

**AGREEMENT BETWEEN THE CITY OF SAN MARCOS AND
THE GREATER SAN MARCOS ECONOMIC DEVELOPMENT CORPORATION
FOR ECONOMIC DEVELOPMENT AND SMALL BUSINESS
ECONOMIC DEVELOPMENT SERVICES**

This Agreement for Economic Development and Small Business Economic Development Services (the “Agreement”) is entered into by and between the City of San Marcos, a Texas municipal corporation (the “City”) and the Greater San Marcos Economic Development Corporation, d/b/a, the Greater San Marcos Partnership (the “Partnership”) and is dated and effective October 1, 2021.

AGREEMENT:

SECTION 1. OBLIGATIONS OF THE CORPORATION

A. Provision of Professional Services. Subject to and in accordance with the terms of this Agreement, the Partnership agrees to provide professional economic development services for the City each year during the term hereof. All deliverables shall be done each fiscal year of the Agreement term. The Partnership agrees to provide necessary skilled and knowledgeable personnel, equipment, and supplies for the administration and operation of the economic development services provided under this Agreement, in accordance with the City approved allocation approved by the City Council. The Partnership agrees that the size, assignments and roles of Partnership staff members performing services under this Agreement will be subject to evaluation and approval by the Partnership in response to work demands, individual skill sets, and the performance measures in the Vision 2025 Economic Development Strategy.

B. Mission and Goals. The mission of the Partnership’s economic development services will be to enhance and diversify the San Marcos area economy. The Partnership agrees to accomplish this mission by implementing the measures identified in the Vision 2025 Economic Development Strategy for the following goals:

1. Support Quality Employment Growth
2. Optimize the Local Talent Base, including Workforce Development initiatives.
3. Accommodate and Manage Quality Growth
4. Enhance Community Appeal.

C. Small Business Development. The Partnership will continue its efforts in working with prospects that are small businesses and, in doing so, commit substantial resources in terms of time, personnel and funds to the growth of local small and medium enterprises (SMEs) including, but not limited to micro-business. For the purpose of this agreement, SMEs shall mean any business meeting the Small Business Administration’s (SBA) definition.

1. Objective: To diversify and grow the regional economy by working with SMEs in primary industry sectors by evaluating their needs and assisting them to find appropriate resources in vital areas such as business planning, access to capital, and search engine optimization.

2. Deliverables:

- a. Facilitate a minimum of four educational events per fiscal year that focus on the needs of small business or entrepreneurs in partnership with the City or local community organizations in the City and provide a written semi-annual report to the City Manager on feedback received.
- b. Create and maintain a “one-stop shop” online database with resources specifically curated to assist small businesses and refer any inquiries by City of San Marcos businesses to the Economic and Business Development Manager for assistance as needed.
- c. Promote small business counseling programs that are offered by the City of San Marcos or other community organizations in San Marcos.

D. Business Retention and Expansion (“BRE”). The Partnership, through the President/ CEO, agrees to function as the City’s initial contact for current employers and businesses in matters related to economic development and will work to diversify and grow the local economy through a targeted BRE program. The Economic and Business Development Manager shall be invited to Business Retention and Expansion meetings for companies within the corporate limits of San Marcos.

1. Objective: Execute an annual BRE strategy that identifies local firms for surveys, fills requests for assistance, and inquiries.

2. Deliverables:

- a. Implement a Business Retention & Expansion program to discover challenges and opportunities faced by local small and medium enterprises and provide monthly written reports to the City Manager for review and direction. Subject to the approval of the City Manager, this program shall establish the frequency of BRE visits, quotas for anticipated number of businesses contacted, targeted industries, and information on whether the business is a paid investor in the Greater San Marcos Partnership or Chamber of Commerce.
- b. Partner closely with local organizations to act as a resource for local businesses.

E. Business Recruitment (Contacts and Leads). The Partnership, through the President/CEO, agrees to function as the City's initial contact for prospective employers and

businesses in primary industry sectors in matters related to economic development and will work to diversify and grow the local economy through a targeted business recruitment program. The President/CEO will continue to pursue business leads on behalf of the City and participate in the negotiation of incentives with all such prospects. The President/CEO may also assist other municipal members of the Partnership to pursue business leads generated by such municipality provided that assisting such other municipality does not conflict with the City's pursuit of a business lead.

