



**THE CITY OF SAN MARCOS  
SERVICES CONTRACT  
UTILITY RATE STUDY  
#219-119**

This **Agreement** (this "**Agreement**") is entered into by and between THE CITY OF SAN MARCOS, a municipality in the State of Texas ("**CITY**"), and GDS Associates, Inc., whose address is 1850 Parkway Place, Suite 800, Marietta, Georgia 30067 ("**CONTRACTOR**"), and is effective for all purposes as of the date of the last signature to this Agreement ("**Effective Date**").

City and Contractor agree as follows:

1. **Services.** Contractor will perform the Services ("**Services**" or "**Project**") and provide deliverables ("**Deliverables**") set forth in Exhibit A, attached and incorporated for all purposes, to the satisfaction of City.
2. **Term.** The term ("**Term**") of this Agreement will commence on the Effective Date, and will continue for a two (2) year term, unless sooner terminated as provided herein. The contract may be extended for six (6) 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. This option, if exercised, is to be executed in the form of an Authorization of Change in Services, to be issued no sooner than ninety days (90) prior to expiration of this contract, nor later than the final day of the contract period. This option to extend 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. The total period of the contract, including all extensions as a result of exercising this option, will not exceed a maximum combined period of eight (8) years.
3. **Compensation.** Contractor's fees for the Services are set forth in Exhibit A, attached and incorporated for all purposes for an amount not to exceed eighty thousand dollars and zero cents (\$80,000.00) for the initial two (2) year term of the Agreement. City will pay to Contractor compensation for performance of the Services within thirty (30) days after receipt of an appropriate invoice ("**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, and 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.

**WARRANTIES, TERMS, AND REPRESENTATIONS.**

4. **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**," when not in conflict with the terms of this Agreement, found at [www.sanmarcostx.gov/termsandconditions](http://www.sanmarcostx.gov/termsandconditions), including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
  - 4.1 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.
  - 4.2 Section 18 of the City's "Standard Terms and Conditions" is amended to include the following:: If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, the Contractor shall pay to the City upon demand the increased cost, if any, up to \$200,000.00, incurred by the City to procure such services from another source.

**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.

5. **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.
6. **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.

7. **Deliverables and use of Documents.** All 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.
9. **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.
10. **Order of Precedence.** This Agreement includes by reference, the provisions of the solicitation documents, Contractor's response to the solicitation, the exhibits or attachments to this Agreement. In case of any conflict among the provisions of this Agreement, the following descending order of precedence will be observed:
  - 10.1 This Agreement and Standard Terms and Conditions;
  - 10.2 Exhibit A;
  - 10.3 Solicitation Documents
  - 10.4 Contractor's Response to Solicitation
  - 10.5 Other exhibits and attachments to this Agreement

In the event of any conflict between the Agreement and the provisions of any exhibits or attachments to this Agreement, this Agreement will govern and control.

11. **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:
  - 11.1 Name the City of San Marcos, 630 East Hopkins Street, San Marcos, Texas 78666 as an additional insured.
  - 11.2 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.
  - 11.3 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.
  - 11.4 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.
  - 11.5 Submit a Certificate of Insurance reflecting coverage as follows:

Automobile Liability:

Bodily Injury (Each person) .....	\$1,000,000.00
Bodily Injury (Each accident) .....	\$1,000,000.00
Property Damage.....	\$1,000,000.00

General Liability (Including Contractual Liability):

Bodily Injury.....	\$1,000,000.00
Property Damage.....	\$1,000,000.00

Workers' Compensation..... Statutory

Professional Liability..... \$1,000,000

12. **Additional Services/Change or Delay in Services.** The City may direct the Contractor to perform services outside of the scope of the Services. The Contractor will submit a written estimate of fees to the City and obtain the City's authorization before initiating any additional services. Each material change (deletion or addition) in the services to be provided by Contractor must be authorized by the City on the Authorization of Change in Services, **Exhibit B** to this Agreement. Compensation for additional services will be in addition to that specified for the Services. The approval of the City Council is necessary for all additional services the compensation for which exceeds \$50,000. No charge will be made by the Contractor for any hindrance or delay from any cause whatever during the progress of any portion of its work that can reasonably be contemplated by the scope of work, but the City may grant an extension of time for the completion of the work, provided it has satisfied that such delays or hindrances were due to extraordinary causes or to

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.

7. **Deliverables and use of Documents.** All 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.
9. **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.
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Workers' Compensation..... Statutory

Professional Liability..... \$1,000,000

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the acts of omission or commission by the City. Any such extension of time will be provided utilizing the City's Authorization of Change in Services form.

**13. Force Majeure.** Neither City nor Contractor will be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

**14. Termination.** City may terminate this Agreement in accordance with the Standard Terms and Conditions. Upon such termination, City will pay Contractor, at the rate set out in Exhibit A, for Services satisfactorily performed through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Contractor for any Services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.

