



September 1, 2015

CH2M HILL Engineers, Inc.
12301 Research Boulevard
Building 4, Suite 250
Austin, Texas 78759

Contract Number: 215-314

Attention: Joseph W. Jenkins, P.E., Senior Engineer

LETTER OF AGREEMENT

Dear Mr. Jenkins:

This letter will serve as an agreement (the "Agreement") between CH2M HILL Engineers, Inc., ("Engineer"), 12301 Research Boulevard, Building 4, Suite 250, Austin, Texas 78758 and the City of San Marcos (the "City"), 630 East Hopkins, San Marcos, Texas 78666 for professional services in connection with the Miscellaneous Improvements at the San Marcos Wastewater Treatment Plant Project ("the Project"). The Engineer will perform its services as described in the Scope of Work attached as Attachment A. The Engineer agrees to perform all of its services in accordance with the attached City of San Marcos Terms and Conditions for Professional Service Agreements (Attachment B). In the event of any conflict between the provisions of Attachment A and the provisions of Attachment B, the provisions of Attachment B will control.

The City agrees to pay Engineer a fixed fee of \$137,179.00 for the satisfactory performance of basic services in accordance with the provisions of Attachment A. Since the Engineer's compensation is a fixed fee for basic services, including minor deviations from those described in this Agreement, compensation to the Engineer for additional services will only be for substantial deviations from the scope of services described in Attachment A of this Agreement. The City is under no obligation to compensate the Engineer for additional services performed without the City's prior approval. Reimbursable expenses, including such things as expenses for reproduction of documents, preparation and transmission of electronic files, auto travel mileage at the IRS standard mileage rate, delivery charges, long distance communication, freight and travel expenses are included in the Engineer's basic services compensation. The City will compensate the Engineer for its performance of additional services based on the Engineer's standard hourly rates plus expenses as specified in Attachment A.

The City will pay the Engineer monthly following the City's receipt and approval of the Engineer's itemized invoices showing direct and indirect labor costs; expenses for materials and supplies and any other reimbursable expenses (if applicable); and fees for additional services performed and included on the invoice submitted. The Engineer will base its invoices upon the extent of work it


has completed on a percentage basis within each phase or task, reimbursable expenses, and additional services (if any) less any disputed amounts, pending resolution thereof.

Each material change (deletion or addition) in the services to be provided by Engineer must be authorized by the City on the Authorization of Change in Services form attached to this Agreement as Attachment C. In no event will this Agreement be increased to an amount in excess of \$50,000.00 without prior approval by City Council.

Please indicate your acceptance of this agreement by counter-signing both agreements, retaining one executed copy for your files and returning one fully executed original to Renate Yanity, Contracts Manager at the address above.

City of San Marcos


By:


City Manager Jared Miller
Title/Printed Name

September 3, 2015
(Date)

CH2M HILL Engineers, Inc.

By:


Area Manager James Dwyer
Title/Printed Name

9/11/15
(Date)

Attachment A

Scope of Work for Miscellaneous Improvements at the San Marcos Wastewater Treatment Plant Project

This Project includes the design and upgrade of the plant non-potable water system, replacement of a dewatering centrifuge, and repair of the sludge holding tanks. These projects were identified and described in CH2M HILL's "*Wastewater Treatment Plant Miscellaneous Improvements Assessment Study*" dated January of 2015. The objective of this project design work is to develop design documents to a level of detail from which the wastewater treatment repairs and equipment replacements can be successfully implemented in regard to function and integration into existing spaces.