1. Objective: Execute an annual business recruitment strategy in target industry sectors that will generate high quality jobs for San Marcos.

2. Deliverables:

- a. The Partnership will respond on behalf of the City to all Requests for Information (“RFIs”) and site selection requests for which the City of San Marcos has eligible properties.
- b. The Partnership will host at least one Familiarization Tour (“FAM Tour”) each fiscal year and will include City leadership and staff to showcase key properties within the City of San Marcos.
- c. The President/CEO will proactively contact at least nine prospective business that could provide an Extraordinary Economic Impact as outlined in the Economic Development Policy of the City.
- d. Whenever the Partnership provides a list of available properties to a prospect seeking to locate in the San Marcos region, and such list includes properties both inside and outside the corporate limits of San Marcos, the Partnership shall place all properties inside the corporate limits first on the list before any other properties.
- e. At least monthly, the Partnership shall provide to the City Manager, or designee, a written report identifying all business prospects with which the Partnership has made contact on behalf of the City of San Marcos. A project code name may be used in instances the company has entered into a Non-Disclosure Agreement with the Partnership.

F. Workforce Development. The quality of a community's workforce is the most important competitive asset it can offer current and future businesses. The Partnership will continue efforts to ensure that the City has the workforce needed for a diverse and growing economy.

1. Objective: Align education and training efforts with job creation so that local citizens have the training they need to more effectively compete for knowledge-intensive industries. The partnership will maintain and expand partnerships with Workforce Solutions Rural Capital Area, Gary Job Corps, Austin Community College,

Texas State Occupational, Workforce and Leadership Studies (“OWLs”) program, and other workforce stakeholders.

2. Deliverables:

- a. Support the San Marcos Consolidated and Hays Consolidated Independent School Districts on job training initiatives to include support for grants and participation on advisory boards.
- b. Identify short-comings in current workforce training through BRE surveys and report to workforce training providers, including an annual written report to the City Manager.
- c. Establish, in partnership with the appropriate entities, a workforce development taskforce to develop actionable items addressing workforce needs for unemployed or underemployed citizens of San Marcos, creating a ready labor force to meet the requirements of current and prospective employers.

G. Partnership/City Coordination. In connection with the provision of the above professional services, the Partnership shall meet the following requirements.

1. Inform the Economic and Business Development Manager within one week of receiving a completed incentive application for consideration and strive to provide a full cost/benefit analysis, proposed incentive proposal, and company information no later than two weeks prior to presentation at an Economic Development San Marcos Board Meeting.
2. In partnership with the City’s Economic and Business Development Manager and the City departments and commissions having responsibility, the Corporation shall coordinate incentive applications for economic development incentives, including incentives under the small business incentive program, legacy business program, fast-tracking of development applications and providing fee reductions, as provided in the City’s policies related to incentives for economic development.
3. Provide written quarterly updates to and participate in monthly update meetings with the City Manager, or designee, with available documentation on business assistance requests, workforce development meetings, BRE surveys, and business prospects in or seeking to locate in San Marcos or when conducted on behalf of the City.
4. Provide the City’s Economic and Business Development Manager with user access to the Corporation’s customer relationship management (“CRM”) program portal to enable the review of the Partnership’s BRE notes and input of details related to San Marcos businesses.

H. Office. The Partnership agrees to maintain an office located within the San Marcos

city limits that meets ADA requirements for accessibility and is staffed during regular business hours, Monday through Friday, excluding City-recognized holidays or any states of emergency.

I. President/CEO. The Partnership agrees to employ a full-time President/CEO to serve as the Partnership's manager for the performance of services under this Agreement. City Council representatives will be on the search committee for the Partnership's President/CEO and provide meaningful input to the process.

1. The President/ CEO will be an ex-officio member, without vote, on the Economic Development San Marcos Board (EDSM Board).

