: PERSONNEL COSTS (inclusive of all overhead costs to include employee benefits, training costs, etc., per position listed) Attach supporting documentation to substantiate annual cost and any anticipated annual adjustments in labor/staffing costs for each position required/listed below. Mark N/A if field not applicable.				
Item #	Description	Unit Cost (Annual Amount Per Person)	X Quantity	= Annual Cost
1	Plant Manager	\$_____	1	\$_____
2	On-Site Operations Manager/ Supervisor	\$_____	1	\$_____
3	On-Site Maintenance Manager/ Supervisor	\$_____	1	\$_____
4	Other: _____	\$_____	_____	\$_____
5	Other: _____	\$_____	_____	\$_____
6	Other: _____	\$_____	_____	\$_____
7	Other: _____	\$_____	_____	\$_____
8	Other: _____	\$_____	_____	\$_____
SECTION ONE TOTAL COST NOTE: Sufficient personnel are required to staff the project with a minimum of two (2) personnel at all times providing coverage of 7 days/week, 24 hours/day for the existing facility.				\$_____

SECTION TWO: ADDITIONAL COSTS		
Item #	Description	Percentage markup from Contractor's price
9	Equipment Costs: List and/or describe how equipment costs will be billed to the City, including any markups or fees the contractor will associate with the equipment	_____
10	Permitting/Regulatory Compliance: List markup and fees the Contractor may charge.	_____
11	Electric & Chemical Cost: List and/or describe how chemical and electrical costs will be billed to the City, including any markups or fees the contractor will associate with the equipment.	_____
12	Outsourced (3 rd Party) Billing: List and/or describe how outsourced (3 rd Party) activities will be billed to the City including markup and fees the Contractor may charge.	_____
13	Additional Fees or Expenses: List any additional fees or expenses for which the Contractor will expect reimbursement that are not described above. Include markup and fees the Contractor may charge.	_____
NOTE: Items 9 through 13 will not be evaluated for point assignment.		

☐ I hereby certify that our business is an Equal Employment Opportunity (EEO) employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation, gender identity, national origin, sex, age, disability or economic condition. I further attest that this policy is documented in our Employee Handbook. As an EEO employer, we prohibit retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier. I understand that failure to check the box as to these conditions may render my proposal non-responsive.

I, _____, as _____
 Name of Individual Title & Authority

of _____, proposes to complete the
 Company Name

Project for the prices listed in this Price Proposal Form for scope of work and services described in the RFP documents.

 Signature

THIS FORM MUST BE SUBMITTED WITH YOUR BID/PROPOSAL

HOUSE BILL 89 VERIFICATION

(This affidavit must be completed and submitted with bid/proposal.)

Pursuant to Sections 2271.001, 2271.002, 808.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
2. "Company" has the meaning assigned by Section 808.001, except that the term does not include a sole proprietorship.
3. Section only applies to a contract that is between a governmental entity and a company with 10 or more full-time employees; and has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

As the undersigned legal representative of _____,
(Business Name)

after being duly sworn by the undersigned notary, do hereby depose and verify under oath that the company named above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2271:

- a. Does not boycott Israel currently; and
- b. Will not boycott Israel during the term of the contract City of San Marcos, Texas.

(Business Representative Signature)

(Date)

(Title)

STATE OF _____ §

COUNTY OF _____ §

On this day, BEFORE ME, _____ personally appeared and personally-known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual executed the instrument for purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20____.

[SEAL]

NOTARY PUBLIC in and for the
State of _____

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.



CONTRACT NUMBER XXX-XXX
AGREEMENT BETWEEN THE CITY OF SAN MARCOS
AND {CONTRACTOR/VENDOR}
FOR
{INSERT}

This Agreement (“**Agreement**”) is entered into by and between THE CITY OF SAN MARCOS, a municipality in the State of Texas (“**City**” or “**Owner**”), and {vendor name}, {vendor address} (“**Contractor**” or “**Firm**”) and is effective for all purposes as of the date of the last signature to this Agreement (“**Effective Date**”).