I. SCOPE OF ENGINEER'S BASIC SERVICES

The Engineer will, in accordance with the City's Standard Terms and Conditions:

A. Task 1 – Project Management Design

1. Staff Management and Task Coordination - Assemble a project team comprised of the City's representatives and the Engineer's representatives. The Engineer will meet with the project team to set the design and production schedule and parameters for all subsequent work, to verify the components within which all project participants must perform, and to identify all parties and significant deadlines involved in the comprehensive schedule strategy. Based on this information, the Engineer will prepare a detailed schedule of its work for the Project addressing each component of the work to be done, indicating the points of involvement of all project participants. Prior to the construction phase, the Engineer will supervise the project staff, conduct monthly project staff coordination meetings as required, document meeting decisions and action items, and assign activities to team members.
2. Monitor Project Progress - Monitor Project progress, including work completed, work remaining, budget expended, schedule, estimated cost of work remaining, and estimated cost at completion. The Engineer will monitor Project activities for potential changes; and will anticipate changes when possible, and, with the City's approval, modify project tasks, budgets, and approach as needed.
3. Project Quality Control - Perform Project quality control reviews of all deliverables on the Project.
4. Head the project team and coordinate the integration of design and operations.

B. Task 2 – Repair of Sludge Holding Tanks

1. Create drawing(s) indicating limits of construction and a potential staging area.
2. Identify construction constraints – which tanks can be out-of-service and for how long, etc.

3. Identify at what level the operators will drain and clean-out tanks.
4. Indicate what is expected of the Contractor regarding existing piping and isolation valves, such as flushing out and operating valves.
5. Develop specification regarding materials and description of work.

C. Task 3 – Centrifuge Replacement

1. Create a demolition drawing and plan for existing centrifuge and associated controls, electrical, and piping.
2. Identify constructability constraints – equipment access into building, allowable shutdowns, etc.
3. Calculate and assess ability of existing conveyor to handle additional solids loading.
4. Evaluate piping and feed pump requirements for sludge feed to centrifuge and for filtrate from the centrifuge.
5. Develop a mechanical plan and sections for new centrifuge placement.
6. Develop a structural plan and sections for centrifuge support and access.
7. Develop electrical and instrumentation and control plan and details.
8. Develop specifications for materials and equipment.

D. Task 4 – Upgrade of Plant Non-Potable Water System

1. Design the upgrades to the plant's non-potable water supply system which includes:
 - a) Replacement of approximately 200 linear feet of six (6) inch diameter non-potable water pipeline.
 - b) Replacement of approximately 150 linear feet of two (2) inch pipe with four (4) inch diameter pipe for the head-works non-potable supply.
 - c) Replacement of one existing non-potable pump with a larger pump with variable speed drive control.
 - d) Replacement of existing hydropneumatic tank with a 2,000 gallon capacity unit and a new air compressor system.
 - e) New chlorine feed line to non-potable pump discharge header.
2. Non-potable Pipeline Replacement to include:
 - a) Determine Pipe materials and pressure class.

- b) Determine Earthwork requirements: Pipe bedding, zone, and backfill requirements; minimum depths; disposal of excess trench materials; finished grading, drainage, and re-vegetation requirements.
- c) Determine location, spacing, and sizing criteria for pipeline appurtenances.
- d) Determine road crossing requirements and develop details.
- e) Determine requirements for casings, concrete encasements, and utility crossing support.
- f) Prepare pipeline Standard Details and Master Specifications.

3. Pump Station to include:

- a) Hydraulic Analysis. Refine and update the system hydraulic analysis conducted during the evaluation. Review existing pump information and curves. Develop new system curves. Define pump operating points and ranges (flows and heads) and determine horsepower requirements. Coordinate this effort with the pipeline hydraulic analysis.
- b) Review existing wet well configuration and Hydraulic Institute criteria for pump stations. Identify required modifications or upgrades needed at the wet well for proper operation of the pumps and optimization of available water storage. It is assumed no computational fluid dynamics (CFD) modeling or physical modeling is required for this task.
- c) Identify modifications of the pumps and pumps' electrical equipment needed based upon hydraulic analysis and wet well configuration modifications.
- d) Operation and Control. Review operation and control functions, features, parameters, and equipment for station including PLCs, SCADA, communications, pump start/stop sequencing, etc. Prepare preliminary piping and instrumentation drawings (P&IDs), control narratives, and lists of required features, functions, and equipment.
- e) Prepare technical specifications for major equipment items. Anticipated items pump and motor improvements, hydropneumatic tank, major valves and operators, and control equipment.
- f) Develop structural and mechanical plans and sections of pipeline and pump station.
- g) Develop electrical and instrumentation plans and details, modifications to existing one-line and typical MCC sections and wiring diagrams.
- h) Identify erosion control measures that will be required in the contractor's erosion control plan for the project.

