



City of San Marcos

Request for Proposals

#222-194

for

**CONSULTING SERVICES FOR OVERSIGHT AND
COMPLIANCE IN CONNECTION WITH THE
AMERICAN RESCUE PLAN ACT ("ARPA") OF 2021**

Issued: Monday, July 25, 2022

ISSUED BY:

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

RESPONSES DUE:

**September 1, 2022,
Prior to 2:00 PM, Local Time**

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I. REQUESTS FOR PROPOSALS

The City of San Marcos (“the City”) requests Proposals from interested qualified Respondents to provide expertise to augment City staff capabilities and ensure compliance with applicable laws and grant requirements of the American Rescue Plan Act (“ARPA”) of 2021, while maximizing the recovery and beneficial uses of funding for the San Marcos community, in accordance with the terms and Scope of Services specified herein.

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

This solicitation complies with applicable City Policy and state of Texas law, including Local Government Code 252, as well as Federal requirements and regulations for use of ARPA funding. The City will select the successful Respondent that is determined to provide the best value to the City of San Marcos based on the published Evaluation Criteria and its final ranking.

The term of the resulting Agreement will be for a period ending December 31, 2024, and may be extended for two (2) 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 extend past December 31, 2026.

Funding will be provided from the allowable cost for administering the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program, which includes costs of consultants to support effective management and oversight, and consultation for ensuring compliance with legal, regulatory, and other requirements including, but not limited to, Uniform Administrative Requirements, Allowable Costs/Cost Principles, and Administrative Costs.

II. SCOPE OF SERVICES AND RESPONSIBILITIES

The City of San Marcos is a municipality located in Central Texas, along one of the busiest interstate corridors, with a population of approximately 68,000. It is home to Texas State University, one of the largest universities in the state. The City has been awarded more than \$18 million in ARPA funds, which consists of \$9.05 million in each tranche, of which approximately \$14.1 million has been allocated, with the remaining \$4 million to be allocated at a later date. Through this Request for Proposals (“RFP”) process, the City seeks professional services from firms with expertise in the oversight and administration of ARPA funds, as well as compliance with funding authority requirements.

The firm selected, if any, will have demonstrated experience in federal grant program management and must have intimate knowledge and expertise in the areas of compliance with the federal Office of Management and Budget (“OMB”)’s Uniform Guidance 2 CFR, Part 200, federal funding requirements including, but not limited to, federal acquisition requirements; operations of the Federal Emergency Management Agency (“FEMA”) Public Assistance Program; and cost/funding eligibility under ARPA and Coronavirus Aid, Relief, and Economic Security (“CARES”) Act and related grant programs.

This RFP may result in on-demand contracts to meet the need for timely specific services. The selected consulting firm, if any, must understand the intricacies of the laws, regulations, policies, timelines, requirements, processes, and systems that govern eligibility and reporting for U.S. Department of Treasury and Texas Department of Emergency Management as well as other federal agencies with regard to ARPA funding. The selected consulting firm, if any, will have the ability to perform services remotely with access to electronic tools.

A. Services Performed. The selected firm, if any, may assist the City of San Marcos, including City departments and subrecipients, with the following areas and duties as mutually agreed upon:

1. Areas and Duties.

a. General Administration of Federal Award – Application, Reimbursement Request Review, Funding, and Cost Reimbursement.

- 1) Develop and implement strategies to maximize federal and state financial assistance.
- 2) Provide expert programmatic and policy advice on federal disaster relief programs, specifically the State and Local Fiscal Recovery Program Funds (ARPA).
- 3) Provide support for the strategic planning and coordination of all recovery efforts.
- 4) If requested, assist with the identification of past, present, and future cost exposures and expenditures associated with COVID-19 public health emergency.
- 5) Assist the City’s Purchasing & Contracting Division with any requests for review of solicitation documents and contracts prior to finalization of solicitation documents and contracts that may involve use of ARPA funds to facilitate compliance with ARPA requirements.
- 6) Develop program guidelines, policies, procedures, implementation plans, or other pertinent documents related to eligibility for award and expenditure of ARPA funds.
- 7) Provide regulatory compliance expertise including identification of authorized uses of the ARPA funds.
- 8) Interpret Federal Guidance, establish procedures, and ensure regulatory compliance for authorized uses of and eligibility under ARPA.
- 9) Establish procedures for verification of eligibility for award and expenditure of ARPA funds.
- 10) Assist the City’s Finance Department with any requests for proper accounting and reporting internal control mechanisms to record, track, and disburse funds according to all federal, state, and local laws and regulations including, but not limited to, Uniform Guidance, Generally Accepted Accounting Principles (“GAAP”), and the City of San Marcos’s internal fund(s) based on accounting policies and procedures.
- 11) Establish policies and procedures for appropriate document retention and reporting with the Federal Financial Accountability and Transparency Act (“FFATA”), and/or Treasury Office of Inspector General.
- 12) Provide oversight and guidance on compliance with OMB Uniform Guidance 2 CFR, Part 200, including performing internal control risk assessments as required.
- 13) Provide support for navigating federal agency web portals and processes.
- 14) Provide technology solution for tracking ARPA funding distribution strategy.
- 15) Assist the City of San Marcos with applying for, aggregating, and packaging materials for reimbursement.

b. Compliance Monitoring.

- 1) Provide compliance monitoring of subrecipients and City departments.
- 2) Review contracts and purchasing documentation to ensure cost recovery and compliance of expenditures using federal funds.
- 3) Develop processes and documentation requirements around subrecipient risk assessment, monitoring and management, including training of subrecipients and City Departments on grant requirements.
- 4) Provide assistance to the City of San Marcos with the education and training of staff that will provide or may be involved with the various aspects of recovery efforts.
- 5) Review and assist with processing payment requests and determining allowable costs with the scope of review and assistance to be set by the City of San Marcos.
- 6) Provide for fraud, waste, and/or abuse identification, reporting, and remediation.
- 7) Resolve any requests for information, justification, audit findings, and eligibility appeals.
- 8) Monitor for duplication of benefits and develop processes and documentation requirements around subrecipients and City Departments on grant requirements.

c. Reporting.

- 1) Establish appropriate performance metrics.
- 2) Create reporting metrics templates for completion by subrecipients and City departments.
- 3) Provide assistance and oversight to the City of San Marcos to facilitate and ensure appropriate progress agreed-upon deliverables.
- 4) Provide regular status reports, including reporting on financial performance and projection modeling. These reports must include, but are not limited to, addressing the City's distribution and use of the ARPA funds. Status reports must include, but may not be limited to, "How much total funding the City has actually received", "How much total funding the City of San Marcos has distributed to date", and "How the distributed funds have been allocated". Frequency and content will be determined by the Finance Department in conjunction with the City Manager's Office and will be discussed at time of contract award with the selected Proponent.
- 5) Establish review processes for any new/future reporting requirements related and/or applicable to the ARPA funds.
- 6) Streamline reporting process to ensure continued compliance and provide post-award grants administration.

d. Close-out.

- 1) Provide the City of San Marcos with grant/funding close-out services to ensure funding is retained.
- 2) Prepare and review documentation and reports for completeness to ensure eligible work and costs are captured for audit.

e. Overall Project Coordination and Communication.

