

**AGREEMENT BETWEEN
THE CITY OF SAN MARCOS AND
PROFESSIONAL FIRM**

This Agreement is made as of May 1, 2020 (the “**Effective Date**”), by and between:

The Owner: The City of San Marcos, Texas

and

The Professional Firm: Schneider Engineering, LTD, Boerne, Texas

for

The Project: 220-199 – Regulatory Tracking and Compliance Engineering Services

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 www.sanmarcostx.gov/termsandconditions.

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 Professional Firm’s obligations under this Agreement (collectively, “**Professional Firm’s Services**”). To the extent of any conflict between the terms in **Exhibit 1** and this Agreement, the terms of this Agreement shall prevail.

The Term of this Agreement will commence on the Effective Date, and will continue for one (1) year term, unless sooner terminated as provided herein. The contract may be extended for four (4) additional one (1) year periods, provided all terms and conditions remain in full force and effect except for the contract period being extended or any price redetermination. This option, if exercised, is to be executed in the form of an Authorization of Change in Services, **Exhibit 3**, to be issued no sooner than ninety days (90) prior to expiration of this contract, nor later than the final day of the contract period. This option to extend requires the mutual agreement of both parties. Refusal by either party to exercise this option to extend will cause the contract to expire on the original or mutually agreed upon date. The total period of the contract, including all extensions as a result of exercising this option, will not exceed a maximum combined period of five (5) years.

ARTICLE 2
PROFESSIONAL FIRM’S RESPONSIBILITIES

Professional Firm agrees to perform services with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Professional Firm shall at all times provide sufficient personnel to accomplish Professional Firm's Services in a timely manner. Professional Firm shall manage its services, administer the Project and coordinate other professional services as necessary for the complete performance of Professional Firm’s obligations under this Agreement.

Professional Firm agrees to perform Professional Firm's 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.

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

Professional Firm shall designate a representative primarily responsible for Professional Firm's Services under this Agreement. The designated representative shall act on behalf of Professional Firm with respect to all phases of Professional Firm's 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 Professional 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 Professional Firm shall deliver a Certificate of Insurance indicating the expiration date, and existence, of the Professional Firm's professional liability insurance before commencement or continuation of performance of the services under this 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 Professional Firm's reports and other documents of service produced by Professional Firm in the performance of its obligations under this Agreement (collectively the "**Reports and Documents**") as required. Owner will notify Professional Firm of any fault or defect in Professional Firm's Services or Reports and 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 Firm's Services.

The Owner designates Tyler Hjorth, Assistant Director-Electric Utility, 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:

Tyler Hjorth, Assistant Director-Electric Utility
630 East Hopkins Street
San Marcos, Texas 78666
Ph.: 512-393-8309
E-mail: thjorth@sanmarcostx.gov

ARTICLE 4

OWNERSHIP AND USE OF DOCUMENTS

The Reports and Documents prepared by Professional Firm as instruments of service shall remain the property of the Owner. In addition, Owner shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the Reports and Documents 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 Professional Firm agree to act in good faith in the selection of the mediator and to 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 Professional 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 Professional Firm.

In the event of termination through no fault of the Professional Firm, Professional Firm shall be equitably compensated for all Professional Firm 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 Professional 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 Professional Firm 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. Professional 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 A, 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 2270 and 808, Texas Government Code, Professional Firm certifies that it 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. Professional Firm hereby certifies that it 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.

Non-Discrimination. In performing services under this Agreement, the Professional Firm will not discriminate against any person based on race, religion, national origin, sex, color, or age, and will not discriminate in employment practices against qualified persons because of disabilities.

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. Professional 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 Professional Firm understands that those Owner funds for the payment for work performed by the Professional 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 Professional 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. Professional 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.

191 Menger Springs Parkway
Boerne, Texas 78006
nbrown@se-texas.com

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 3 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. The approval of the City Council is necessary for all additional services or annual renewals the compensation for which exceeds \$50,000.

ARTICLE 8

REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to Compensation for Professional Firm's Services and include actual and reasonable expenses incurred by the Professional 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 Professional 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 Professional Firm.

ARTICLE 9

ADDITIONAL SERVICES

Additional Services are services not included in the Professional Firm's Services and not reasonably inferable from Professional Firm's 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 Professional 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

Professional Firm shall present monthly Consultant Payment Requisitions to the Owner detailing the Professional 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, Professional Firm shall submit 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 Consultant 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 net 30 days 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 Professional 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 Professional Firm to perform its obligations under this Agreement.

ARTICLE 11 **PROFESSIONAL FIRM'S ACCOUNTING RECORDS**

Records of Professional 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. Professional 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, Purchasing and Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666** as an additional insured.

Worker's Compensation	Statutory Limits
Employer's Liability	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Comprehensive General Liability	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Comprehensive Auto Liability	\$1,000,000 each person
Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
Professional Liability	\$1,000,000

Professional Firm shall include the Owner as an additional insured on the General Liability policy, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner.

Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

Upon request Professional 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 Firm shall hold Owner, The City of San Marcos, and its City Council, officers, agents and employees harmless and free from any loss, damage or expense to the extent that the loss, damage or expense is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

ARTICLE 14

COMPENSATION

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

Fees: Professional Firm's Services are estimated to be **\$15,000.00 (Fifteen Thousand Dollars and 00/100) annually**, 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 Professional Firm. Notwithstanding the foregoing, Owner's payment to Professional 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 Professional Firm's Compensation for any approved Additional Services shall be as described in the Additional Services Proposal accepted by the Owner.