E. Task 5 – Secondary Clarifier Crack Repairs

- 1. Identify the types of cracks the basins have and what repair systems will work best for the type of cracks to include the following subtasks. Based upon current observations this only includes clarifier no. 1 and clarifier no. 2.
 - a) Drain each clarifier and make a site visit to inspect cracks.
 - b) Measure and make an estimate of how many linear feet of repair is needed.
 - c) Based upon crack types, i.e. horizontal or vertical, identify repair products.
 - d) Develop specifications for products, acceptable methods of application, testing requirements, and performance requirements and warranties.

F. Task 6 - Design Review Workshop. Conduct a design review workshop with the City's personnel and key individuals from the Engineer's project team; the design review workshop will be conducted when the design is 30% complete.

G. Task 7 - Construction Cost Estimate. Prepare an estimate of the construction costs (AACE Class 2 level) following completion of the design and provide the City with a summary of the construction cost estimate.

H. Task 8 – Deliverables.

1. Provide the following:

- a) Three sets all final plans and specifications. Plans will be D size, 22- by 34-inch format. All scalable plans will have a graphic scale-bar on each individual sheet.
- b) One electronic copy of plans and specifications in PDF format.
- c) Two copies of the itemized cost estimate for construction of the project.

2. Based on the City's and the Engineer's understanding of the Project, the level of effort has been developed assuming the following list of drawings (total of 29) are required:

SHEET NO.	DWG NO.	DESCRIPTION	FACILITY
0001	G-1	Cover/Index	
0002	G-2	General Notes	
0003	G-3	Abbreviations	
0004	G-4	Civil Legend	
0005	G-5	Civil Legend	
0006	G-6	Mechanical Legend	
0007	G-7	Electrical Legend	
0008	G-8	I&C Legend	
0009	G-9	I&C Legend	
0010	C-1	Pipeline Plan	Non-Potable System
0011	C-2	Pipeline Plan	Non-Potable System
0012	SM-1	Mech Pump Station	Non-Potable System
0013	SM-2	Mech Pump Station	Non-Potable System
0014	SM-3	Hydro Tank Mech	Non-Potable System

0015	E-2	One-Line Modification	Non-Potable System
0016	E-3	PS Electrical Mod	Non-Potable System
0017	E-4	Wiring Diagrams/conduit schedule	Non-Potable System
0018	M-1	Mechanical PlanSludge Holding Tanks	Sludge Holding Tanks
0019	M-2	Centrifuge Plan/Sections	Centrifuge
0020	M-3	Centrifuge Details	Centrifuge
0021	S-1	Centrifuge Structural	Centrifuge
0022	E-5	Centrifuge Electrical	Centrifuge
0023	I-1	Centrifuge I&C	Centrifuge
0024	D-1	STD Piping	
0025	D-3	STD Mechanical	
0026	D-2	STD Structural	
0027	D-2	STD Electrical	
0028	D-2	STD I&C	
0029	S-2	Clarifier Crack Repair	Clarifier

II. CITY RESPONSIBILITIES

The City will:

- A. Provide full and accurate information to the Engineer regarding the City's requirements for the Engineer's services under this Agreement. In addition, the City will furnish the Engineer with copies of data and information in the City's possession needed by the Engineer pertinent to the Engineer's provision of services required under this Agreement at the Engineer's request. The City will provide this information and render decisions expeditiously for the orderly progress of the Engineer's services.
- B. Designate Jon Clack, Assistant Director of Public Services, Water/Wastewater Division, as the City's authorized representative to act on the City's behalf with respect to this Agreement. The City will examine all documents and information submitted by the Engineer and promptly render responses to the Engineer on issues requiring a decision by the City.
- C. Provide access to and make all necessary provisions for the Engineer to access City personnel and to enter public and private property as required for the Engineer to perform its services under this Agreement.
- D. Bear all costs incidental to this Article.