Include background and purpose of the agreement. Delete if not applicable or not necessary.

Delete brackets when text is inserted throughout document.

Background. {Describe background and purpose of this agreement.}

City and Contractor, the “Parties”, agree as follows:

1. **Services.** Contractor will perform the Services to {describe services} (“**Services**” or “**Project**”) and provide deliverables (“**Deliverables**”) set forth in Exhibit 1, attached and incorporated for all purposes, to the satisfaction of City.

Contract term/duration may be modified depending on need. Delete if not applicable.

2. **Term/Duration.** The term (“**Term**”) of this Agreement will commence on the Effective Date and will continue for one (1) year term, unless sooner terminated as provided herein. The contract will be automatically renewed for up to {number (#)} additional one (1) year periods, provided all terms and conditions remain in full force and effect except for the contract period being extended or any price redetermination for a maximum contract period not to exceed {total number (#)} years. Either party may decline to renew the contract by providing written notice to the other party at least than ninety days (90) prior to renewal of this contract, nor later than the final day of the contract period. This automatic renewal requires the mutual agreement of both parties. Refusal by either party to exercise this option to extend will cause the contract to expire on the original or mutually agreed upon date.

Compensation section may be modified to include any payment based on deliverables, progress payments, etc. Are fees fixed amount, not to exceed? If payments are tied to milestone, may describe here. Modified as needed.

3. **Compensation.** Contractor's fees for the Services are set forth in Exhibit 1, for {spelled out amount} Dollars (\$ {figures}).
4. **Payments.** City will pay to Contractor compensation for performance of the Services within thirty (30) days after receipt of an appropriate invoice and City's approval of Services. Payment will be made in accordance with the Texas Prompt Payment Act, currently codified in Chapter 2251, *Texas Government Code*. Payment for delivery of Services rendered will not be unreasonably withheld or delayed. If City disapproves any amount submitted for payment by Contractor, City will give Contractor specific reasons for disapproval in writing within a reasonable time. Upon resolution of any disputed charges, Contractor will re-invoice such remaining charges to City.
- 4.1 Payment(s) will be made by the City upon the completion and acceptance of the work performed under this contract, and submission of an original invoice to the City of San Marcos, Accounts Payable Division, 630 East Hopkins Street, San Marcos, Texas 78666, or cosmap@sanmarcostx.gov.
- 4.2 Invoices will include the Contract Number, work description, unit price, quantity, extended price, as applicable.
- 4.3 Invoices must be submitted to the City no later than sixty (60) days following completion of work/delivery of Services.
5. **City's Representative.** The City designates the following individual as its representative authorized to act in the City's behalf with respect to this Agreement. The City representative's contact information is:

{Name and Title}
{Department}
630 East Hopkins Street
San Marcos, Texas 78666
Telephone: 512-{xxx-xxx}
Email: {email address}

WARRANTIES, TERMS, AND REPRESENTATIONS

6. **Compliance with Laws and Policy.** Contractor warrants and agrees that Contractor will perform the Services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any Service performed on premises owned or controlled by City, Contractor warrants and agrees that Contractor will perform the Services in compliance with all City's Rules and "**Standard Terms and Conditions**" found at sanmarcostx.gov/StandardTermsandConditions, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
- 6.1 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, required for the performance of the Services.
7. **Performance.** Contractor represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under this Agreement. Contractor warrants that all services performed under this Agreement will be performed consistent with generally prevailing professional or industry standards.
8. **Authority.** Contractor represents and agrees that this Agreement reflects Contractor's full and correct name, and that Contractor is entering into this Agreement in an individual capacity/with authorization on behalf of the named entity.
9. **Conflict of Interest.** Contractor represents and agrees that Contractor presently has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the Services hereunder. Contractor further warrants that no relationship or affiliation exists between Contractor and City that could be construed as a conflict of interest with regard to this Agreement.
10. **Deliverables and Use of Documents.** All applicable drawings, specifications, plans, computations, data, photographs, records, models, statements, reports, and other deliverables or materials prepared or produced by

Contractor in connection with the Services (collectively, "**Service Deliverables**"), whether or not accepted or rejected by City, are the property of City and for its exclusive use and re-use at any time without further compensation and without any restrictions. Contractor will not sell, disclose, or obtain any other compensation for the Service Deliverables. Contractor will not use Service Deliverables in any manner for any other purpose without the express written consent of City.