2. The President/CEO will provide reports directly to the City Manager and any City nominees who serve on the Partnership's Board of Directors (the Partnership Board), and will cooperate fully with the EDSM Board, the City Council and the City staff in all matters related to economic development.

J. Economic Development San Marcos Board ("EDSM"). The President/CEO, or designee, shall attend all meetings of the EDSM Board at which an incentive presented to the City by the Partnership is discussed or at which the President/CEO's presence is requested by the City Manager. If the City's Economic and Business Development Manager is unavailable, the Partnership shall perform the following services:

1. Provide facilities and staffing for meetings of the EDSM Board. The Partnership will ensure that facilities for board meetings allow for attendance by members of the public.

2. Keep minutes of the public portion of meetings of the EDSM Board, and provide a copy of each set of minutes to the City Council and City Manager.

3. Prepare agendas for meetings of the EDSM Board, and provide them to the City Clerk in a timely manner so that notice of meetings of the board can be given in accordance with the Texas Open Meetings Act.

4. Ensure that an appropriate record is made of any closed meetings of the EDSM Board, and promptly deliver such records to the City.

K. Semi-Annual and Annual Reports. The Partnership will prepare written semi-annual reports regarding Small Business Development, Business Retention and Expansion, Business Recruitment, and Workforce Development for the City of San Marcos and present to the City Council and City Manager. A written Annual Report on activities of the Partnership will be prepared and provided to the City Manager no later than January 31st of each year. The reports provided to the City Council in this paragraph are in addition to any information the City may request from the Partnership for presentation to the City Council in connection with a specific request for an economic development incentive request to be considered by the City Council.

L. Funding Requests. On or before June 15th of each year preceding the fiscal year

for which City funding is requested, the Partnership will, in consultation with the President/CEO, develop and submit to the City for review and approval by the City Council, the Partnership's proposed annual budget, any changes or additions to the proposed program of work, and benchmark measurements in the Partnership's Vision 2025 Economic Development Strategy or City of San Marcos Economic Development Policy

M. Financial Report; Audit. The Partnership will submit to the City a written annual financial report and an audit prepared by a certified public accountant no later than January 31st of each year.

N. Records and Expense Reports. The Partnership shall maintain complete and accurate financial records of each expenditure of funds in accordance with generally accepted accounting principles prescribed for the Partnership and, at the request of the City Manager or his or her designee, or of any other person, shall make the records available for inspection and review during normal business hours. The Partnership, as a recipient of public funds under this Agreement, hereby acknowledges that all of its records both in the future and in the past are subject to the disclosure requirements and exceptions provided in the Texas Public Information Act, Chapter 552, Texas Government Code. The Partnership shall promptly respond to public information requests received by the City and shall immediately notify the City Clerk of any public information request the Partnership receives from any third party. The Corporation shall provide monthly detailed expense reports to the City's Economic and Business Development Manager and the City Clerk in substantially the form attached hereto as Exhibit A for distribution to the City Council. The City Manager may authorize modifications to such form consistent with the purposes of this section.

O. Financial Disclosures. Members of the Partnership Board will be subject to the provisions of Section 2.462 (d) of the San Marcos City Code, requiring annual financial disclosures by all City board members.

O. Conflicts of Interest. Whenever the City's approval of an incentive request would confer a benefit upon or has an economic interest (as those terms are defined in Section 2.422 of the San Marcos City Code) on a member of the Partnership Board, such board member must recuse themselves from any action of the Partnership Board that would confer a benefit upon or have an economic effect on such board member.

P. City Branding. Upon the City's submission of any official City brand, slogan or logo to the Partnership, the Partnership will include the brand, slogan or logo into advertising programs initiated after the receipt of the brand, slogan or logo.

Q. Open Meetings. The Partnership hereby agrees to post notice of meetings of its Board of Directors and to conduct such meetings in the spirit of openness and transparency. Notices and agendas for all meetings of the Partnership Board shall be posted on the website of the Partnership and provided to the City Clerk's Office at least 48 hours in advance of the meeting. Members of the public shall be invited to attend and listen to all non-executive portions of such meetings. The Partnership will post the minutes and agendas of the meeting within a reasonable time after the minutes are approved.