- 1) Work closely with City Finance Department to assess ARPA work performed to date and accurately document.
- 2) Provide technical advisory services related to recovery of expenditures arising from, or related to, the COVID-19 public health emergency, that work.
- 3) Research, develop, and prepare grant applications and other applicable public assistance documents.
- 4) Identify potential improvements and maximize public assistance/ARPA funding in conjunction with the City of San Marcos.
- 5) Represent City of San Marcos and attend meetings with FEMA, U.S. Treasury, or other agencies as may be necessary on behalf of the City of San Marcos.
- 6) Work with the City of San Marcos to resolve disputes with FEMA, U.S. Treasury, external auditors, community partners, or other agencies as may be necessary on behalf of the City of San Marcos.
- 7) As may be applicable, coordinate between federal, state, and local agencies including, but not limited to, the U.S. Department of the Treasury, U.S. Office of Management Budget, U.S. Attorney's Office, U.S. Department of Justice, and the Texas Department of Emergency Management ("TDEM").
- 8) Ensure that the City is meeting ARPA-related requirements pertinent to equity.

2. Minimum Qualifications. To be eligible for consideration, a duly authorized representative of the responding firm must certify in writing as to each of the following requirements:

- a. Firms will have at least five (5) years of documented experience advising government clients on compliance with federal grants including, but not limited to, identification of authorized uses of such funds and any subsequent reporting requirements.
- b. Firms will have prior governmental accounting or auditing experience. Respondent may provide their response as a partnership between an accounting and legal firm to ensure to cover the necessary services requested herein.
- c. Firms will have no conflict of interest in representing the City.
- d. Firms will carry sufficient professional liability insurance to cover the cost of any errors and omissions, improper judgment, and/or negligence associated with the engagement.
- e. Firm will be registered through SAM.gov and will be compliant with all required federal rules and regulations pertinent to ARPA funding and other federal funding sources.

III. EVALUATION CRITERIA

A committee comprised of City staff will evaluate and rank each Response based on the following factors. The City reserves the right to request additional information or clarifications from all Respondents and to allow corrections of

errors or omissions.

1	PAST EXPERIENCE – DEMONSTRATED EXPERIENCE AND EXPERTISE IN PROJECTS/CONTRACTS OF SIMILAR SCOPE <ul style="list-style-type: none">• Quality of work• Maintaining schedule• Client satisfaction• Years in business• Capacity to perform	30 points max
2	PROJECT TEAM – ABILITY TO ASSEMBLE AN EXCEPTIONAL TEAM TO ACCOMPLISH ALL ITEMS IN THE SCOPE OF WORK Resumes must be submitted for the Project Lead and other Key Personnel. The following factors will also be considered: <ul style="list-style-type: none">• Relevant projects• Ability to maintain project schedule• Experience and expertise levels of Project Team	20 points max
3	PROJECT APPROACH, STRATEGY, AND SCHEDULE/TIMELINE <ul style="list-style-type: none">• Approach – Outline proposed path to addressing necessary work• Strategies – Narrative providing more detail on implementing proposed work• Schedule/Timeline – Identify and explain strategies to be utilized to minimize delays and areas for possible time savings. Provide a proposed schedule for this work defining critical path.	30 points max
4	PRICE PROPOSALS The lowest total base price receives twenty (20) points, with others receiving a percentage of points based on a percentage comparison with the lowest base proposals price.	20 points max
	TOTAL	100 points

Optional Interviews: The shortlisted Respondents may be requested to participate in an interview and provide a presentation that is worth up to an additional twenty-five (25) points. Any additional points earned will be added to the points the Respondent received in the first round of the evaluation.

Final Decision: In responding to this Solicitation, the Respondents understand that the decision of the selection committee is final. All Responses will be reviewed and ranked according to the criteria above, and Respondents may be selected for interviews or oral presentations as may be necessary. The City makes no commitment to any Respondent to this Solicitation beyond consideration of the Response.

IV. REQUIREMENTS FOR RESPONSE

The following items are required to be submitted with the Response. In order to expedite the evaluations, interested Respondents will organize their Responses in the sequence provided below. These instructions are designed to ensure the submission of information essential to the understanding and comprehensive evaluation of the Response.

1) Executive Summary:

Provide an Executive Summary of the major features of the Response, including any conclusions, assumptions, and general recommendations the Respondent desires to make. In addition, provide the following information. The Executive Summary section is limited to a length of two (2) pages.

- Identify a Point of Contact and/or Project Manager and provide contact information for questions, notice of selection/non-selection, etc.
- Responding firm name and year established, including former Responding firm names and year(s) established, if applicable. State the size of the Responding firm and the number and nature of the professional staff to be assigned to the contract, if awarded.
- Verification statement that the proposed team individuals are currently employed by the Respondent.
- Confirmation that the general liability insurance, workers' compensation, and professional liability insurance will be provided within ten (10) calendar days of the Contract Award.
- Brief statement providing assurances that the Respondent will be cognizant of, comply with, and enforce all applicable Federal, State, and local laws, regulations, and ordinances, and a description of your Respondent's methodology for handling errors and omissions in the materials developed as part of this Project.
- Acknowledgment of Addenda.

2) Relevant Experience Information:

Provide Relevant Experience Information that includes the information outlined below. Resumes will not count toward the section page limit. This section is limited to a length of ten (10) pages.

- The name of the project lead who will work on the contract and relevant project experience, educational background, any professional licenses or certifications held, and their office location.
- Identification of the key team members under the project lead that would be assigned to this contract, including resumes, certifications, and licenses, and their office location(s).
- Provide confirmation that key personnel are registered, certified, and/or licensed to practice in Texas, if applicable.
- Location of the headquarters office, as well as the location of each the office where work will be performed for the project.
- Provide information on experience in federal grant program management and intimate knowledge and expertise in the areas of compliance with the federal OMB's Uniform Guidance 2 CFR, Part 200, federal funding requirements including, but not limited to, federal acquisition requirements; operations of FEMA Public Assistance Program; and cost/funding eligibility under ARPA and CARES Act and related grant programs.
- Describe continuing professional education regarding federally funded programs and governmental accounting and auditing received by the Respondent's project lead and key team members that would be assigned to this project.
- Provide the name and qualifications of any sub-consultants who will assist the Respondent's staff members.

3) Reference List of Projects of Similar Scope, Size, and Complexity:

Provide a Reference List of Projects of Similar Scope, Size, and Complexity that includes the information listed

below. This section is limited to a length of ten (10) pages.

- Provide a detailed narrative statement listing the five (5) most recent, comparable contracts that your firm has completed. For each contract, describe how the services provided are similar to those requested by this RFP and how they differ. Provide the following information for each contract:
 - Entity's name and location.
 - Name, address, telephone number, and email address of the entity's representative.
 - Detailed scope of services provided.
 - Actual beneficial outcomes and lessons learned from each project.
- A list of every entity for which substantially similar services have been provided at any time during the past three (3) years.
- A list of all current projects.
- A list of all failed projects, suspensions, debarments, and litigation that have occurred within the past five (5) years.

4) Proposed Project Approach, Strategy, and Schedule/Timeline:

Provide a Proposed Approach, Strategy, and Schedule/Timeline including the information listed below. This section is limited to a length of seven (7) pages.

