



City of San Marcos

Request for Qualifications

224-236

for

**PUBLIC-PRIVATE PARTNERSHIP FINANCIAL &
TRANSACTION ADVISOR(S)**

Issued: Tuesday, July 9, 2024

ISSUED BY:

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

RESPONSES DUE:

**August 8, 2024,
Prior to 2:00 PM, Local Time**

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I. REQUESTS FOR QUALIFICATIONS

The City of San Marcos (“the City”) requests Qualifications from interested qualified Respondents to provide Public-Private Partnership (“P3”) Financial Advisory Services, in accordance with the terms and Scope of Services specified herein.

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

This solicitation complies with applicable City Policy and state of Texas law, including Texas Government Code 2254. The City will select the successful Respondent that is determined to be the most highly qualified based on the published Evaluation Criteria, its final ranking, and a finally negotiated fair and reasonable price.

II. PROJECT BACKGROUND AND OBJECTIVES

The City of San Marcos, Texas (pop. 86,000) is a dynamic community located between San Antonio and Austin, and is home to Texas State University. San Marcos is the county seat for Hays County, one of the fastest-growing counties in Texas. San Marcos’ population is expected to grow to 145,000 by 2035. San Marcos is known for its unique natural setting. The Blackland Prairie lies to the east, and Texas Hill Country is to the west. The San Marcos River, originating from the San Marcos Springs, runs through the city and joins with the Blanco River. The Springs are home to several threatened or endangered species. The presence of the River is a draw for locals and tourists, and is also a significant driver in the City’s commitment to protecting water quality and being outstanding stewards of the natural environment. Regarding the local economy, San Marcos’ central location along IH-35 and regional airport makes it ideal for industry and business growth.

About the Project:

The City of San Marcos would like to revitalize the Hopkins Street corridor between IH 35 and North CM Allen Parkway. This area serves as a primary gateway into San Marcos, and the City desires to refresh the area to better reflect the community and San Marcos’ natural beauty. Specifically, the City desires to build a new City Hall complex on City-owned land on the northern side of Hopkins Street next to the Public Library and San Marcos Activity Center. A new City Hall will meet the needs of a growing City staff, and allow for a civic center on the northern side of Hopkins. There is also an existing skate park and dog park in this immediate vicinity. Further along Hopkins Street, as it approaches North CM Allen Parkway, there are other City facilities, including a Veteran’s Plaza, San Marcos Plaza Park, and the Grant Harris Building. Additionally, the San Marcos River runs perpendicular to the Hopkins Street within this section. The City desires not only a new City Hall building, but connectivity and walkability amongst the City facilities along the northern side of Hopkins.

The City is interested in an eventual public-private partnership with a master developer to redevelop the site that the existing San Marcos City Hall is on.

San Marcos City Hall is currently located at 630 E. Hopkins Street, on the southern side of Hopkins and essentially across the street from the location identified for the new City Hall. On the land the City Hall is currently on, the City wishes to enter into a public-private partnership with a master developer to develop a mixed-use development that meets market demand, reflects community values, and increase the overall tax value on the assessment rolls.

Although not in the area defined for this project, the San Marcos historic downtown square is located in very close proximity, and is a thriving downtown square anchored by the County courthouse.

The City’s goals with this project include, but are not limited to:

- Revitalizing this gateway entrance into the community from IH-35 to N CM Allen Parkway

- Building a new City Hall
- Sparking new development in the area that meets market and community needs
- Leveraging the existing City facilities and parkland to create a cohesive, well-designed, connected space that the community can enjoy
- Safe, connected multi-modal transportation within the area
- Attractive public spaces and roadways
- Environmental protection of the nearby river

The City of San Marcos has performed previous studies on potential development scenarios for the properties. The City is requesting P3 advisory services to assist the City with developing a plan that is financially feasible, a conceptual land plan that meets community vision and reflects the market, and provides recommendations for funding and deal structure.