R. Board Responsibilities. The Partnership Board, acting as a body, by virtue of their leadership position, shall maintain a neutral posture with regard to any political activity involving elected officials, current and future, representing the Partnership's public sector investors. A standard of respect and mutual support shall be upheld by all Partnership Board members, as well. Public sector investors and their elected officials shall be treated as collaborative, supportive partners. The President and members shall not oppose any third-party analysis of financial incentives or development agreements requested by the City Council.

S. Press Releases and Promotion. All press releases and promotional materials produced by the corporation about incentives granted and projects landed in the City shall recognize the involvement of the City Council and the City. The Partnership shall cite the determining factors for a business that commences operations or expands in the city such as educational, geographical, financial, or natural assets that influenced the decision.

SECTION 2. OBLIGATIONS OF THE CITY

A. Payments. In exchange for the services provided under this Agreement, the City will pay to the Partnership \$100,000.00 per quarter throughout the term of this Agreement; subject, however, to the terms set forth in Section 4(B) and Section 4(C) hereof.

B. Board Appointments. The City shall appoint six (6) members to the Partnership Board. These appointees shall include the City Manager, the Mayor, the Economic Development San Marcos Chair, San Marcos Regional Airport representative and at least two elected officials. At least one elected City representative shall serve on the Nominating Committee. Per the Partnership bylaws, the Nominating Committee meets not less than three times per year and includes the Chair, Vice Chair, one Board member, two Lead members not on the Board and one General member not on the Board.

SECTION 3. TERM

A. The term of this Agreement shall be from October 1, 2021 through September 30, 2025.

B. Pursuant to the City's rights and obligations under this contract, both parties agree and acknowledge that a review of the terms and conditions contained in this Agreement shall be conducted annually in March, in order to assure alignment with the City's visioning process.

SECTION 4. MISCELLANEOUS

A. Notices. Notices required by this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile or email transmission, to the following addresses:

To the City:

City Manager
City of San Marcos
630 E. Hopkins
San Marcos, TX 78666
Fax: 512/396-4656
Email: blumbreras@sanmarcostx.gov

To the Partnership:

President & CEO
Greater San Marcos Partnership
113 N Guadalupe St.
San Marcos, TX 78666
Phone: 512/393-3400
Email: jasang@greatersanmarcostx.com

If a party changes its address, facsimile number or email address for notice purposes, it will provide written notice of the new information to the other party within 10 days of the change.

B. Non-Appropriation of Funds. Funds for payments under this Agreement shall be subject to appropriation through the City budget approved by the City Council for each fiscal year. State laws prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of services covered by this Agreement is likely to be a recurring requirement, and the City anticipates including this cost as a standard and routine expense of the City to be included in each proposed budget within the foreseeable future. Notwithstanding the foregoing, the City does not guarantee the availability of funds in future fiscal years of the City, and the City enters into this Agreement only to the extent such funds are made available in the City's adopted budgets for future fiscal years. Therefore, for the avoidance of doubt, the Partnership shall have no recourse against the City for failure to appropriate funds for the purposes of this Agreement during any fiscal year. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.

C. Retainage of Funds. The City may retain up to 20% of each quarterly payment to the Partnership until all required reports and deliverables, as shown in Exhibit B, have been submitted to and accepted by the City for the preceding period, at which time the retainage will be released.

D. Termination.

1. Termination by City. The City reserves the right to terminate this Agreement upon 30 days' written notice for any reason deemed by the City Council to serve the public interest. In the event of such termination the City will pay the Partnership those costs directly attributable to services received by the City in compliance with the Agreement prior to termination. The City will not be liable for any damages or any loss of profits anticipated to be made by the Partnership under this Agreement in connection with any such termination.

2. Termination by Partnership. The Partnership may terminate this Agreement upon the default by the City if the City fails to comply with any term or condition of this Agreement. The Partnership must notify the City in writing of any default. The City will take action so that the default is corrected within 30 days of receipt of the notice. If after receipt of such notice, the City fails to timely correct the default, the Partnership may immediately terminate this Agreement in its entirety by giving notice to the City.