- Summarize your understanding of the City's needs and how your team will coordinate its work with City staff to ensure satisfactory project completion.
- **Approach** – Provide your overall approach outlining how you plan to meet duties, necessary ARPA requirements and thread together work that may be at different stages of implementation (in progress, not yet commenced). This topic is limited to a length of one (1) page.
- **Strategy** – Provide your strategy to your ARPA work. Provide more details on how you will implement; how you will determine what to prioritize; how you will assign resources; how you will address Duties listed in Section II.; etc. Describe how you will coordinate with staff. This topic is limited to a length of three (3) pages.
- **Schedule/Timeline** – Provide a proposed **schedule/timeline** with key milestones/highlights. Explain the work plan with detailed specific tasks as noted in the Scope of Work and Responsibilities section of this RFP. Note all tasks and the responsible parties, including the City and any sub-consultants. This topic is limited to a length of one (1) page.
- Demonstrate how your firm will minimize costs and maximize federal resources, including utilization of project management resources in a cost-effective manner, assessment of alternatives, delivery methods, streamlining project and work tasks, quality control methods, and so forth.

5) Legal Entity Status:

- Provide sufficient documentation of Respondent's legal name and entity status signed by an authorized representative which clearly indicates not only the legal name and entity status, but also the capacity and authority

of the person signing on behalf of the Respondent.

6) Information Questionnaire and Assurances:

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

7) Price Proposal:

- Submit proposed price on attached Price Proposal Form (Attachment “B”).

8) House Bill 89 Verification Affidavit:

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

9) Conflict of Interest Questionnaire (CIQ):

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

10) Federal Forms:

- Submit the completed Federal Funding and Accountability Transparency Act Contractor Form (Attachment “E”, Exhibit 5B), and MBE/WBE/Section 3 and F.2: Statement of Intent of MOB/WOB/Section 3 Utilization form (Attachment “E”, Exhibit 5C) with the response.
- System for Award Management. Respondents should have a current registration in the System for Award Management (<https://www.sam.gov/SAM/>). Respondents and their Principals may not be debarred or suspended nor otherwise on the Excluded Parties List System (“EPLS”) in the System for Award Management (“SAM”). Include verification that the Respondent as well as its Principals are not listed (are not debarred) through SAM. This clearance information should be included in the Respondent’s proposal. The clearance in the Respondent’s proposal must be reverified prior to award.
- Disclosure of Lobbying Activities Form (Attachment “F”) must be completed and included with the Respondent’s proposal.

V. SUBMISSION OF RESPONSE

Interested and qualified Respondents or teams are invited to submit one (1) original and one (1) copy of their Response, and one (1) USB flash drive containing the Response in a single file PDF document. **Documentation should be limited to page limits as specified in each section.** The page limits do not include tabs or other document portions unless the tabs or other document portions provide information noted in this solicitation (photos, client testimonials, etc.). Responses must be written entirely on 8 ½” X 11” paper and may be spiral, staple, or clip bound. Responses must be submitted in a manner that does not carry any benefit, keepsake, or value for members of the evaluation committee.

To the extent permitted by law, all documents pertaining to this Solicitation will be kept confidential until a contract is awarded. Any information deemed confidential by the submitted Respondent must be clearly marked as such. No information about any Response will be released to the public until a contract is awarded. The City is under no obligation to return Responses.

It is the sole responsibility of the Respondent to ensure that its submittal reaches the Office of the Purchasing Manager, Purchasing & Contracting. Deliver Responses, unless otherwise specified, to the address on the label no later than the submittal deadline. Therefore, if your Response is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the address below. **The City is not responsible for deliveries made to any place other than the Office of the Purchasing Manager, for reasons including the lack of or improper labeling of the outermost sealed shipping container to indicate the Solicitation number, title, and deadline.**

Responses may be dropped off in-person in the Bid/Proposal drop box at the Office of the Purchasing Manager, Purchasing & Contracting, Building 4, (behind the Municipal Building), prior to the submittal deadline. Responses received after the submittal deadline will not be accepted.

Responses shall be mailed or delivered to:

**Office of the Purchasing Manager
630 East Hopkins Street, Building 4
San Marcos, Texas 78666**

The outermost envelope/container must be sealed and will be labeled as such to ensure delivery to the Office of the Purchasing Manager prior to the submission deadline:

SEALED RESPONSE – DO NOT OPEN

SEALED PROPOSAL NO.: **222-194**

PROPOSAL TITLE: **Consulting Services for Oversight and Compliance in Connection with the American Rescue Plan Act (“ARPA”) of 2021**

DUE DATE/TIME: **September 1, 2022, no later than 2:00 PM, Local Time**

SUBMITTED BY: _____
(Name and City/State of Respondent)

Acknowledgement of Responses will be broadcast live via video conference by reading aloud the Respondent’s name, city, and state in the Conference Room, Building 4, 630 East Hopkins Street, San Marcos, Texas 78666, at 2:00 PM, on the Due Date. Instructions for access to the video conference can be located at the top of the www.sanmarcostx.gov/eprocurement. Registration for the video conference submittal acknowledgement must be made at least thirty (30) minutes prior to 2:00 PM. Registrations made later than thirty (30) minutes prior to the time of opening are not guaranteed access to the video conference.

VI. AWARD OF CONTRACT

1) **Negotiations:** After evaluation and ranking based on the evaluation criteria, the City may then enter into negotiations with the top ranked Respondent as to the terms of the agreement and all aspects of the project to reach an agreement.

2) **Inability to Reach an Agreement:** In the event the negotiations between the top ranked Firm and the City cannot

be completed as a result of an inability to reach agreement, the City may formally end negotiations with that Firm and attempt to negotiate a contract with the next ranked Respondent until a contract is entered.

3) **Successful Firm's Documents:** The successful Respondent will provide its Response and any negotiated amendments to the Office of the Purchasing Manager as an electronic Microsoft Office Word file.

4) **Contract Award:** The selection of a Respondent and the execution of a contract, while anticipated, are not guaranteed by the City. The City reserves the right to determine which Response is in the City's best interest and to award the contract on that basis, to reject any and all Responses, and waive any irregularities of any Response.

5) **City Council Approval:** The City Council will consider the final contract for approval in the event the final contract amount is anticipated to exceed \$50,000.

6) **Final Contract:**

a. The selected Respondent will assume responsibility for all services offered in its Response, whether or not such services are provided by a subconsultant or joint venture arrangement. The successful Respondent will be considered the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

b. The successful Respondent will be required to enter into a written contract with the City (Attachment "G") which includes the City's "Standard Terms and Conditions" found at www.sanmarcostx.gov/termsandconditions. Where conflicts exist between the provisions of Attachment "G" and the provisions of this Solicitation, the provisions imposing greater responsibility on the successful Respondent will control.

c. This Solicitation and the successful Response, or any part thereof, may be incorporated into and made a part of the final contract. The City reserves the right to negotiate the terms and conditions of the contract with the successful Respondent.

d. Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of your Response. If exceptions are taken to the City's Agreement, this will be clearly indicated and a full explanation given for each exception. It is required that the Response enumerate the specific clauses that the Respondent wishes to amend or delete and suggest alternative wording in the Response. In view of the length of time involved in obtaining the approval of legal counsel, Respondents are cautioned not to state that the Respondent's Response is subject to the Respondent's standard terms and conditions or that the final terms and conditions are subject to negotiation after award. This may result in the Response being deemed non-responsive, in which no further consideration or evaluation will be made.

VII. INSURANCE AND LIABILITY

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

- 1) Name the **City of San Marcos, Purchasing & Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666** as an additional insured.
- 2) Provide the City with a thirty (30) days' written notice to the Certificate Holder prior to cancellation or material change of any insurance referred to in the certificate.