The City of San Marcos has completed several studies on the development of a new City Hall to inform the consultant on potential scenarios and constraints to be considered. The following are included as appendices to this Request for Qualifications.

- 2019 Jacobs Presentation – The study identified 130,000 sf City Hall with 8 acres of impervious cover (IC). This results in the maximum 30% of impervious cover allowed by the San Marcos River Corridor Ordinance, without any additional for private development.
- 2022 CAMPO Transportation Corridors Study – looked at City Hall and Downtown catalyst sites. Two development plans (A & B) were provided for new City Hall with housing and office spaces. **The City Council has provided direction to staff to proceed with further analysis on the CAMPO study option B for the location of a new City Hall.**

The parent parcel for both the current and proposed City Hall locations (with some exclusions) is dedicated parkland. In the past, San Marcos voters have approved releases of the parkland dedication. At this time, the City anticipates holding an election to release this parkland in November 2025. Effective and inclusive public engagement will be a critical component of the project leading up to the November 2025 election.

The City has hired an architect to conduct a Comprehensive Space Study for the new City Hall, and this effort is currently underway. This exercise will include an assessment of the parking needs for the new City Hall, the proposed size of the new building, and a cost estimate conducted by a third party.

Map 1: Shows project area for planning purposes

City Owned Property Near City Hall

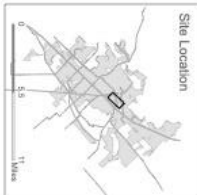


Primary Area of Redevelopment
 City Property To Be Included in Planning Effort
 City Property That Can Optionally Be Considered for Planning Effort

SAMMYARCOS
 Engineering and Capital Improvements



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
 Date: 6/10/2024



Map 2: Shows planning area with relationship to IH-35. As part of the larger gateway creation goal, the City may be interested in exploring some beautification efforts along Hopkins from IH 35 to N CM Allen Parkway.

City Owned Property Near City Hall

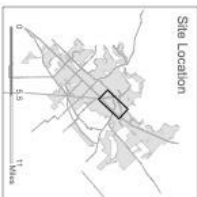


- ▭ Primary Area of Redevelopment
- ▭ City Property to be included in Planning Effort
- ▭ City Property that can optionally be considered for Planning Effort

SAMMYARCOS
Engineering and Capital Improvements



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Date: 6/11/2024



The City Hall property is located within the FEMA 0.2% Annual Chance Flood Hazard Area. Therefore, the protection of structures and impacts of new construction must be analyzed in compliance with the City's flood protection ordinance. Additionally, the City property is included within the San Marcos River Corridor Protection Zone and Water Quality and Buffer Zones, which limit impervious cover and necessitate treatment of runoff. Considerations for meeting City regulations must be considered during the initial alternatives planning.

III. SCOPE OF SERVICES AND RESPONSIBILITIES

The successful Respondent will provide various advisory services associated with the redevelopment and revitalization of the Hopkins Street corridor, which serves as a gateway into San Marcos. The advisory services provided by the successful Respondent will guide the City's execution of the key project components: the design and construction of a new City Hall, an improved gateway to the community along Hopkins, and the development of a mixed-use center on City-owned property. At the conclusion of the work performed by the successful Respondent, the City should have:

- Vision for revitalization of the area that is financially feasible and realistic for the area's real estate market
- Conceptual land plan that achieves the City's goals
- A preliminary concept for private development on the existing City Hall tract that balances community values and vision with market realities and provides an appropriate amount of flexibility for a future master developer
- An understanding of the various financial tools and approaches that will accomplish the City's vision and a clear recommendation for which tool(s) are most advantageous to the City
- Initial recommendations regarding potential transaction structure between the City and a master developer

Services may include, but are not limited to, the following:

Visioning and Refinement:

- Work with the City project team and leadership to discuss, confirm, and prioritize the project objectives and the assumptions, motivations, and aspirations underlying them.
- Review existing project documents.