E. Dissolution of Partnership. In the event of the dissolution of the Partnership, after the payment of all debts and obligations of the Partnership, the assets of the Partnership shall be distributed to one or more exempt organizations under Sections 510(c)(6) and 170(c)(2) of the Internal Revenue Code as amended, or any successor provisions, or to the federal, state, local government for lawful purposes. To the extent allowed under said provisions of the Internal Revenue Code and applicable laws, such distribution shall be as follows:

1. Contributed property shall be offered to the member entity that contributed such property;
2. All other property shall be sold and the proceeds of sale distributed to qualifying exempt members in proportion to their financial contributions to the Partnership;
3. All remaining unencumbered funds shall be distributed to qualifying exempt members in proportion to their contributions to the Partnership.

F. Authority of Signatories. Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the party that person represents.

G. Force Majeure. In the event that the performance by either party of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.

H. Severability. If any word, phrase, clause, sentence, or paragraph of this Agreement is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this Agreement will continue in force if they can be given effect without the invalid portion.

I. Partnership Bylaws. The Partnership shall submit its bylaws and any amendments thereof to the City Clerk on the same day the amendments are sent to the GSMP Board of Directors as stated in the GSMP Bylaws Section entitled Amendments.

J. Incorporation of Terms and Conditions. The City and the Partnership agree that the City's Standard Terms and Conditions for Professional Services Agreements, in the form attached as Exhibit C, will apply to this Agreement. In the event of any conflict between the terms

of this Agreement and the attached Standard Terms and Conditions, the terms of this Agreement will govern and control.

EXECUTED to be effective as of October 1, 2021.

CITY:

PARTNERSHIP:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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EXHIBIT A – SAMPLE EXPENSE REPORT

To be provided.

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EXHIBIT B – SCHEDULE OF REPORTS

Report	Reporting Period	Content	Format	Submitted To	Due Date
Small Business Development	Semi-Annual	Feedback received from educational events focused on small business or entrepreneurs.	Written	City Manager	April 30 and October 31
BRE	Monthly	Number of San Marcos businesses contacted, challenges and opportunities, industry of businesses surveyed, and local membership of the businesses surveyed.	Written	City Manager	15 th of each month
Business Prospects	Monthly	List of business prospects with which GSMP contact on behalf of the City.	Written	City Manager	15 th of each month
Workforce Training Short-comings	Yearly	Short-comings in current workforce training.	Written	City Manager	January of each year.
Work done on behalf of the City	Monthly	Updates on business assistance requests, workforce development meetings, BRE surveys, and business prospects.	Verbal	City Manager	15 th of each month.
Work done on behalf of the City	Quarterly	Supporting documentation on business assistance requests,	Written	City Manager	January 15, April 15, July 15, October

		workforce development meetings, BRE surveys, and business prospects.			15
Semi-Annual Report	Semi-Annually	Small business development, BRE, business recruitment, and workforce development	Written/Verbal	City Council & City Manager	April 30 and October 31
Annual Report	Annually	Activities for the City of San Marcos and Greater San Marcos Region	Written	City Manager	January 31
Audit	Annually	Financial audit prepared by a Certified Public Accountant.	Written	City Manager	January 31
Expense Report	Monthly	Detailed list of expenses incurred or salaries expended while engaging in economic development activities for the City of San Marcos.	Written	Economic & Business Development Manager and City Clerk	15 th of each month

EXHIBIT C



**City of San Marcos
Standard Terms and Conditions**

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1. Definitions.