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

OWNER:

PROFESSIONAL FIRM:

THE CITY OF SAN MARCOS

SCHNEIDER ENGINEERING LTD

By: Lynda Williams
DocuSigned by: 6568F3FQ2AD8484
 Name: Lynda Williams
 Title: Purchasing Manager
 Date: 4/29/2020

By: Lance Pettigrew
DocuSigned by: 5B25B9EF41184D3
 Name: Lance Pettigrew
 Title: President
 Date: 4/27/2020

Exhibits:

EXHIBIT 1 – Scope of Services, Deliverables, Fee

EXHIBIT 2 – Detailed Rates

EXHIBIT 3 – Authorization of Change in Service Form

Exhibit 1
Scope of Services, Deliverables, and Fees



PROPOSAL

2020 AGENCY TRACKING AND COMPLIANCE SUPPORT SERVICES

PREPARED FOR:

CITY OF SAN MARCOS / SAN MARCOS ELECTRIC UTILITY

December 13, 2019

Client: City of San Marcos / San Marcos Electric Utility

Proposal: Regulatory Support Services – Agency Tracking and Compliance Support

Scope of Work: Schneider Engineering (SE) proposes to provide City of San Marcos (COSM) / San Marcos Electric Utility (SMEU) with ongoing Regulatory Tracking and Compliance Support services designed to address regulatory compliance issues and tasks in a proactive and timely manner.

Services and deliverables include the following:

- **Agency Tracking** for NERC, FERC, TRE, ERCOT, PUCT, EPA and other relevant regulatory agencies. Tracking tasks and activities include:
 - Attend relevant meetings, workshops, training sessions and provide meeting summaries and issue papers/written briefs as needed;
 - Monitor agency websites and other public information sources to track current standards and requirements along with any emerging / developing regulations;
 - Review emerging issues with COSM / SMEU staff. Jointly determine whether individual issues require further monitoring, or immediate action including filing comments as needed.
- **Prepare and submit all applicable reports** to TRE, NERC, ERCOT and other agencies as needed. Assist with monthly, quarterly and annual reporting and submittals to TRE, NERC and ERCOT.
 - Assist with executing the annual self-certification information upload through the Texas RE electronic portal.
 - Coordinate NERC Alert responses for COSM / SMEU.
 - Assist / coordinate the non-standard Requests for Information (RFI).
- **Develop and maintain NERC Compliance Program (NCP), ERCOT Compliance Program (ECP), and Event Reporting Operating Plan (EROP) documents.**
 - Maintain and update COSM / SMEU's NCP and ECP. The annual NCP and ECP provide COSM / SMEU with the overall reliability compliance roadmap and include Reliability Compliance policies and procedures along with roles and responsibilities for reliability compliance at COSM / SMEU.
 - Maintain and update COSM / SMEU's Event Reporting and Operations Plan (EROP). The EROP provides compliance procedures related to EOP-004-4 (Event Reporting).
 - Review all mandatory NERC Distribution Provider (DP) standards and requirements.
- **Conduct compliance review meetings and provide training to COSM / SMEU compliance team** as needed. Compliance review meetings will focus on relevant compliance issues and activities. Training will include HB4150 Hazard Recognition / NESC Review and other training for COSM / SMEU Managers, SME's, operations personnel, and other personnel on an annual or as-needed basis.

Cost Estimate: The cost of the services depends on the amount of support required on recurring and non-recurring regulatory compliance tasks and projects. Based on experience, SE recommends an annual budget of **\$15,000** be established.

EXHIBIT 2
DETAILED RATES

The Owner shall pay the Engineer for services performed under this Agreement as follows:

POSITION	HOURLY RATE
President	\$250.00
Principal	\$230.00
Engineer VIII / Senior Consultant V	\$200.00
Engineer VII / Senior Consultant IV	\$185.00
Engineer VI / Senior Consultant III	\$170.00
Engineer V	\$155.00
Engineer IV	\$140.00
Engineer III	\$125.00
Engineer II	\$110.00
Engineer I	\$100.00
Project Manager V	\$180.00
Project Manager IV	\$165.00
Project Manager III / Senior Consultant II	\$155.00
Project Manager II / Senior Consultant I	\$140.00
Project Manager I	\$125.00
Project Analyst IV	\$120.00
Project Analyst III	\$105.00
Project Analyst II	\$90.00
Project Analyst I	\$75.00
Technician VI	\$135.00
Technician V	\$125.00
Technician IV / Designer III	\$110.00
Technician III / Designer II	\$95.00
Technician II / Designer I	\$85.00
Technician I	\$75.00
Technician Assistant	\$60.00
Administrative Staff	\$65.00
Administrative Assistant	\$55.00
Clerical	\$50.00

PERSONNEL OVERTIME CHARGES

Hourly personnel overtime work will be invoiced at the base billing rate plus a multiplier of 1.5 times the employee hourly rate.

REIMBURSABLE EXPENSES

- Mileage Reimbursement: \$0.57/mile for cars, \$0.75/mile for trucks, \$0.85/mile for fully equipped off-road survey trucks
- The following will be billed at cost plus 12%:
 - Copying costs
 - Transportation, subsistence and lodging
 - Approved sub-contract services

EXHIBIT 3
AUTHORIZATION OF CHANGE IN SERVICE

CONTRACT NO./ CONTRACT NAME:	220-199	Regulatory Tracking & Compliance
CITY REPRESENTATIVE:	Tyler Hjorth, Asst Director-Electric Utility, Public Services	
CONTRACTOR:	SCHNEIDER ENGINEERING LTD	
CONTRACT EFFECTIVE DATE:	May 1, 2020	
THIS AUTHORIZATION DATE:		AUTHORIZATION NO.:

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

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

CONTRACTOR:

Signature

Date

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

CITY:

Signature

Date

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

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

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