- a. Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify a deficiency from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.
- 3) Provide the City of San Marcos, Purchasing & Contracting Division, 630 East Hopkins Street, San Marcos, Texas 78666, a Certificate of Insurance evidencing required coverage before execution of contract.
- 4) Submit a Certificate of Insurance reflecting coverage as follows:

Automobile Liability:

Bodily Injury (Each person) \$1,000,000.00

Bodily Injury (Each accident) \$1,000,000.00

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

General Liability (Including Contractual Liability):

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

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

Workers' Compensation..... Statutory

Professional Liability..... \$1,000,000.00
(each & aggregate)

VIII. SPECIAL PROVISIONS

1) **ARPA Guidance:** As per the State and Local Fiscal Recovery Funds- Compliance and Reporting Guidance, the Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive an SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients in accordance with 2 CFR 200.332, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's interim final rule and final rule, applicable federal statutes, regulations, and reporting requirements.

Selected Contractor will be considered a subrecipient and held accountable to the same oversight as the Recipient.

2) **Selected Response:** The City reserves the right to include the selected Response or any part or parts thereof in the final contract.

3) **Reimbursement:** The City makes no commitment to any Respondent of this Solicitation beyond consideration of the written Response. The City will not reimburse Respondents for the costs incurred in response to this solicitation.

4) **Collusion:** By submission of a Response, the Respondent certifies, and in the case of a joint submission each party certifies as to its own organization, that in connection with any cost proposal submitted by the Respondent, the prices which are quoted are not the product, direct or indirect, of any collusion with any other Respondent, and have not been knowingly disclosed by the Respondent directly or indirectly to any other Respondent prior to submission to the City.

5) **Lobbying:** Respondents are prohibited from directly or indirectly communicating with City Council members regarding their qualifications or any other matter related to the eventual award of a contract for the services requested in this Solicitation. Respondents are prohibited from contacting City staff or evaluation committee members

regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff or committee member through the Purchasing Manager. **Any violation will result in immediate disqualification of the Respondent from the selection process.**

6) City of San Marcos Artwork: Use of the City seal or the City brand on Responses is **not** permitted on non-City-generated work product.

7) Taxpayer Identification Form: Prior to the execution of a contract for these services, the selected Respondent will complete a Request for Taxpayer Identification Number and Certification Form (IRS Form W-9). The City will not make payment against the contract until it has received the properly completed form.

The selected Respondent will invoice the City for services rendered accompanied by the City's required documentation. The City's representative and the appropriate staff in the City's Finance Department must approve payments.

8) "Green" Procurement: It is the City's objective to be proactive with regard to the environment. The City encourages "Value Purchasing" of environmentally friendly products. Respondents are encouraged to clearly identify any green solution in their Responses, or a Respondent may propose a separate alternative "Green" solution in a separate envelope marked "Green Solution". The Green solution alternative Response will meet the minimum performance and delivery standards.

9) Protest Procedures: The purpose of the protest procedures is to protect the public interest in the purchasing process. This section is intended to give a bidder, proposer, respondent, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract the opportunity to protest. The City's objective is to resolve protests as soon as practical.

Any protest or complaint to the City's consideration must be submitted in writing and received by the Purchasing Manager no later than 5:00 PM on the fifth (5th) calendar day after the City notifies the bidder or proposer: 1) that it is deemed non-responsive; 2) that it is deemed not responsible; 3) the name of the apparent winning bidder; or 4) the City's intent to award a contract. If the protest or complaint does not contain the following information, it may be dismissed by the Purchasing Manager:

- Protestor's name, address, telephone number, and email address;
- The solicitation number;
- Identification of the statute or policy that is alleged to have been violated;
- A precise statement of the relevant facts;
- Identification of the issues to be resolved; and
- Supporting documentation.

The protest must be concise and presented logically and factually to help with the City's review and determination as to whether the grounds for the protest are sufficient. The Purchasing Manager will notify the protesting party that the protest has been received and make every effort to resolve the protest before contract award.

If it is determined that the grounds for the protest are insufficient and no violation of a statute or policy has occurred, the Purchasing Manager will provide a written decision to the protesting party setting forth the reasons for the

determination.

If, after conferring with the City Attorney's Office, it is decided that the grounds for the protest are sufficient and it is determined that a violation of a statute or policy has occurred, the Purchasing Manager will inform the protesting party by letter setting forth the reasons for the determination and the remedial action that will be taken.

When a protest is filed, the City will not make an award until a decision on the protest is made except, as determined by the City Manager, when a delay would jeopardize urgently needed goods or services, or a delay in making an award will unduly delay delivery or performance of urgently needed services.

10) Smoking Prohibition: Pursuant to San Marcos Ordinance No. 2013-57, as amended, all City of San Marcos-owned and rented/leased properties are smoke-free properties. All contractors, vendors, subcontractors, and their employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within ten (10) feet of doors and windows of City-owned or rented buildings, all City parks and the grounds outside of any City building. This prohibition includes e-cigarettes and other inhaled vapor devices. The City may terminate the contract for noncompliance with this ordinance.

11) Certificate of Interested Parties: A contract greater than \$50,000 requires the vendor to electronically create a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission ("TEC") website (https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the City prior to the award of the contract. A contract, including a City-issued purchase order, will not be enforceable or legally binding until the City receives and acknowledges receipt of the properly completed Form 1295 from the vendor.

12) 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. Vendors will submit the House Bill 89 Verification Affidavit with their Response. Failure to meet or maintain the requirements under this provision will be considered a material breach.

13) 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.

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

15) Intergovernmental Purchases: The City reserves the right to extend all of the terms, conditions, specifications, and unit or other prices of any contract resulting from this Response to any and all public entities, subdivisions, school districts, community colleges, colleges, and universities. This is conditioned upon mutual agreement of all parties pursuant to special requirements which may be deleted from the original contract. The Respondent will notify any governmental entity that wishes to use any contract resulting from this Solicitation that it must contact the City Purchasing Manager for approval of its utilization of the City's contract.

The City assumes no authority, liability or obligation, on behalf of any other governmental entity that may use any contract resulting from this Solicitation. All purchases and payment transactions will be made directly between the successful Respondent and the requesting entity. Any exceptions to this requirement must be specifically noted in the Solicitation.

16) Conflict of Interest Questionnaire (Form CIQ): In accordance with Chapter 176 of the Texas Local Government Code, “Disclosure of Certain Relationships with Local Government Officers,” persons, or their agents who seek to contract for the sale or purchase of property, goods, or services with the City, will file a Conflict of Interest Questionnaire (Form CIQ) with the City Secretary if the vendor has a business relationship as defined by Section 176.001(1-a) with the City and the vendor meets requirements under Section 176.006(a).

The Conflict-of-Interest Questionnaire (Form CIQ) is required to be filed within seven (7) business days of:

- a. Beginning of discussions or negotiations to enter into a contract with the City; or
- b. Submission of an application, response to a request for Responses or bids, correspondence or other writing related to a potential agreement with the City.

If the above is applicable in accordance with LGC Chapter 176, Bidder is requested to submit a completed Conflict of Interest Questionnaire (Form CIQ), with their bid in addition to submitting a completed Form CIQ to the City Clerk’s Office, 630 E. Hopkins Street, San Marcos, Texas 78666.