- a. Addendum is a written instrument issued by the City of San Marcos which clarify, correct or change the bidding/proposal requirements or the contract or solicitation documents prior to the due date of the bids/proposal. "Addenda" is the plural form of Addendum.
- b. Agreement means any contract, agreement, purchase order, contract award, response to production or any other document which references these Terms and Conditions.
- c. Contractor means any individual, company, corporation or other legal entity who has entered into an Agreement with the City.
- d. City means the City of San Marcos, Texas.
- e. City Council means the duly elected members of the City Council of the City of San Marcos.
- f. Deliverables shall have the same definition, if applicable, as found in the Agreement. If not defined in the Agreement, Deliverables shall mean any goods, whether tangible, digital, or otherwise, contracted for and due to City under the Agreement.
- g. Services shall have the same definition, if applicable, as found in the Agreement. If not defined in the Agreement, Services shall mean any required performance by Contractor, contracted for and due to City under the Agreement.
- h. Goods shall have the same definition as Deliverables. The terms Goods and Deliverables may be used interchangeably.
- i. HUB means Historically Underutilized Business and has the meaning given by State law.
- j. Texas Resident Bidder means a bidder whose principal place of business is in this state, and includes a bidder whose ultimate parent company or majority owner has its principal place of business in this state.
- k. Scope of Work or Specifications is a description of or requirements of the services or goods being solicited.
- l. Supplemental Terms and Conditions means general supplemental conditions to these Standard Terms and Conditions and shall have the same force and effect.
- m. Vendor has the same meaning as Contractor. The terms Vendor and Contractor may be used interchangeably.

- 2. Package Deliverables.** Contractor will package goods in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price Unless otherwise provided in the

Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

- 3. Shipment under Reservation Prohibited.** The Contractor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
- 4. Title & Risk of Loss.** Title to and risk of loss of the goods shall pass to the City only when the City actually receives and accepts the goods.
- 5. Delivery Terms and Transportation Charges.** Goods shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the goods. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
- 6. Right of Inspection and Rejection.** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the goods at delivery before accepting them, and to reject defective or non-conforming goods. If the City has the right to inspect the Contractor's or the Contractor's Subcontractor's facilities, or the goods at the Contractor's or the Contractor's Subcontractor's premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
- 7. No Replacement of Defective Tender.** Every tender or delivery of good must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and



the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

8. **Workforce.** The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Agreement.
9. **Payments.** City will pay Contractor for goods and services in accordance with Chapter 2251, *Texas Government Code*. City, a municipality in the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (“TAC”) Section 3.322.
10. **Limit on Value.** Contractor acknowledges and agrees that the total aggregate value of the Agreement together with any related change orders, amendments, or addendums will not exceed forty-nine thousand nine hundred ninety-nine dollars and ninety-nine cents (\$49,999.99) without the approval of the City Council of the City.
11. **Right to Audit.**
 - a. Contractor agrees that the representatives of the Finance Department of the City or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
 - b. The Contractor shall include Section a. above in all subcontractor agreements entered into in connection with the Agreement.
12. **Access to Premise and City Rules.** Contractor will conduct all its operations on the City’s premises in conformity with all applicable federal and state laws, rules and regulations, and local ordinances and rules including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
13. **Travel Expenses.** No travel, lodging or per diem expenses in connection with the Agreement will be reimbursed unless both the City and the Contractor come to written agreement on the terms of such reimbursement.
14. **Warranty-Title.** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under

the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.

15. **Modifications.** This Agreement may be modified by a written amendment signed by both parties to the Agreement.
16. **Warranty-Price.**
 - a. The Contractor warrants the prices quoted in the bid/proposal are no higher than the Contractor’s current prices on orders by others for like goods under similar terms of purchase.
 - b. The Contractor certifies that the prices in the bid/proposal have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
 - c. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor’s current prices on orders by others for like goods under similar terms of purchase.
17. **Warranty-Deliverables.** The Contractor warrants and represents that all Deliverables sold the City under the Agreement shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Agreement, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Agreement, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
 - a. Recycled Deliverables shall be clearly identified as such.
 - b. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - c. Unless otherwise specified in the Agreement, the warranty period shall be at least one (1) year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City’s option and at no additional cost to the City. All costs incidental to such repair or



replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

- d. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Agreement from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
- e. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

Warranty-Services. The Contractor warrants and represents that all services to be provided the City under the Agreement will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Agreement, and all applicable Federal, State and local laws, rules or regulations.

- a. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- b. Unless otherwise specified in the Agreement, the warranty period shall be at least one (1) year from the last date services have been paid for under the Agreement. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
- c. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as

required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Agreement from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

19. Ownership and Use of Deliverables. The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.

- a. Patents. As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- b. Copyrights. As to any Deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables. Should by operation of law, such Deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.
- c. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and



nominees, the sole and exclusive right, title, and interest in and to the Deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Section 19 a., b., and c. shall continue after the termination of this Contract with respect to such Deliverables.