11. **Assignment.** Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, without the express written consent of City. The benefits and burdens of this Agreement are assignable by City.
12. **INDEMNIFICATION. CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CAUSES OF ACTION, FINES, JUDGMENTS, LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, JOINT OR SEVERAL, WHETHER THEY BE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER TYPE OF CLAIM, WHICH MAY BE ASSERTED AGAINST ANY OF THEM ARISING OUT OF OR RELATED TO (I) ANY ACTION BY CONTRACTOR OR ITS AGENTS IN THE CARRYING OUT OF THE SERVICES DURING THE TERM OF THIS AGREEMENT; (II) THE NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF CONTRACTOR OR ITS AGENTS; (III) ANY VIOLATION OF ANY REQUIREMENT APPLICABLE TO CONTRACTOR OR ITS AGENTS UNDER ANY FEDERAL, STATE, OR LOCAL LAW OR REGULATION, (IV) THE FAILURE OF CONTRACTOR TO PERFORM SPECIFIED DUTIES UNDER THIS AGREEMENT, OR (V) THE BREACH OF THIS AGREEMENT BY CONTRACTOR, EXCEPT IN EACH CASE TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF THE CITY. OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT AND WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**
13. **Order of Precedence.** When applicable, this Agreement includes by reference, the provisions of the solicitation documents, Contractor's response to the solicitation, and exhibits or attachments to this Agreement. In case of any conflict among the provisions of this Agreement and the provisions of any exhibits or attachments to this Agreement, this Agreement will govern and control.

Insurance: Review "Insurance Requirements for Vendors" guide for other required insurance or deletion thereof.

14. **Insurance and Liability:** During the period of the resulting contract, the Contractor will maintain, at its expense, insurance with limits not less than those prescribed below. Insurance underwriters will be acceptable to the City. With respect to required insurance, the Contractor will:
 - 14.1 Name the **City of San Marcos, c/o Purchasing and Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666** as an additional insured.
 - 14.2 Provide the City with a thirty (30) days' written notice to the Certificate Holder prior to cancellation or material change of any insurance referred to in the certificate.
 - 14.3 Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.
 - 14.4 Provide the City of San Marcos Purchasing and Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666, a Certificate of Insurance evidencing required coverage before execution of contract.

14.5 Submit a Certificate of Insurance reflecting coverage as follows:

Business automobile liability insurance with minimum limits of liability for bodily injury and property damage combined of not less than \$1,000,000 per occurrence. Contractor will maintain a standard ISO version of Business automobile liability insurance or its equivalent providing coverage for all owned, non-owned and hired automobiles. City will be included as an additional insured party.

Commercial General Liability Insurance: Including Bodily Injury and Property Damage Liability, Independent Contractors Liability, Contractual Liability, Product Liability and Completed Operations Liability in an amount not less than \$1,000,000 combined single limit, per occurrence, and \$2,000,000 aggregate. City will be included as an additional insured party.

Umbrella or Excess Liability Coverage: Not less than \$2,000,000 per occurrence and in the aggregate. This coverage typically sits above the underlying General Liability, Automobile Liability and Professional Liability policies. Depending upon the scope and work to be performed in the proposed agreement, this policy may be required in order for the vendor to be able to meet the minimum insurance requirements. {check with Mandy Riske in HR if amount should be different }

Workers' compensation insurance in accordance with and as required by the Workers' Compensation Act of the State of Texas in amounts sufficient to satisfy statutory requirements or \$500,000.00/\$500,000.00 for Employer's Liability.

Certificate of coverage or certificate means a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

Professional Liability is dependent upon the scope of services.

Professional Liability: Not less than \$1,000,000 per occurrence and aggregate to be maintained for the duration of the agreement and three years following its termination.