By law, Form CIQ must be filed with the City Clerk no later than the seventh (7th) business day after the date the Vendor/Contractor becomes aware of facts that require the statement to be filed as per Section 176.006(a-1). A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Form CIQ is available from the Texas Ethics Commission by accessing the following web address:

<https://www.ethics.state.tx.us/data/forms/conflict/CIS.pdf>

17) Prohibition on Contract with Certain Foreign-Owned Companies: Section 2274 of the Texas Government Code (SB2116) restricts the City from contracting with companies that do business with certain foreign-owned companies in connection with critical infrastructure if the company is granted direct or remote access; and if the company is owned by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a “designated country”, or headquartered in China, Iran, North Korea, Russia, or a designated country. Designated country is Governor-designated country as a threat to critical infrastructure. By signing below as an authorized signer, the Bidder hereby certifies that it does not do business with certain foreign-owned companies in connection with critical infrastructure as described herein. Failure to maintain the requirements under this provision will be considered a material breach.

18) 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 ten (10) or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.

19) Prohibition on Contracts with Companies Boycotting Certain Energy Companies: Section 2274 of the Texas Government Code (SB13) restricts the City from contracting with companies that boycott energy companies. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive boycotting energy companies, and will not discriminate against the same during the term of this contract. (Only applies to companies with ten (10) or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.

20) Inquiries and Other Information: All questions and other communication from Respondents will be permissible until 5:00 P.M., fifteen (15) business days prior to the solicitation due date. All responses to this Request for Responses, as well as any questions, clarifications, or requests for general information are to be directed to the following Point of Contact in writing:

Veronica Bradshaw, CPPB, CTCM
Procurement Program Administrator
Purchasing & Contracting Division
City of San Marcos
Email: ybradshaw@sanmarcostx.gov

21) Addenda: Any changes resulting from the questions submitted affecting the scope of services, or which may require an extension to the solicitation due date will be reduced to writing in the form of an addendum to this solicitation. Addenda may only be viewed at www.sanmarcostx.gov/eprocurement. It is the Respondent's responsibility to check the above site to determine if the City has issued any addenda. Addenda will be issued no later than ten (10) business days prior to the solicitation due date.

IX. ANTICIPATED SCHEDULE

The following is the anticipated schedule for the selection process and is subject to change:

- **July 25, 2022** – Advertise, mail, or email Solicitation
- **August 11, 2022** – Deadline for submission of questions to ybradshaw@sanmarcostx.gov
- **August 18, 2022** – Deadline for addendum to be posted at www.sanmarcostx.gov/eprocurement
- **September 1, 2022** – Deadline for receipt of responses
- **October 10, 2022** – Selection Committee selects its recommendation for the Best Value to the City
- **November 15, 2022** – City Council for consideration and contract



ATTACHMENT "A"

VENDOR INFORMATION QUESTIONNAIRE AND ASSURANCES

If this document is not submitted with the bid/proposal, it may be considered non-responsive.

Name of Company:	
Primary Office Address (City/State/Zip):	
Telephone Number:	
Email Address:	
DUNS Number (if applicable):	
Company has been in business since:	

Form of Ownership (check one):

- ☐ State Incorporated/Registered _____ / Date Incorporated/Registered _____
- ☐ LLC
- ☐ Joint Venture
- ☐ Partnership: If Partnership, select one: ☐ Limited or ☐ General
- ☐ Individual

List of Partners, Principals, Corporate Officers or Owners:

Name	Title

List of Corporate Directors:

Name	Title

1. Have you had any contracts terminated for default or other performance reasons? ☐ Yes ☐ No If yes, explain:

--

2. Has your company been convicted of a criminal offense involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official? ☐ Yes ☐ No If yes, has the conviction occurred within three (3) years immediately preceding either the date of submission of a bid/proposal, or the date of award of the contract?

If yes, explain:

--

3. Is your company involved in pending investigation or criminal prosecution of a criminal offense involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official?

☐ Yes ☐ No If yes, explain:

4. Does your company have pending claims, investigations, or civil litigation involving allegations of fraud, misrepresentation, or conversion?

☐ Yes ☐ No If yes, explain:

5. Does your company have previous final judgments against the City for breach of contract, fraud misrepresentation or conversion?

☐ Yes ☐ No If yes, explain:

6. Has your company failed to timely pay/remit sales tax, property tax, or utility payments to the City of San Marcos?

☐ Yes ☐ No If yes, explain:

7. Has your company refused to execute a contract following an award by the San Marcos City Council?

☐ Yes ☐ No If yes, explain:

8. Has your company violated the anti-lobbying provisions in a current or previous City of San Marcos procurement process by contacting a member of the San Marcos City Council prior to the award of a contract?

☐ Yes ☐ No If yes, explain:

9. Has your company furnished unauthorized substitutions of materials not meeting contract specifications in a current or previous contract with the City of San Marcos?

☐ Yes ☐ No If yes, explain:

10. Non-Collusion Certification: By signing below as an authorized signer, the Bidder certifies that ALL items below are true and correct concerning its bid.

- 1) You are fully informed of the contents of the bid and the circumstances of its preparation.
- 2) Your bid is genuine and is not a collusive or sham bid.
- 3) Neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other bidder, firm, or person to submit a collusive or sham bid, or to refrain from bidding, or sought by communication or conference with any other bidder, firm, or person to fix the prices, overhead, profit, or any cost element in your bid or in any other bid, or to secure through any collusion, conspiracy, or agreement any advantage against the City of San Marcos or any other bidder.
- 4) The prices quoted in your bid are fair and proper and are not affected by any collusion, conspiracy, connivance, or unlawful agreement on the part of your company or anyone acting on its behalf.

11. Prohibition on contracts with companies that boycott Israel. Chapter 2270 and 808, Texas Government Code restricts the City from contracting with companies that boycott Israel. By signing below and submission of the HB89 Verification form, the Bidder certifies that it does not boycott Israel and will not during the term of this contract. Failure to maintain the requirements under this provision will be considered a material breach. (HB89 Verification form required if contract value is greater than \$100,000.)

12. Prohibition on contracts with companies that do business with Iran, Sudan, or a foreign terrorist organization. Section 2252 of the Texas Government Code restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. By signing below as an authorized signer, the Bidder certifies that it does not do business with Iran, Sudan, or a foreign terrorist organization. Failure to maintain the requirements under this provision will be considered a material breach.
13. Prohibition on contracts with certain foreign-owned companies. Section 2274 of the Texas Government Code (SB2116) restricts the City from contracting with companies that do business with certain foreign-owned companies in connection with critical infrastructure if the company is granted direct or remote access; and if the company is owned by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a "designated country", or headquartered in China, Iran, North Korea, Russia, or a designated country. Designated country is Governor-designated country as a threat to critical infrastructure. By signing below as an authorized signer, the Bidder hereby certifies that it does not do business with certain foreign-owned companies in connection with critical infrastructure as described herein. Failure to maintain the requirements under this provision will be considered a material breach.
14. Prohibition on contracts with companies that discriminate against firearm and ammunition industries. Section 2274 of the Texas Government Code (SB19) restricts the City from contracting with companies that discriminate against firearm and ammunition industries. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate against the same during the term of this contract. *(Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.)* Failure to maintain the requirements under this provision will be considered a material breach.
15. Prohibition on contracts with companies boycotting Certain Energy Companies. Section 2274 of the Texas Government Code (SB13) restricts the City from contracting with companies that boycott energy companies. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive boycotting energy companies, and will not discriminate against the same during the term of this contract. *(Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.)* Failure to maintain the requirements under this provision will be considered a material breach.
16. I hereby certify that our business is an Equal Employment Opportunity (EEO) employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation, gender identity, national origin, sex, age, disability or economic condition. I further attest that this policy is documented in our Employee Handbook. As an EEO employer, we prohibit retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier.