Conduct Market Analysis and Development Gap Analysis:

- Conduct updated market analysis to identify the current economic and market conditions around the site, and identifies the demand for residential, retail, and other commercial uses.
- Perform business case/Value for Money Analysis and risk analysis. Create a residual land value analysis with a development budget (hard & soft costs) and an initial 10-year operating pro forma. Include a development gap analysis.
- Identify alternatives to General Obligation bond issuance to fund public uses. Provide a menu of financing and real estate options. Provide recommendations and pros/cons of different approaches.
- Provide recommendations regarding the feasibility of the project.

Public Engagement Efforts:

- Provide input into the City's proposed stakeholder engagement strategy.
- Assist City with engaging external groups and individuals. Assist with community engagement as it relates to the land planning initiatives to understand community desires and sentiments for the area.
- Assist with creating meeting materials (i.e. visual aids, character imagery, graphics to reflect potential development layouts) where needed.
- Review collected community input as it relates to this project and integrate it into overall financial and land planning efforts where feasible.

Conceptual Project Master Plan:

- Develop a conceptual land plan for the Hopkins Street corridor area that includes a new City Hall and an appropriate mix of uses informed by the market study and community input.
- Express an understanding of the City's development regulations that will impact the conceptual land plan.
- Identify existing development regulations that may hinder the City's ability to accomplish its goals and objectives for the area.
- Develop two (2) potential conceptual development land plans for the City to evaluate.
- Develop conceptual design documents, including renderings, and a conceptual site plan, including massing, sizing, and programmatic elements, for the selected conceptual development land plan.
- Identify infrastructure requirements and associated delivery costs.
- Provide recommendations for development execution to ensure the City and community's vision is met while balancing a future developer's need for flexibility (i.e. recommendation to create a Design Book with standards or Design Review Committee).

Transaction Structure:

- Define preferred ownership structure – ground lease, lease-leaseback, etc.
- Define the recommended project delivery method for overall development and align it with preferred delivery for public facilities.
- Identify preferred financing and funding methods for public use.
- Demonstrate expertise and experience with Tax Increment Financing and creating Tax Increment Reinvestment Zones in Texas.
- Determine appropriateness of risk and reward allocation of project delivery structure.

Solicitation Development / Pre-Solicitation Activities:

- Assist the City with the development of a request for the master developer solicitation process and associated documents.
- Review and provide input to the City regarding solicitation-related documents, other attachments, and requirements for the release.
- Provide recommendations regarding the response evaluation framework, including selection criteria and the scoring system to be utilized during the evaluation process.

Procurement:

- Reviewing and advising on received responses to the solicitation.
- Leading financial evaluation process of received responses to the solicitation.

Presentations to the City Council:

- May present to City Council as needed.

Subsequent Phase:

Should the City successfully award a master developer due to the solicitation, the P3 Advisor may be requested to provide future services regarding negotiations, financial evaluations, and other associated activities. Costs for those services will be negotiated at that time.

IV. 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.		
1	EXPERIENCE OF KEY PERSONNEL WITH PROJECTS OF SIMILAR SIZE, SCOPE, AND COMPLEXITY <ul style="list-style-type: none"> Reference three (3) or more relevant projects completed in the last seven (7) years Client satisfaction: Provide owner references for each relevant project cited Demonstrate experience of key personnel 	35 points
2	PRIOR EXPERIENCE OF FIRM(S) MANAGING PROJECTS OF SIMILAR SIZE, SCOPE, AND SCALE <ul style="list-style-type: none"> Years in Business Capacity to perform 	25 points
3	PROJECT APPROACH TO SCOPE OF WORK <ul style="list-style-type: none"> Describe how the P3 Advisor will manage and complete the assigned scope of work, including management of relevant sub-consultants. Proposed schedule 	20 points
4	EXPERIENCE OF KEY PERSONNEL WITH POSITIVE COMMUNITY AND STAKEHOLDER ENGAGEMENT <ul style="list-style-type: none"> Participate in meaningful community outreach, including experience effectively presenting technical material to general audiences Collecting and considering community input and making necessary adjustments based on community feedback 	20 points
TOTAL POINTS		100 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 twenty-five (25) points. Any additional points earned 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 selection committee's decision 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.