This insurance requirement applies when a supplier has a professional designation or license and/or is providing professional services. The minimum limit for architects and engineers is \$2,000,000 per occurrence and in the aggregate and may be increased depending upon the nature of the services to be provided to the City.

- 15. Additional Services/Change or Delay in Services.** If the City or Contractor requires a change or amendment to this Agreement or its Exhibits, the Authorization of Change in Services Form, **Exhibit 2** will be used to make such addition or change. The Authorization of Change in Services Form must be agreed to and signed by both parties before any change to this Agreement is effective.

MISCELLANEOUS PROVISIONS

- 16. Entire Agreement.** This Agreement supersedes all prior agreements, written or oral, between the Contractor and City and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.
- 17. Applicable Law/Venue.** The Agreement will be governed by and construed under the laws of the State of Texas. Any controversy, claim or dispute arising out of or relating to this Agreement will be brought in a state court of competent jurisdiction in Hays County or, if in federal court, in the Federal Western District of Texas, Austin Division for trial.

- 18. Waiver.** A delay or omission by either party in exercising any right or power under the Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement shall not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement.
- 19. Severability.** If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination shall not affect any other provision of this Agreement which shall be interpreted as if the invalid or unenforceable provision had not been included.
- 20. Independent Contractor.** Contractor recognizes that it is engaged as an independent contractor and acknowledges that the City shall have no responsibility to provide Contractor or its employees with any benefits normally associated with employee status. The Contractor will neither hold itself out as nor claim to be an officer, partner, employee or agent of City.
- 21. Family Code Child Support Certification.** If State funds are being used in the procurement of the services described in Exhibit 1, pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
- 22. Prohibition on Contracts with Companies Boycotting Israel.** Pursuant to Chapter 2271 and 808, Texas Government Code, the Contractor certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 23. Section 2252 Compliance.** Section 2252 of the Texas Government Code restricts the Owner from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. The Contractor hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 24. Prohibition on Contracts with Certain Foreign-Owned Companies.** Section 2274 of the Texas Government Code (SB2116) restricts the City from contracting with companies that do business with certain foreign-owned companies in connection with critical infrastructure if the company is granted direct or remote access; and if the company is owned by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a “designated country”, or headquartered in China, Iran, North Korea, Russia, or a designated country. Designated country is Governor-designated country as a threat to critical infrastructure. By signing below as an authorized signer, the Bidder hereby certifies that it does not do business with certain foreign-owned companies in connection with critical infrastructure as described herein. Failure to maintain the requirements under this provision will be considered a material breach.
- 25. Non-Discrimination.** The Contractor understands and certifies that it is an Equal Opportunity Employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation, gender identity, national origin, sex, age, disability or economic condition and prohibits retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier.
- 26. Proprietary Interests.** All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Contractor in the performance of services for Owner, which is not generally known to the public, shall be confidential and Contractor shall not disclose any such confidential information, unless required by law. The Contractor shall not announce or advertise its engagement by City in connection with the Project or publicly release any information regarding the Project without the prior written approval of City.

- 27. Termination Due to Loss of Funding.** If City funds are utilized to fund any part of this Agreement, the Contractor understands that those City funds for the payment for work performed by the Contractor under this Agreement have been provided through the City's budget approved by City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The City cannot guarantee the availability of funds and enters into this Agreement only to the extent such funds are made available. The Contractor acknowledges and agrees that it will have no recourse against the City for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.
- 28. Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives, and subcontractors have read and understand City's Ethics Policy available at <http://www.sanmarcostx.gov/380/Ethics>, and applicable state ethics laws and rules. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause City employees to violate City's Conflicts of Interest Policy, provisions described by City's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the City Council of San Marcos has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- 29. Subcontracting.** The Contractor will not subcontract any work under this Agreement without prior written approval from the City. In the event approval is given by the City, the Contractor will specify any work or services, the appropriate insurance requirements and miscellaneous provisions by separate written agreement with the subcontractor.
- 30. Mutual Waiver of Consequential Damages.** In no event shall either party be liable, whether in contract or tort or otherwise, to the other party for loss of profits, delay damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.
- 31. Force Majeure.** Contractor shall have no liability for any delay caused by an event of force majeure, the City or any of its consultant's or contractors, or circumstances outside of its reasonable control.
- 32. Termination for Convenience.** The City's City Manager or the City Manager's designee may terminate the Agreement at any time upon thirty (30) calendar days' notice in writing to the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement. As soon as practicable after the receipt of notice of termination, Contractor shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under the Agreement to date of termination. The City agrees to compensate the Contractor for that portion of the prescribed charges for which the services were actually performed, or items delivered under the Agreement and not previously paid.
- 33. Notices.** All notices referenced in this Agreement shall be provided in writing. Notices shall be deemed effective when delivered by hand delivery or on the third business day after the notice is deposited in the U.S. Mail. Notices shall be sent to the following addresses:

If to City: The City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666
Attn: City Purchasing Manager's Office
cosmpurchasing@sanmarcostx.gov

With Copies to: The City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666
Attn: City Attorney's Office
LegalInfo@sanmarcostx.gov

If to Contractor: {Firm Name}
{Firm Mailing Address}
{Firm City, State, Zip Code}
Attn: {Department or Contact Name}
{Firm Email Address}

The parties may designate alternative persons or addresses for receipt of notices by written notice.

34. Dispute Resolution. If a dispute arises out of or relates to the Agreement or these Terms and Conditions, or a breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

Delete paragraphs 35 and 36 if contract is less than \$100,000.

35. Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Section 2274 of the Texas Government Code (SB19) restricts the City from contracting with companies that discriminate against firearm and ammunition industries. By signing below as an authorized signer, the Contractor certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate against the same during the term of this contract. (Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.

36. Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Section 2274 of the Texas Government Code (SB13) restricts the City from contracting with companies that boycott energy companies. By signing below as an authorized signer, the Contractor certifies that it does not have a practice, policy, guidance, or directive boycotting energy companies, and will not discriminate against the same during the term of this contract. (Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.

37. WARRANTY AND DEGREE OF CARE. CONTRACTOR WARRANTS THE MATERIALS USED SHALL BE FREE OF DEFECT OR FAILURE FOR A PERIOD OF AT LEAST ONE YEAR FROM THE DATE OF COMPLETION OF THE SERVICES AND THAT ALL SERVICES PROVIDED BY CONTRACTOR SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER IN ACCORDANCE WITH THE SPECIFICATIONS OF THIS AGREEMENT AND IN ACCORDANCE WITH THE DEGREE OF CARE AND SKILL ORDINARILY EXERCISED UNDER SIMILAR CIRCUMSTANCES BY COMPETENT CONTRACTORS IN TEXAS APPLICABLE TO THE TYPE OF SERVICES CONTEMPLATED HEREUNDER. IN THE EVENT ANY DEFECT IS DISCOVERED OR DEVELOPS IN MATERIALS PROVIDED BY CONTRACTOR OR WORK PERFORMED BY CONTRACTOR WITHIN ONE YEAR AFTER COMPLETION OF THE SERVICES, CONTRACTOR WILL REPAIR OR REPLACE ANY SUCH MATERIALS OR WORK SO THAT IT IS NOT DEFECTIVE AND MEETS THE REQUIREMENTS OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the Effective Date written above:

OWNER:

THE CITY OF SAN MARCOS

FIRM:

{LEGAL NAME OF FIRM}

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Up to and including \$50,000 – Purchasing Manager signs

Over \$50,000 – City Manager signs after Council approval

Exhibits:

EXHIBIT 1 – Scope of Services and Deliverables, Project Schedule, Detailed Fee Schedule

EXHIBIT 2 – Authorization of Change in Service Form

Include- Exhibit 3 if applicable for Federal funded projects. Otherwise delete.

Include Exhibit 4 if applicable for On-Call Agreements. Otherwise delete.

EXHIBIT 3 – Any Federal Grant Terms and Conditions, as required

EXHIBIT 4 – On-Call Agreement Fund Allocation Request Form

SAMPLE