I, _____, as _____
Name of Individual Title & Authority

of _____, declare under oath
Company Name

that the above Statements, including any supplemental responses attached hereto, are true and correct, and that the representations made herein are accurate to the best of my knowledge and are based upon a diligent search of records. I further acknowledge that any failure to conduct a diligent search or to make a full and complete disclosure may result in cancellation of my contract by the City of San Marcos, and possibly debarment.

Signature

THIS FORM MUST BE SUBMITTED WITH YOUR BID/PROPOSAL



ATTACHMENT "B"

PRICE PROPOSAL FORM

If this document is not submitted with the proposal, it may be considered non-responsive.

Name of Company:	
Contact Person:	
Primary/Principal Office Address:	
City, State, Zip:	
Telephone Number:	
Email Address:	

Item #	Position Title	Hourly Rate	x Hours per Month	= Monthly Rate	x 12 Months	= Annual Rate
1	Project Manager	\$_____		=\$_____	x 12 months	=\$_____
2	Accountant/Auditor	\$_____		=\$_____	x 12 months	=\$_____
3	Accountant/Auditor	\$_____		=\$_____	x 12 months	=\$_____
4	Investigator	\$_____		=\$_____	x 12 months	=\$_____
5	Administrative Staff	\$_____		=\$_____	x 12 months	=\$_____
6	Administrative Staff	\$_____		=\$_____	x 12 months	=\$_____
7	Administrative Staff	\$_____		=\$_____	x 12 months	=\$_____
Total Annual Rate for Items #1 through #7:						=\$_____

*Position titles may be modified as needed. Place "N/A" in unused fields.

☐ I hereby certify that our business is an Equal Employment Opportunity (EEO) employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation, gender identity, national origin, sex, age, disability or economic condition. I further attest that this policy is documented in our Employee Handbook. As an EEO employer, we prohibit retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier. I understand that failure to check the box as to these conditions may render my proposal non-responsive.

I, _____, as _____
Name of Individual Title & Authority

of _____, proposes to complete the
Company Name

Project for the prices listed in this Price Proposal Form for scope of work and services described in the RFP documents.

Signature

THIS FORM MUST BE SUBMITTED WITH YOUR BID/PROPOSAL

ATTACHMENT "C"
HOUSE BILL 89 VERIFICATION
(This affidavit must be completed and submitted with bid/proposal.)

Pursuant to Sections 2270.001, 2270.002, 808.001, Texas Government Code:

1. *"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
2. *"Company" has the meaning assigned by Section 808.001, except that the term does not include a sole proprietorship.*
3. *Section only applies to a contract that is between a governmental entity and a company with 10 or more full-time employees; and has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.*

As the undersigned legal representative of _____,
(Business Name)

after being duly sworn by the undersigned notary, do hereby depose and verify under oath that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

- a. **Does not boycott Israel currently; and**
- b. **Will not boycott Israel during the term of the contract City of San Marcos, Texas.**

(Business Representative Signature)

(Date)

(Title)

STATE OF _____ §

COUNTY OF _____ §

On this day, BEFORE ME, _____ personally appeared and personally-known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual executed the instrument for purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20_____.

[SEAL]

NOTARY PUBLIC in and for the
State of _____

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

ATTACHMENT "E"
EXHIBIT 5A
FEDERAL, STATE, AND LOCAL REQUIRED PROVISIONS

A. NATIONAL OBJECTIVES

All activities funded with American Rescue Plan Act (ARPA) funds must meet one or more objectives of the ARPA program. The Contractor certifies that the activities carried out under this Agreement will meet one or more objectives of the ARPA program.

B. COPELAND ANTI-KICKBACK ACT COMPLIANCE

The Contractor will comply with the requirements of 29 CFR Part 3 (the Copeland Act). The "Anti-Kickback" section of the Act precludes a contractor or subcontractor from inducing an employee -- in any manner -- to give up any part of his/her compensation to which he/she is entitled under his/her contract of employment.

C. CONFLICTS OF INTEREST (24 CFR 570.611; 2 CFR 200.112 AND 200.318(c); 24 CFR 85.35; AND 24 CFR 84.42

There are two sets of conflict of interest provisions applicable to activities carried out with ARPA funding. The first set, applicable to the procurement of goods and services by subrecipients (*funded applicants*), is the procurement regulations located at 24 CFR 84.42 and 85.36. The second set of provisions is located at 24 CFR 570.61 l(a)(2). These provisions cover situations not covered by parts 84 and 85.

With respect to procurement activities, the Contractor must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. At a minimum, these standards must:

- 1) Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:
 - a) An employee, officer, or agent' of the Contractor;
 - b) Any member of an employee's, officer's, or agent's immediate family;
 - c) An employee's, agent's, or officer's partner; or
 - d) An organization which employs or is about to employ any of the persons listed in the preceding sections.
- 2) Require that employees, agents, and officers of the Contractor neither solicit nor accept gratuities, favors, or anything of value from contractors, or parties to sub-agreements. However, Contractors may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- 3) Provide for disciplinary actions to be applied for any violations of such standards by employees, agents or officers of the subrecipient.

With respect to all other ARPA assisted activities, the general standard is that no employee, agent or officer of the subrecipient, who exercises decision-making responsibility with respect to ARPA funds and activities is allowed to obtain a financial interest in or benefit from ARPA activities, or have a financial interest in any contract, subcontract, or agreement regarding those activities or in the proceeds for the activities. Specific provisions include that:

- a) This requirement applies to any person who is an employee, agent, Contractor, officer, or elected or appointed official of the City, a designated public agency, or a subrecipient, and to their immediate family members and business partner(s).
- b) The requirement applies for such persons during their tenure and for a period of one year after leaving the grantee or subrecipient organization.
- c) Upon written request, exceptions may be granted by ARPA on a case-by-case basis.

D. CERTIFICATION OF ELIGIBILITY

By submitting a proposal in response to the Invitation for Bids, the Contractor certifies that at the time of submission, he/she/it is not listed on the government- wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p 189) and 12689 (3 CFR part 1989 Comp., p 235), "Debarment and Suspension".

- 1) In the event of placement on the list between the time of bid/proposal submission and time of contract award, the bidder/proposer will immediately notify the City.
- 2) Contractor certifies that its subcontractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.
- 3) Placement of Contractor on the federal government's list of suspended, ineligible, or debarred contractors, false certification, or failure to notify City as required may result in City's termination of this Contract for default.
- 4) Contractor will furnish a copy of the certification in accordance with 24 C.F.R. Part 24 (Debarment and Suspension). The Contractor and all subcontractors will be active and not debarred on the website, www.sam.gov. and provide a copy of the certification to the City before the entity performs work under this contract.

The Contractor must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" and the UAR. Contractor will have each contractor and subcontractor complete a contractor eligibility form in a format that is provided or approved by the City. This form will provide the information necessary to verify contractor eligibility.

E. NON-COLLUSION CERTIFICATION

The Contractor certifies that, if a proposal was provided that resulted in a contract, that proposal was made without collusion with any other person, firm or corporation.