**15. Notice.** Any notices required under this Agreement will be made in writing, postage prepaid to the following addresses, and will be deemed given up hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three days after deposit in the United States Mail:

**CITY:**

The City of San Marcos  
Attn: City Manager's Office  
630 East Hopkins Street  
San Marcos, TX 78666

**CITY:**

The City of San Marcos  
Attn: Purchasing Manager's Office  
630 East Hopkins Street  
San Marcos, TX 78666

**CONTRACTOR:**

GDS Associates, Inc.  
Attn: Chuck E. Loy, CPA  
1850 Parkway Place, Suite 800  
Marietta, GA 30067

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:

**CONTRACTOR:**

Chuck Loy, CPA - GDS Associates, Inc.

Signature

5/16/2019

Date

Chuck Loy, CPA - GDS Associates, Inc. Principal

Print Full Name / Title (if not in individual capacity)

**CITY:**

  
Signature

Bert Lumbreras

Print Name

06/12/19  
Date

City Manager

Title



**EXHIBIT "A"**  
**SCOPE OF WORK**

**EXHIBIT A**

**GDS ASSOCIATES, INC.'S  
SCOPE OF WORK AND DELIVERABLES**

**YEAR ONE 2019 - Develop Comprehensive Rate Study, Computerized Rate Model, Written Report, and Presentation**

- 1. Review requested documentation needed to develop ten-year revenue requirements.**
- 2. Review and analyze past rate studies.**
- 3. Analyze and obtain a thorough understanding of each of the utilities' financial condition.**
  - Analysis of historical operating expenses, including the cost of water purchased, sewer treated, and cost of energy;
  - Analysis of continued growth projections, evaluation of utility departments' capital improvement/infrastructure program, and determination of funds needed to support the plan;
  - Analysis of historic demand and consumption characteristics with the purpose of properly classifying and segregating the costs associated with the different functions and customers of the City's utility systems;
  - Analysis of the impact of peak demands on the cost of providing service; and
  - Analysis of existing utility fund financial condition, reserves, and debt coverage;
  - Identify any shared costs among utilities to be allocated, if needed;
  - Identify or verify existing area cities to be used in benchmarking.
- 4. Identify special Rate Model Specifications per RFP #219-119.**
  - Work with Staff to identify standard reports consisting of detailed accounting and statistical data to be used for model input and updates.
  - Work with Staff to review options or "views" for graphical presentations for consumption, revenue, expenses, reserve balances and debt services times coverage data to be generated by rate model.
- 5. Develop 10-year revenue requirement based on analysis of financial and statistical information.**
- 6. Develop rate model for a ten-year period starting with October 1, 2019 through September 2020 with the following specifications:**
  - Utility rates based on the respective costs of these services: electric, water, and wastewater.
  - Maintains existing rate structures, classes and inside/outside ratios
  - Analysis and recommendations for fixed and variable structure of the rates;
  - Easily understood by customers and laypersons;
  - Develop Rate Schedules.

## **EXHIBIT A**

### **GDS ASSOCIATES, INC.'S SCOPE OF WORK AND DELIVERABLES**

**7. Develop Presentation and Final Written Report of Rate Model Outputs.**

- A draft presentation and report will be presented to senior management for revenue and incorporation of management comments
- Presentation/Report will include discussion and graphics on basics and objectives of rate making;
- Presentation/Report will provide an overview of the rate study including assumptions, inputs and relevant calculations where needed;
- Presentation/Report will Benchmark to Area Cities for all comparable customer classifications;
- Presentation/Report Analyze the impact of proposed rates on the City's ability to attract and retain retail and commercial businesses;
- Presentations to CUAB and/or City Council.

**YEAR TWO 2020 - Update Comprehensive Rate Study, Computerized Rate Model, Written Report and Presentation.**

- 1. Review analyze latest budgets, compare with previous years assumptions, adjust/update 10-year revenue requirement where needed.**
- 2. Conduct "hands on" live training involving Staff with model data input and updates.**
- 3. Make nominal computer model adjustments where needed post training/input.**
- 4. Analyze results and determine if there is a need for adjusting rate structures, rate classes, or propose riders.**
- 5. Update benchmark City rates.**
- 6. Update Presentation and Report to reflect new significant changes (if any) new rates, and rate recommendations and/or options on rate structure, customer classes, riders, etc.**
- 7. Presentations to CUAB and/or City Council.**

**EXHIBIT "B"**  
**AUTHORIZATION OF CHANGE IN SERVICE**

<b>AGREEMENT/ SERVICES NAME:</b>	<b>{Contract #}</b>	<b>{Contract Name}</b>
<b>CITY REPRESENTATIVE:</b>		
<b>CONTRACTOR:</b>		
<b>CONTRACT EFFECTIVE DATE:</b>		
<b>THIS AUTHORIZATION DATE:</b>		<b>AUTHORIZATION NO.:</b>

**DESCRIPTION OF WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES:**

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Original Contract Amount:	NTE	\$
Previous Increases/Decreases in Contact Amount:	NTE	\$
This Increase/Decrease in Contract Amount:	NTE	\$
Revised Contract Amount:	NTE	\$

**CONTRACTOR:**

Signature \_\_\_\_\_

Date \_\_\_\_\_

Print Full Name / Title (if not in individual capacity) \_\_\_\_\_

**CITY:**

Signature \_\_\_\_\_

Date \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

*City Department Use Only Below This Line (PM, etc.).*

Account Number(s):	Date:	Amount
#		
#		
#		