V. REQUIREMENTS FOR RESPONSE

The following items must be submitted with the Response. 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 understanding and comprehensive evaluation of the Response.

1) Executive Summary: (one page limit)

- In lieu of a cover letter, provide a one-page Executive Summary identifying and substantiating the basis of your contention that your firm is a qualified respondent to this solicitation. Also provide the name, title, business address, email address, and telephone number of the individual the City should contact regarding your submittal.
- Confirmation that the general liability insurance, workers' compensation, and professional liability insurance will be provided 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.

2) Relevant Experience Information: (eight page limit)

- Identification of the Respondent/team and a brief description of each key team member including a brief summary of their experience, education, and relevant certifications (if applicable). Provide information on experience and confirmation that key personnel are registered or licensed to practice in Texas, if applicable.
- Provide a brief description of each proposer firm separately including year organization established, number of employees, and number of projects/clients in state of Texas.
- Identify any projects that key personnel have worked together on.
- Provide a graphical corporate organizational chart showing the relationship between firm(s) and key personnel as it relates to the project. Clearly identify which firm(s) and personnel will work as sub-consultants to a primary consultant.

3) Relevant Projects of Similar Scope, Size, and Complexity: (five page limit)

- Provide a brief description of three (3) or more relevant projects completed within the last seven (7) years. Each key personnel within this proposed project team should have worked on at least one (1) of the relevant projects included. Clearly identify the role held by the key personnel for each relevant project.
- Highlight relevant project attributes or features that are similar to the proposed project in San Marcos.
- Provide the current status for each relevant project:
 - Report received by client, no further action;
 - Client received report and moved forward with executing project;
 - Project in process or completed; etc.)
- Provide client representative contact information for each relevant project referenced.

4) Proposed Project Schedule, Strategy and Approach: (two page limit)

- Provide a narrative describing your proposed services, strategy, and project schedule for implementation.

5) Relevant Experience with Community Engagement: (three page limit)

- Provide a narrative describing each key personnel's experience with stakeholder and/or community engagement. Highlight any relevant experiences in which better understand the needs and wants of stakeholders directly impacted a project plan.

6) Information Questionnaire and Assurances:

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

7) **House Bill 89 Verification Affidavit:**

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

8) **Conflict of Interest Questionnaire (CIQ):**

- Submit the completed and notarized Conflict of Interest Questionnaire (Attachment “C”) with the Response.

VI. 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:

**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.: **224-236**

PROPOSAL TITLE: **Public-Private Partnership Financial & Transaction Advisor**

DUE DATE/TIME: **August 8, 2024, no later than 2:00 PM, 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. Instructions for access to the video conference can be located at the top of the www.sanmarcostx.gov/eprocurement. Registration for the video conference submittal acknowledgement must be made at least thirty (30) minutes prior to 2:00 PM. Registrations made later than thirty (30) minutes prior to the time of opening are not guaranteed access to the video conference.

VII. 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 "D",

which includes the City's Standard Terms and Conditions found at sanmarcostx.gov/termsandconditions. Where conflicts exist between the provisions of Attachment "D" 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. 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.

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.

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., fifteen (15) 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:

Veronica Bradshaw, CPPB, CTCM
Purchasing Manager
Purchasing & Contracting Division
City of San Marcos
Email: cosmpurchasing@sanmarcostx.gov

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 ten (10) business days prior to the solicitation due date.