F. BYRD ANTI-LOBBYING AMENDMENT

(31 U.S.C. 1352) Contractors that bid for an award exceeding \$100,000 must file the required certification that it will not and has not used Federal appropriated funds to pay any persons or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

G. COMPLIANCE WITH RULES AND REGULATIONS

Funding for the Project has been made available through the ARPA Program. The Contractor will comply with all of the applicable uniform administrative regulations related to the application, acceptance and use of federal funds as contained in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Contractor is encouraged to obtain the necessary information but failure to do so will not relieve it from compliance with the applicable regulations. The Contractor will be responsible for compliance and conformance with applicable federal and state laws, rules, regulations and codes, City permitting requirements, and City ordinances currently in effect. Federal and state laws, rules, regulations and codes include but are not limited to:

a. WORKERS COMPENSATION LAWS:

- 1) Minimum and maximum salary and wage statutes and regulations, including but not limited to:
 - a) Fair Labor Standards Act of 1938, as amended;
 - b) Equal Pay Act of 1963, PL 88-38; and
 - c) All applicable regulations implementing the above laws;
- 2) Non-discrimination statutes and regulations, including but not limited to:
 - a) Title VII of the Civil Rights Act of 1964, as amended;
 - b) Section 504 of the Rehabilitation Act of 1973, as amended;
 - c) The Age Discrimination Act of 1975, as amended; and
 - d) all applicable regulations implementing the above laws;
- 3) Licensing laws and regulations;
 - a) Compliance with Texas Accessibility Standards ("TAS") and ADA requirements, issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, or other applicable Texas law;
- 4) Requirements under the Architectural Barriers Act and the Americans with Disabilities Act set forth in 24 C.F.R. Section 570.614;
- 5) All applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q), and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.
- 6) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PUB L 94-163, 89 Stat. 871) codified at 42 U.S.C.A. Section 6321 et seq.;
- 7) National Environmental Policy Act ("NEPA") including Environmental Protection Agency regulations (40 C.F.R. Part 15), applicable ARPA regulations set forth in Code of Federal Regulations (CFR) including authorities cited therein, and National Historic Preservation Act of 1966, including Federal Historic Preservation Regulations (36 C.F.R. Part 800), which require environmental clearance of federal aid projects; and in connection with NEPA requirements, Contractor is responsible for the preparation of NEPA documents required for environmental clearance of the Project covered hereunder; G) 24 C.F.R. Section 5.105, including applicable authorities cited therein, as well as applicable provisions of 24 C.F.R. Part 58, including Section 58.5 and applicable authorities cited therein and Section 58.6 and applicable authorities cited therein.

b. AFFIRMATIVE ACTION-WOMEN-ANDMINORITY-OWNED BUSINESSES (W/MBE)

The Contractor will take all necessary affirmative steps to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro- Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Contractor may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

Affirmative steps must include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises, are solicited whenever they are potential sources.
- iii. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;
- iv. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- v. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

c. LABOR STANDARDS

The Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

The Contractor agrees to comply with the Copeland Anti-Kick Back Act (18U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The Contractor agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher wage. The Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

d. USE OF ASSETS AND ASSET REVERSION

City assets used by the Contractor during the contract shall be given back to the City at the conclusion of the contract.

e. **PROGRAM INCOME**

The City will accept and report program income to the federal government.

f. **FEDERAL FUNDING AND ACCOUNTABILITY TRANSPARENCY ACT (FFATA)**

Contracts equal to or greater than \$25,000 must be entered into the Federal Service Reporting System. Contractor information is needed to complete the compliance reporting for the Federal Funding and Accountability Transparency Act. The Contractor will complete the Federal Funding and Accountability Transparency Act form attached to this Contract.

g. **LOBBYING**

The Contractor hereby certifies that:

(i.) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(ii.) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(iii.) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Contractors shall certify and disclose accordingly:

(iv.) **Lobbying Certification**

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

h. **LEAD-BASED PAINT**

The Contractor agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-DR-assisted

housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

i. FLOOD DISASTER PROTECTION

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Contractor shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

j. HISTORIC PRESERVATION

The Contractor agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

k. RELIGIOUS ACTIVITIES

The Contractor agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(G), such as worship, religious instruction, or proselytization. The acquisition, construction, or rehabilitation of structures used for inherently religious activities is not allowable under this program.

l. COPYRIGHT

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

m. EQUAL EMPLOYMENT OPPORTUNITY

The Contractor will comply with Executive Order 11246 of 9/24/65, entitled "Equal Employment Opportunity," (30 FR 12319, 12935, 3 CFR Part, 1964-65 Comp., p. 339) as amended by Executive Order #11375 of 10/13/67, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).

EXHIBIT 5B
FEDERAL FUNDING AND ACCOUNTABILITY TRANSPARENCY ACT
CONTRACTOR FORM

Contracts equal to or greater than \$25,000 must be entered into the Federal Service Reporting System. The following Contractor information is needed to complete the compliance reporting for the Federal Funding and Accountability Transparency Act:

Contractor EIN _____

Contractor DUNS Number _____

Contractor Legal Name _____

Subawardee Address _____

Subawardee Principal Place of Performance (including congressional district)

Has the Contractor met all of the following conditions? _____

- **80% or more** of prior year annual gross revenues are from Federal awards;
- **\$25 million or more** in annual gross revenues are from Federal awards; **and**
- The public does **not** have access to compensation information filed under *Securities and Exchange Commission* (SEC) and IRS requirements.

If the Contractor has met **ALL** of the above conditions, please provide the total compensation and names of top five executives of the Contractor.

Number	Total Compensation	Name of Executive (Top 5)
1		
2		
3		
4		
5		

EXHIBIT 5C
MBE/WBE/Section 3

Instructions: If the Respondent/Bidder is a Minority Owned Business (MOB) or Women Owned Business (WOB) or qualifies as a Section 3 business, the Respondent completes Form F.1., and if the Respondent/Bidder intends to utilize a MOB/WOB or Section 3 business in the performance of the proposed contract, the respondent /bidder completes Form F.2

F.1: CERTIFICATION AS A MINORITY OWNED, WOMEN OWNED OR SECTION 3 BUSINESS

I, _____ certify that _____ () is / () is not
a Minority Owned, Women Owned or Section 3 Business.

Business Registered Name

Business Registered Address 1

State of Registration: _____

Certificate or Registration Number: _____

Certifying Agency: _____

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The City reserves the right to withdraw or terminate the proposed contract should the representation of fact be false.

Signature and Date: _____

Printed Name: _____

Position: _____

F.2: STATEMENT OF INTENT OF MOB/WOB/SECTION 3 UTILIZATION

I, _____ certify that _____ () will / () will not
will utilize **Minority Owned Business (MOB)** or **Women Owned Business (WOB)** as subcontractor(s), vendor(s),
supplier(s), or professional service(s). The estimated dollar value of the amount that we plan to pay the MOB or
WOB subcontractor(s), vendor(s), supplier(s), or professional service(s) is \$_____.

Description of Work	MOB Amount \$	Race/ Ethnicity	WOB Amount \$	Section 3 Amount \$	Name of MOB/WOB/Section 3 Organization/Address

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The City reserves the right to withdraw or terminate the proposed contract should the representation of fact be false.