- 20. Right to Use Specific City Marks.** Contractor understands and acknowledges that the City owns all rights to the name, logos, and symbols of City ("City Marks"). All rights to the City Marks will at all times remain the property of the City. Subject to these Terms and Conditions, the City may grant to Contractor a nonexclusive right to use those specific City Marks that are directly required to complete Contractor's obligations in the Agreement, and which are approved for use in accordance with this Section.

All use of the City Marks will be in a manner that (i) complies with applicable laws, City Rules; (ii) is consistent with Contractor's use of other City Marks under similar situations; and (iii) will not tarnish the City Marks. Any use of City Marks by Contractor **MUST** be approved as follows: Requests for approval will be in writing, accompanied by the material requested to be approved, will be transmitted by e-mail, express mail, overnight carrier, or regular mail, and will be addressed as follows:

Director, Communications
City of San Marcos
630 East Hopkins Street
San Marcos, TX 78666
512-393-8242

communicationsinfo@sanmarcostx.gov

City will notify Contractor via e-mail or facsimile of City's approval or disapproval of Contractor's request to utilize City Marks in accordance with this Section. Reasonable effort will be made to timely notify Contractor of approval or disapproval. Contractor should make every effort to submit all uses for approval as early as practicable.

- 21. Insurance.** Contractor acknowledges that City, as a municipality in the State of Texas, maintains and operates programs of self-insurance. City will maintain during the term of this Agreement a self-insurance program and, upon written request, will provide to Contractor a written description of such self-insurance program.
- 22. Contractor Insurance.** In the event Contractor, its employees, agents or subcontractors enter premises occupied by or under the control of City in the performance of the Agreement, Contractor agrees that it will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth in the

Agreement, and will maintain worker's compensation coverage (either by insurance or if qualified pursuant to law, through a self-insurance program) covering all employees performing the Agreement on premises occupied by or under the control of City. Contractor may receive copies of specific requirements for coverage by contacting the Risk Management Department of the City at 512-393-8060.

- 23. Gratuities.** The City may terminate this contract if the City's Ethics Review Commission finds, after notice and hearing, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City to secure favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of the contract
- 24. Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this Section.
- 25. Subcontracting (HUB).** When applicable, Contractor will use good faith efforts to subcontract work performed under the Agreement in accordance with the Historically Underutilized Business Subcontracting Plan ("HSP") as submitted by Contractor. Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under the Agreement, in whole or in part.
- 26. Limitations.** THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF CITY (A TEXAS MUNICIPALITY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF



THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON CITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS AND THE ORDINANCES OF THE CITY OF SAN MARCOS, TEXAS.

27. INDEMNITY. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD-PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

28. Termination for Convenience. The City through the City Manager or the City Manager's designee may terminate the Agreement at any time upon thirty (30) calendar days' notice in writing to Contractor. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement. As soon as practicable after the receipt of notice of termination, Contractor shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under the Agreement to date of termination. The City agrees to compensate the Contractor for that portion of the prescribed charges for which the services were actually performed or items delivered under the Agreement and not previously paid.

29. Termination Due to Loss of Funding. If City funds are utilized to fund any part of this Agreement, the Contractor understands that those City funds for the payment for work performed by the Contractor under this Agreement have been provided through the City's budget approved by City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The City cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. The Contractor acknowledges and agrees that it will have no recourse

against the City for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.

30. Venue. The venue for any litigation arising from this Agreement will be San Marcos, Hays County, Texas.

31. Dispute Resolution.

a. 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.

b. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and 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 City and Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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



Failure to meet or maintain the requirements under this provision will be considered a material breach.