IX. ANTICIPATED SCHEDULE

The following is the anticipated schedule for the selection process:

- **July 9, 2024** – Advertise, mail, or email Solicitation
- **July 18, 2024** – Deadline for submission of questions to cosmpurchasing@sanmarcostx.gov
- **July 25, 2024** – Deadline for addendum to be posted at www.sanmarcostx.gov/eprocurement
- **August 8, 2024** – Deadline for receipt of responses
- **October 2, 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

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

For vendor doing business with local governmental entity

FORM CIQ

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
PROFESSIONAL {ARCHITECTURAL} {ENGINEERING} FIRM**

This Agreement (“Agreement”) is entered into by and between the Owner, City of San Marcos, Texas (“CITY”), and {vendor}, {City, State}, (“Professional {Architectural} {Engineering} Firm”), and is effective for all purposes as of the date of the last signature to this Agreement (“Effective Date”).

The Owner: The City of San Marcos, Texas

and

The Professional Firm (“Firm”): {A/E Name, City, State}

for

The Project: {Include “On-Call Agreement Project Title, Number, if applicable}
{Project Title and Contract Number}

Owner Standard Terms and Conditions: Parties have read and agree to be bound by the Standard Terms and Conditions, when not in conflict with the terms of this Agreement, found at sanmarcostx.gov/StandardTermsandConditions.

Further;

The Owner and the Professional Firm agree as follows:

**ARTICLE 1
PROFESSIONAL FIRM’S SERVICES**

Professional Firm agrees to perform the services specifically described in **Exhibit 1** and all other professional services reasonably inferable from **Exhibit 1** and necessary for complete performance of Firm’s obligations under this Agreement (collectively, “**Services**”). To the extent of any conflict between the terms in **Exhibit 1** and this Agreement, the terms of this Agreement shall prevail.

**ARTICLE 2
PROFESSIONAL FIRM’S RESPONSIBILITIES**

Professional licensed engineer or registered architect will perform services:

- (1) with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and
- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

The Firm shall at all times provide sufficient personnel to accomplish Services in a timely manner. The Firm shall manage its services, administer the Project and coordinate other professional services as necessary for the complete performance of its' obligations under this Agreement.

Professional Firm agrees to perform Services in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

The Firm's Services shall be reasonably accurate and free from material errors or omissions. The Firm shall promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other services provided by the Firm without any additional cost or expense to Owner.

The Firm shall designate a representative primarily responsible for Firm's Services under this Agreement. The designated representative shall act on behalf of Firm with respect to all phases of Professional Services and shall be available as required for the benefit of the Project and Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

The Firm shall carry such professional liability and errors and omissions insurance, covering the services provided under this Agreement, with a minimum limit of \$1,000,000 each claim and \$1,000,000 aggregate. The fees for such insurance will be at the expense of the Professional Firm. The Firm shall deliver a Certificate of Insurance indicating the expiration date, and existence, of the Firm's professional liability insurance before commencement or continuation of performance of the services under this Agreement.

For "On-Call" Agreements, use the paragraph below. Modify Exhibit # as appropriate. Otherwise delete.

On-Call Professional Services. The Professional Firm will perform assigned services as described in **Exhibit "6"**, On-Call Agreement Fund Allocation Request Form. The Fund Allocation Request Form serves to "assign" specific project related scopes of services and establishes the price for such services within the overall Master Agreement.

ARTICLE 3 **THE OWNER'S RESPONSIBILITIES**

The Owner shall provide the Professional Firm with a full description of the requirements of the Project.

The Owner shall furnish surveys, geotechnical reports or other special investigations of the Project site as requested by the Professional Firm and as reasonably necessary for the completion of Professional Firm's Services. The Owner shall furnish structural, mechanical, chemical, and other laboratory tests as reasonably required.

The Owner will review the drawings, specifications and other documents of service produced by Professional Firm in the performance of its obligations under this Agreement (collectively the "Design Documents") as required. Owner will notify Firm of any design fault or defect in Services or Design Documents of which Owner becomes aware.

The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Professional Services.

The Owner designates **{name of PM}**, as its representatives authorized to act in the Owner's behalf with respect to the Project. The contact information for Owner's representative is listed below:

{Name and Title}
{Department}

630 East Hopkins Street
San Marcos, Texas 78666
Telephone.: 512-{xxx-xxxx}
Email: {email address}

For “On-Call” Agreements, use the paragraph below. Modify Exhibit # as appropriate. Otherwise delete.

