THE CITY OF SAN MARCOS
PROFESSIONAL SERVICES AGREEMENT
WHOLESALE POWER AND UTILITY CONSULTING SERVICES
CONTRACT NUMBER 2026-002

This **Agreement** (this "**Agreement**") is entered into by and between THE CITY OF SAN MARCOS, a municipality in the State of Texas ("**CITY**"), and **Frank McCamant, McCamant Consulting, LLC,** whose address is PO Box 26921, Austin, Texas 78755, ("**CONTRACTOR**"), and is effective for all purposes as of the date of the last signature to this Agreement ("**Effective Date**").

City and Contractor agree as follows:

1. **Services.** Contractor will perform the Services to provide wholesale power and utility consulting professional services to the City ("**Services**" or "**Project**") and provide deliverables ("**Deliverables**") set forth in **Exhibit A**, attached and incorporated for all purposes, to the satisfaction of City.

2. **Term.** The term ("**Term**") of this Agreement will commence on the Effective Date, and will continue for one (1) year term, unless sooner terminated as provided herein. The contract will be automatically extended for three (3) 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. The total period of the contract, including all extensions as a result of exercising this option, will not exceed a maximum combined period of four (4) years. Formal Notice of refusal by either party to exercise this option to automatically extend must be submitted ninety days (90) prior to annual expiration of the contract period and will cause the contract to expire on the original or mutually agreed upon date.

3. **Election Not to Renew.** Either party may elect not to renew this Contract for any subsequent renewal period by providing the other party with ninety (90) days' prior written notice before the expiration of the then-current contract period. If such notice is given, the Contract shall expire at the end of the current contract period, and no further automatic extensions shall apply.

4. **Compensation.** Contractor's fees for the Services are set forth in **Exhibit A**, attached and incorporated for all purposes for an annual amount not to exceed ninety-two thousand four hundred dollars ($92,400.00) and an amount up to seven thousand seven hundred dollars ($7,700.00).

5. **Invoice**. City will pay to Contractor compensation for performance of the Services within thirty (30) days after receipt of an appropriate invoice ("**Invoice**") and City's approval of Services. Payment will be made in accordance with the Texas Prompt Payment Act, currently codified in Chapter 2251, *Texas Government Code*. Payment for delivery of Services, and rendered will not be unreasonably withheld or delayed. If City disapproves any amount submitted for payment by Contractor, City will give Contractor specific reasons for disapproval in writing within a reasonable time. Upon resolution of any disputed charges, Contractor will re-invoice such remaining charges to City.

   5.1 Payment(s) will be made by the City upon the completion and acceptance of the work performed under this contract, and submission of an original invoice to the City of San Marcos, Accounts Payable Division, 630 East Hopkins Street, San Marcos, Texas 78666, or cosmap@sanmarcostx.gov.

   5.2 Invoices will include the Contract Number, work description, unit price, quantity, extended price, and contract number.

6. **City's Representative.** The City designates Utilities Director, to be named at a later date, as its representative authorized to act in the City's behalf with respect to this Agreement. The City representative's contact information is:

Utilities Director
630 East Hopkins Street
San Marcos, Texas 78666
Temporary Phone: 512-393-8301
Temporary email: hmolina@sanmarcostx.gov

7. **Compliance with Laws and Policy.** Contractor warrants and agrees that Contractor will perform the Services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any Service performed on premises owned or controlled by City, Contractor warrants and agrees that Contractor will perform the Services in compliance with all City's Rules and "**Standard Terms and Conditions,**" when not in conflict with the terms of this Agreement, found at sanmarcostx.gov/StandardTermsandConditions, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.

   7.1 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, required for the performance of the Services.

8. **Performance**. Contractor represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under this Agreement. Contractor warrants that all services performed under this Agreement will be performed consistent with generally prevailing professional or industry standards.

9. **Non-Discrimination.** Contractor understands and certifies that it is an Equal Opportunity Employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation, gender identity, national origin, sex, age, disability or economic condition and prohibits retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier.

10. **Authority**. Contractor represents and agrees that this Agreement reflects Contractor's full and correct name and that Contractor is entering into this Agreement in an individual capacity/with authorization on behalf of the named entity.

11. **Conflict of Interest.** Contractor represents and agrees that Contractor presently has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the Services hereunder. Contractor further warrants that no relationship or affiliation exists between Contractor and City that could be construed as a conflict of interest with regard to this Agreement.

12. **Deliverables and use of Documents.** All drawings, specifications, plans, computations, data, photographs, records, models, statements, reports, and other deliverables or materials prepared or produced by Contractor in connection with the Services (collectively, "**Service Deliverables**"), whether or not accepted or rejected by City, are the property of City and for its exclusive use and re-use at any time without further compensation and without any restrictions. Contractor will not sell, disclose, or obtain any other compensation for the Service Deliverables. Contractor will not use Service Deliverables in any manner for any other purpose without the express written consent of City.

13. **Assignment.** Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, without the express written consent of City. The benefits and burdens of this Agreement are assignable by City.

14. **INDEMNIFICATION.**

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.

15. **Order of Precedence.** This Agreement includes by reference the exhibits or attachments to this Agreement. In case of any conflict among the provisions of this Agreement, the following descending order of precedence will be observed:

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

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

    16.1 Name the **City of San Marcos, Purchasing and Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666** as an additional insured on Automobile Liability and General Liability; Umbrella coverage must follow form with the primary coverage.

    16.2 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.

    16.3 Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.

    16.4 Provide the City of San Marcos Purchasing and Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666, a Certificate of Insurance evidencing required coverage before execution of contract.

    16.5 Submit a Certificate of Insurance reflecting coverage as follows:

    Automobile Liability (providing coverage for all owned, non-owned and hired automobiles):
    Combined Single Limit ……..……. $1,000,000.00

    General Liability (Including Contractual Liability):
    Each Occurrence…… $1,000,000.00

    Umbrella Policy…… $1,000,000.00

    Professional Liability (E&O)…… $1,000,000.00 per claim-based policy
    Professional Liability (E&O) policy must be maintained for the duration of the agreement and two-year extended reporting period.

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

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

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

17. **Prohibition on Contracts with Companies Boycotting Israel.** Pursuant to Chapter 2270 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.

18. **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.

19. **Prohibition on Contracts with Certain Foreign-Owned Companies**. Section 2275 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.

20. **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.

21. **Prohibition on Contracts with Companies Boycotting Certain Energy Companies**. Section 2276 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.

22. **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.

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

CITY:	**CITY:**	**CONTRACTOR:**
The City of San Marcos	The City of San Marcos	McCamant Consulting LLC
Attn: City Manager's Office	Attn: Purchasing Manager's Office	Attn: Frank McCamant
630 East Hopkins Street	630 East Hopkins Street	PO Box 26921
San Marcos, TX 78666	San Marcos, TX 78666	Austin, Texas 78755

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

CONTRACTOR: McCamant Consulting, LLC

_____ _____

Signature Date

_____

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

CITY:

_____ _____

Signature Date

_____

Print Full Name / Title

Exhibits:

EXHIBIT A – Scope of Work

EXHIBIT B – Authorization of Change in Service Form