33. **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.
34. **MS4:** In accordance with San Marcos Ordinance No. 2016-12, all contractors and subcontractors will adhere to the established methods for controlling and minimizing the release of pollutants into the municipal separate storm sewer systems (MS4) of City of San Marcos in order to comply with local, state, and federal regulations. All contractors and subcontractors will comply with specific good housekeeping and stormwater pollution prevention measures established for the facility or site covered under this contract.
35. **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures.
- Nothing in the foregoing shall be deemed to relieve Contractor or its Affiliates of its obligation to pay fees owed under this Agreement.
36. **Texas Public Information Act.** Contractor understands and acknowledges that the City is a governmental entity in Texas and is subject to requests for public information under the Texas Public Information Act. Any action taken by the City to meet its legal requirements under the Texas Public Information Act or related City Ordinance will not be considered a breach of this Agreement.
37. **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.
38. **Governing 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.

39. **Terms and Conditions Controlling.** In the event there is a conflict between the Agreement and these Terms and Conditions, these Terms and Conditions will control.

40. **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:

Purchasing Manager
City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666

41. **Order of Precedence.** In the event of inconsistency between provisions of this contract, the inconsistency will be resolved by giving precedence in the following descending order:

- a. Change Orders / Amendments
- b. Addenda
- c. Supplemental/Special conditions
- d. Bid/Quote/Proposal form
- e. Scope of Work / Specifications
- f. Standard Terms and Conditions
- g. Other provisions, whether incorporated by reference or otherwise, including any documents provided by the Contractor.

42. **If Contractor is receiving State of Texas funds under the Agreement.** Texas Family Code Child Support Certification. Pursuant to Section 231.006, *Texas Family Code*, Contractor 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.

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



COSM QUICK REFERENCE TO CONTRACT INSURANCE REQUIREMENTS

QUICK REF.	TYPE OF WORK	TYPE OF INSURANCE REQUIRED	AMOUNT OF INSURANCE REQUIRED	SPECIAL COVERAGES OR OTHER REQUIREMENTS
AL	Operation of motor vehicle where operation constitutes a large portion of the project, or where operated in close proximity to a large number of persons	Business Auto Liability to include coverage for all owned autos, hired autos, non-owned autos	\$1,000,000 per occurrence	
AL	Installation, dismantling, or delivery where motor vehicle use is a major part of the project	Business Auto Liability to include coverage for all owned autos, hired autos, non-owned autos	\$1,000,000 per occurrence	
AL	Transporting valuable City property for repair, rebuild, modification or other purposes	Business Auto Liability to include coverage for all owned autos, hired autos, non-owned autos -plus- Property damage coverage protecting property while in transit and contractor's possession	\$1,000,000 per occurrence Actual cash value of property being transported	
CGL	Coverage for injury to or destruction of tangible property of others	Comprehensive General Liability	\$1,000,000 per occurrence \$1,000,000 aggregate	Additional Insured
PL	Contract for professional services upon whose advice others have reason to rely (such as auditors, architects, engineers, or consultants)	Professional Liability or Errors and Omissions	\$1,000,000 per occurrence	Coverage for profession involved (i.e., medical malpractice, security guard liability)
GKL	Contract for wrecker service or auto storage facilities	Garage Keeper's Liability	Value of autos held	Additional Insured
HKL	Coverage for lease of hanger facilities	Hanger Keeper's Liability	Value of one aircraft / Value of all aircraft	Additional Insured
LIQL	Liquor is served with charge to the general public; liquor is served as a means of generating revenue for a fund-raising event; liquor is served by another party contracted for any of these reasons. Liquor includes beer and wine.	Liquor Liability	\$1,000,000 per occurrence	Additional Insured
POLL	Contract involves asbestos removal, lead paint cleanup, PCBs, and similar materials	Pollution Legal Liability	\$1,000,000 per occurrence / \$2,000,000 annual aggregate	Additional Insured
CC/FB	Contract or handles or has access to City or public funds	Commercial Crime Coverage or Fidelity Bond, Employee Dishonesty	Coverage for value of funds or properties handled during period from contractor control until delivered to City	City to be listed as a joint obligee
BR	Contract is for new construction of a structure or building	All Builder's Risk Insurance. Should provide transit and off-premises coverage if the builder makes the City responsible for material	Value of completed improvements	City to be listed as Loss Payee