Fund Allocation Request Form. As required, the Owner will issue specific project related scopes of services assignments utilizing the Fund Allocation Request Form, **Exhibit “6.”** The issuance of assigned services via the Fund Allocation Request Form shall be binding and in compliance with the terms of this Agreement.

ARTICLE 4

OWNERSHIP AND USE OF DOCUMENTS

The Design Documents prepared by Professional Firm as instruments of service are and shall remain the property of the Firm whether the Project for which they are created is executed or not. However, the Owner shall be permitted to retain copies, including reproducible copies, of the Design Documents for information and reference in connection with the Owner’s use and occupancy of the Project. In addition, Owner shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the Design Documents and the ideas and designs contained in them for any purpose, with or without participation of the Professional Firm.

ARTICLE 5

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 Owner and the Firm 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 Contract 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 Owner and Firm 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.

ARTICLE 6

PROJECT TERMINATION OR SUSPENSION

This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured in the seven (7) calendar days’ notice period. This Agreement may be terminated by the Owner’s City Manager or City Manager’s Designee for any reason upon fifteen (15) calendar days’ written notice to the Firm.

In the event of termination through no fault of the Firm, the Firm shall be equitably compensated for all Professional Services performed and Reimbursable Expenses incurred prior to termination in accordance with this Agreement.

ARTICLE 7 MISCELLANEOUS PROVISIONS

Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between the Firm and Owner 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.

Assignment. This Agreement is a personal service contract for the services of Professional Firm, and Professional Firm's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Applicable Law. 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.

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.

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.

Independent Contractor. Professional Firm recognizes that it is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide Professional Firm or its employees with any benefits normally associated with employee status. The Firm will neither hold itself out as nor claim to be an officer, partner, employee or agent of Owner.

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, Professional Firm 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.

Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Chapter 2271 and 808, Texas Government Code, the Firm 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.

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 Firm 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.

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.

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.

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.

Non-Discrimination. The Firm 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.

Proprietary Interests. All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Professional Firm in the performance of services for Owner, which is not generally known to the public, shall be confidential and Professional Firm shall not disclose any such confidential information, unless required by law. The Firm shall not announce or advertise its engagement by Owner in connection with the Project or publicly release any information regarding the Project without the prior written approval of Owner.

Termination Due to Loss of Funding. If Owner funds are utilized to fund any part of this Agreement, the Firm understands that those Owner funds for the payment for work performed by the Firm under this Agreement have been provided through the Owner's budget approved by Owner 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 Owner cannot guarantee the availability of funds and enters into this Agreement only to the extent such funds are made available. The Firm acknowledges and agrees that it will have no recourse against the Owner 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 Owner extends from October 1st of each calendar year to September 30th of the following calendar year.

Ethics Matters; No Financial Interest. Firm and its employees, agents, representatives, and subcontractors have read and understand Owner's Ethics Policy available at <http://www.sanmarcostx.gov/380/Ethics>, and applicable state ethics laws and rules. Neither Professional Firm nor its employees, agents, representatives or subcontractors will assist or cause Owner employees to violate Owner's Conflicts of Interest Policy, provisions described by Owner's Standards of Conduct Guide, or applicable state ethics laws or rules. Professional Firm 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.

Subcontracting. The Professional Firm will not subcontract any work under this Agreement without prior written approval from the Owner. In the event approval is given by the Owner, the Professional Firm will specify any work or services, the appropriate insurance requirements and miscellaneous provisions by separate written agreement with the subcontractor.

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.