Signature and Date: _____

Printed Name: _____

Position: _____

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _ _	
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: 4c			5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:		
6. Federal Department/Agency:			7. Federal Program Name/Description: CFDA Number, if applicable: _____		
8. Federal Action Number, if known:			9. Award Amount, if known: \$ _____		
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):			b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):		
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Federal Use Only:				Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

ATTACHMENT "G"
**AGREEMENT BETWEEN
THE CITY OF SAN MARCOS AND
PROFESSIONAL FIRM
CONTRACT NUMBER XXX-XXX**

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

The Owner: The City of San Marcos, Texas

and

The Professional Firm ("Firm"): {Vendor Name, City, State}

for

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

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

Further;

The Owner and the Professional Firm agree as follows:

ARTICLE 1
PROFESSIONAL FIRM'S SERVICES

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

ARTICLE 2
PROFESSIONAL FIRM'S RESPONSIBILITIES

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

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

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

The Firm shall designate a representative primarily responsible for Firm's Services under this Agreement. The designated representative shall act on behalf of Firm with respect to all phases of Professional Services and shall

be available as required for the benefit of the Project and Owner. The designated representative shall not be changed without prior approval of the Owner, which approval shall not be unreasonably withheld.

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

For "On-Call" Agreements, use the paragraph below. Otherwise delete.

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

ARTICLE 3

THE OWNER'S RESPONSIBILITIES

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

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

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

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

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

{name and title}
630 East Hopkins Street
San Marcos, Texas 78666
Ph.: 512-393-{number}
E-mail: {email}

For "On-Call" Agreements, use the paragraph below. Otherwise delete.

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

ARTICLE 4

OWNERSHIP AND USE OF DOCUMENTS

The Design Documents prepared by Professional Firm as instruments of service are and shall remain the property of the Firm whether the Project for which they are created is executed or not. However, the Owner shall be permitted to retain copies, including reproducible copies, of the Design Documents for information and reference in

connection with the Owner's use and occupancy of the Project. In addition, Owner shall have an irrevocable, paid-up, perpetual license and right, which shall survive the termination of this Agreement, to use the Design Documents and the ideas and designs contained in them for any purpose, with or without participation of the Professional Firm.

ARTICLE 5

DISPUTE RESOLUTION

If a dispute arises out of or relates to the Agreement or these Terms and Conditions, or a breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the Owner and the Firm agree to act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Owner and Firm will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

ARTICLE 6

PROJECT TERMINATION OR SUSPENSION

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

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

ARTICLE 7

MISCELLANEOUS PROVISIONS

Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between the Firm and Owner and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

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

Applicable Law. The Agreement will be governed by and construed under the laws of the State of Texas. Any controversy, claim or dispute arising out of or relating to this Agreement will be brought in a state court of competent jurisdiction in Hays County or, if in federal court, in the Federal Western District of Texas, Austin Division for trial.

Waiver. A delay or omission by either party in exercising any right or power under the Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement shall not

be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement.

Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination shall not affect any other provision of this Agreement which shall be interpreted as if the invalid or unenforceable provision had not been included.

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

Family Code Child Support Certification. If State funds are being used in the procurement of the services described in Exhibit 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, the 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. The 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.

Prohibition on Contracts with Certain Foreign-Owned Companies. Section 2274 of the Texas Government Code (SB2116) restricts the City from contracting with companies that do business with certain foreign-owned companies in connection with critical infrastructure if the company is granted direct or remote access; and if the company is owned by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a “designated country”, or headquartered in China, Iran, North Korea, Russia, or a designated country. Designated country is Governor-designated country as a threat to critical infrastructure. By signing below as an authorized signer, the Bidder hereby certifies that it does not do business with certain foreign-owned companies in connection with critical infrastructure as described herein. Failure to maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Section 2274 of the Texas Government Code (SB19) restricts the City from contracting with companies that discriminate against firearm and ammunition industries. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate against the same during the term of this contract. (Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Section 2274 of the Texas Government Code (SB13) restricts the City from contracting with companies that boycott energy companies. By signing below as an authorized signer, the Bidder certifies that it does not have a practice, policy, guidance, or directive boycotting energy companies, and will not discriminate against the same during the term of this contract. (Only applies to companies with 10 or more full-time employees and for a contract value greater than \$100,000.) Failure to maintain the requirements under this provision will be considered a material breach.

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

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

Termination Due to Loss of Funding. If Owner funds are utilized to fund any part of this Agreement, the Firm understands that those Owner funds for the payment for work performed by the Firm under this Agreement have been provided through the Owner's budget approved by Owner Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The Owner cannot guarantee the availability of funds and enters into this Agreement only to the extent such funds are made available. The Firm acknowledges and agrees that it will have no recourse against the Owner for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for the Owner extends from October 1st of each calendar year to September 30th of the following calendar year.

Ethics Matters; No Financial Interest. Firm and its employees, agents, representatives, and subcontractors have read and understand Owner's Ethics Policy available at <http://www.sanmarcostx.gov/380/Ethics>, and applicable state ethics laws and rules. Neither Professional Firm nor its employees, agents, representatives or subcontractors will assist or cause Owner employees to violate Owner's Conflicts of Interest Policy, provisions described by Owner's Standards of Conduct Guide, or applicable state ethics laws or rules. Professional Firm represents and warrants that no member of the City Council of San Marcos has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

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

Mutual Waiver of Consequential Damages. In no event shall either party be liable, whether in contract or tort or otherwise, to the other party for loss of profits, delay damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

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

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

Limitation of Liability. In recognition of the relative risks and benefits of the Agreement to both the Owner and the Firm, to the fullest extent permitted under applicable law, Owner agrees that the Firm's total liability for any and all claims, losses, costs, damages, or expenses including, without limitation, reasonable attorneys' fees and costs, of any nature whatsoever, shall not exceed the Professional Firm's total fee under the Agreement. It is intended that this limitation of liability shall apply to any and all liability or cause of action, whether in contract, warranty, tort, or otherwise, however alleged or arising.

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

Notices. All notices referenced in this Agreement shall be provided in writing. Notices shall be deemed effective when delivered by hand delivery or on the third business day after the notice is deposited in the U.S. Mail. Notices shall be sent to the following addresses:

If to Professional Firm {Firm's name and address}
{Firm's email}

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

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

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

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

ARTICLE 9

ADDITIONAL SERVICES

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

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

ARTICLE 10

PAYMENTS TO PROFESSIONAL FIRM

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

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

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

ARTICLE 11

PROFESSIONAL FIRM'S ACCOUNTING RECORDS

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

ARTICLE 12

INSURANCE

For services performed on Owner's premises, Professional Firm shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement. On the Certificate of Insurance, name the **City of San Marcos, Purchasing & 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 each occurrence and aggregate

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

ARTICLE 13 **INDEMNITY**

THE 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 Services shall be as follows:

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

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

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

For "On-Call" Agreements, use the Article below and modify duration as required. Otherwise delete.

ARTICLE 15 **TERM OF CONTRACT**

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

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

OWNER:

PROFESSIONAL FIRM:

THE CITY OF SAN MARCOS

{LEGAL NAME OF FIRM}

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibits:

EXHIBIT 1 – Scope of Services and Deliverables

EXHIBIT 2 – Detailed Fee Schedule

EXHIBIT 3 – Project Schedule

EXHIBIT 4 – Authorization of Change in Service Form

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

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

EXHIBIT 6 – On-Call Agreement Fund Allocation Request Form

EXHIBIT 1
SCOPE OF SERVICES AND DELIVERABLES

DRAFT

EXHIBIT 2
DETAILED FEE SCHEDULE

DRAFT

EXHIBIT 3
PROJECT SCHEDULE

DRAFT

EXHIBIT 4
AUTHORIZATION OF CHANGE IN SERVICE

DRAFT