Texas Tax Code 171.1011(g)(3). Notwithstanding anything in this agreement and for the purpose of complying with Texas Tax Code 171.1011(g)(3), the City agrees to the following:

- (1) Prior to commencing performance under this Agreement, Firm will provide the City with a list of proposed subconsultants, subcontractors, or agents to be used in Professional Firm's services under this Agreement. The City shall have the right to accept or reject the use of any subconsultant, subcontractor, or agent on the Professional Firm's list. Such acceptance or rejection shall be given within a commercially reasonable time from the date the Professional Firm delivers it, and;
- (2) Any payment made by the Owner to the Firm that includes fees payable to a subconsultant, subcontractor or agent of Professional Firm under this Agreement shall constitute an acceptance by the Owner of Firm's use of any such subconsultant, subcontractor or agent of the Firm under this Agreement.

Force Majeure. Professional Firm shall have no liability for any delay caused by an event of force majeure, the Owner or any of its consultant's or contractors, or circumstances outside of its reasonable control.

Termination for Convenience. The Owner'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 Firm. Upon receipt of such notice, the Firm 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, Professional Firm 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 Owner agrees to compensate the Firm for that portion of the prescribed charges for which the services were actually performed or items delivered under the Agreement and not previously paid.

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 Owner: 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 Professional Firm {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.

Changes in Service. If a Party requires a change or amendment to this Agreement or its Exhibits, the Parties agree to use the Authorization of Change in Services Form in **Exhibit 4** to do so. The Authorization of Change in Services Form must be agreed to and signed by both Parties before any change to this Agreement is effective.

ARTICLE 8 **REIMBURSABLE EXPENSES**

Reimbursable Expenses are in addition to Compensation for the Firm's Services and include actual and reasonable expenses incurred by the Firm, that are (i) outside the services listed in **Exhibit 1**; and (ii) solely and directly in connection with the performance of Professional Firm's Services. Such Reimbursable Expenses must be approved in writing by the Owner and may include the following:

Expense of transportation (coach class air travel only) and living expenses in connection with out-of-state travel as directed and approved in advance by the Owner. Transportation and living expenses incurred within the State of Texas are not reimbursable unless expressly approved by the Owner in advance.

Fees paid for securing approval of authorities having jurisdiction over the Project.

Professional models and renderings if requested by the Owner.

Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other project-related work product, other than that used solely in-house for the Firm.

Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project.

Expense of any additional insurance coverage or limits, excluding professional liability and errors and omissions insurance, required under this Agreement or requested by the Owner that is in excess of that normally carried by the Firm.

ARTICLE 9
ADDITIONAL SERVICES

Additional Services are services not included in the Professional Firm's Services and not reasonably inferable from its Services. Additional Services shall be provided only if authorized or confirmed in writing by the Owner. Prior to commencing any Additional Service, Professional Firm shall prepare for acceptance by the Owner an Additional Services Proposal detailing the scope of the Additional Services and the proposed fee for those services. Professional Firm shall proceed to perform Additional Services only after written acceptance of the Additional Services Proposal by Owner.

Upon acceptance by Owner, each Additional Services Proposal and the services performed by the Firm pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement.

ARTICLE 10
PAYMENTS TO PROFESSIONAL FIRM

The Firm shall present monthly Payment Requisitions to the Owner detailing the Firm's Services and approved Additional Services performed and the approved Reimbursable Expenses incurred for the Project in the previous month. With each application for payment, Firm shall submit payroll information, receipts, invoices and any other evidence of payment which Owner or its designated representatives shall deem necessary to support the amount requested.

Owner shall promptly review the Payment Requisition and notify Professional Firm whether the Payment Request is approved or disapproved, in whole or in part. Owner shall promptly pay Professional Firm for all approved services and expenses. For purposes of Texas Government Code § 2251.021(a)(2), the date performance of services is completed is the date when the Owner's representative approves the Payment Requisition.

Owner shall have the right to withhold from payments due the Firm such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Professional Firm or failure of the Firm to perform its obligations under this Agreement.

ARTICLE 11
PROFESSIONAL FIRM'S ACCOUNTING RECORDS

Records of the Firm costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for three (3) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Professional Firm in writing. The Firm's records shall be kept on the basis of generally accepted accounting principles.

ARTICLE 12
INSURANCE

For services performed on Owner's premises, Professional Firm shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement. On the Certificate of Insurance, name the **City of San Marcos, c/o Purchasing & Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666** as an additional insured. Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

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 Form Excess Liability with minimum limits of \$1,000,000. Umbrella coverage must follow form with the primary coverage.

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. Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner.

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. 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.

Upon request, the Firm shall furnish complete sets of its insurance policies to Owner for review. If additional insurance or changes to this article are required, they shall be explicitly laid out in **Exhibit 1**.

ARTICLE 13 **INDEMNITY**

PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR PROPERTY, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBPROFESSIONAL OR SUPPLIER COMMITTED BY PROFESSIONAL, ITS AGENTS, OR CONSULTANTS UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH PROFESSIONAL EXERCISES CONTROL, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (b) AND PROFESSIONAL WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT CITY AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

THE INDEMNIFICATION UNDER THIS SECTION SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO PROFESSIONAL'S LIABILITY.

PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS SECTION (INDEMNIFICATION) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

**ARTICLE 14
COMPENSATION**

The Professional Firm’s compensation for Professional Services shall be as follows:

Service Fees: The maximum fee for Professional Services shall not exceed {**spelled out**} dollars (**\$numbers**) as approved by the Owner set forth in Exhibit 2.

Reimbursable Expenses: For Reimbursable Expenses approved by the Owner (ref. Article 8 and Exhibit 2), Professional Firm shall be compensated for the actual expense incurred by the Firm. Notwithstanding the foregoing, Owner’s payment to the Firm for Reimbursable Expenses will not exceed a maximum of amount agreed upon in this Agreement and Exhibits without the prior written approval of the Owner.

Additional Services: The Firm’s Compensation for any approved Additional Services shall be as described in the Additional Services Proposal accepted by the Owner.

For “On-Call” Agreements, use Article 15 below and modify duration as required. Otherwise delete.

**ARTICLE 15
TERM OF CONTRACT**

Duration: The term of this On-Call Agreement will be for {**five (5)**} years from the established Effective Date. No additional work assignments through the Fund Allocation Request Form can be issued after this date; however, all assignments made prior to the expiration date, and which have not been completed, can be completed.

The Owner and the Professional Firm have entered into this Agreement as of the Effective Date.

OWNER:

THE CITY OF SAN MARCOS

By: _____
Name: _____
Title: _____
Date: _____

PROFESSIONAL FIRM:

{LEGAL NAME OF FIRM}

By: _____
Name: _____
Title: _____
Date: _____

Exhibits:

EXHIBIT 1 – Scope of Services and Deliverables

EXHIBIT 2 – Detailed Fee Schedule

EXHIBIT 3 – Project Schedule

EXHIBIT 4 – Authorization of Change in Service Form

*Include- Exhibit 5 if applicable for Federal funded projects. Otherwise delete.
Include Exhibit 6 if applicable for On-Call Agreements. Otherwise delete.*

EXHIBIT 5 – Any Federal Grant Terms and Conditions, as required

EXHIBIT 6 – On-Call Agreement Fund Allocation Request Form

SAMPLE

EXHIBIT 1
SCOPE OF SERVICES AND DELIVERABLES

SAMPLE

EXHIBIT 2
DETAILED FEE SCHEDULE

SAMPLE

EXHIBIT 3
PROJECT SCHEDULE

SAMPLE

EXHIBIT 4
AUTHORIZATION OF CHANGE IN SERVICE

SAMPLE

Attachment E: San Marcos Transportation Corridor Study

The San Marcos Transportation Corridor Study, developed by CAMPO, can be found at:
https://www.campotexas.org/wp-content/uploads/2023/03/SanMarcosTransportationCorridorStudyS2022_Final_DocumentWithExecutiveSummary_Pages-UPDATED.pdf

Pages 113, 118-123, 150-157 are particularly relevant to this RFQ.