III. ADDITIONAL SERVICES AND PROJECT ASSUMPTIONS

- A. The City may direct the Engineer to perform services outside of the scope of the Basic Services described in Section A above. The Engineer will submit a written estimate of fees to the City and obtain the City's authorization before initiating any additional services.
- B. Each material change (deletion or addition) in the services to be provided by the Engineer must be authorized by the City on the Authorization of Change in Services form attached to this Agreement as Attachment. Compensation for additional services will be in addition to that specified for Basic Services in accordance with Section of this Agreement. The approval of the San Marcos City Council is necessary for all additional services the compensation for which exceeds \$50,000.00.
- C. Both the Engineer and the City understand and assume the following:
- 1) That only technical specifications and drawings are needed. This scope assumes that services for bidding of this work, like bid forms, contract forms, advertising, etc. are not needed at this time.
 - 2) That in providing estimates of cost, financial analyses, economic feasibility projections, and schedules for the project, the Engineer has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost and schedule. Therefore, the Engineer makes no warranty that the City's actual Project costs, economic feasibility, or schedules will not vary from the Engineer's opinions, analyses, projections, or estimates.
 - 3) The design work on this Project will last 2 months from effective date of this Agreement. Any extension of the Project schedule by the City will require an increase in the fee.
 - 4) Specifications will be incorporated into drawings as much as possible and descriptive specifications will be bound with the drawings.
 - 5) Profile drawings of the full alignment of the reclaimed pipeline are not required.
 - 6) Any land acquisition and identification of property owners will be managed by City.
 - 7) The design will be based upon existing geotechnical reports developed for the wastewater treatment plant and supplied by the City.
 - 8) If any traffic control plans are needed they will be developed and submitted by Contractor.
 - 9) Application for any necessary construction and other required permits will be prepared and submitted by either the City or the Contractor, .e.g., storm water permits and erosion and sedimentation control plan and all other required permits.

- 10) The Engineer's master specifications will be used as the basis for the development of all Division 1 and technical specifications.
- 11) The drawings will follow the City's CAE/CAD standards. Microstation will be used to develop the drawings.
- 12) The City's standard construction notes will be utilized in developing the construction drawings.
- 13) Any investigation and remediation of possible hazardous materials encountered is not included in this Agreement and will be considered an additional service.
- 14) Restoration will be seeding and sod and no special landscape design effort is required.
- 15) Project Schedule - It is anticipated that the contract period for design will occur in 2015. It is assumed all design work will be completed in 2 months from the effective date of the Agreement. A detailed project schedule will be developed and submitted to the City for acceptance prior to the beginning of Design activities.

IV. BASIS OF COMPENSATION

A. Basic Services:

The total of all fees and expenses to be paid to the Engineer for the Engineer's satisfactory performance of Basic Services as described in Section A is a total fixed fee \$137,179.00 which includes labor and expenses. The amounts of these invoices will be based upon the extent of work completed on a percentage basis. This compensation is divided among the Basic Services and Reimbursable Expenses as follows:

TABLE 1
2015 Miscellaneous Improvements at the San Marcos WWTP Engineering Design Fee Summary Breakdown

Description of Services	Labor Hours	Fee
Project Management – Design Phase		\$14,100
Non-Potable System Upgrade		\$46,179
Centrifuge Replacement		\$57,400
Sludge Holding Tank Repairs		\$7,500
Secondary Clarifiers 1&2 Concrete Crack Repairs		\$9,000
Design Review Workshop		\$3,000
Total	1,081	\$137,179

B. REIMBURSABLE AND ADDITIONAL SERVICE EXPENSES:

Compensation for additional services (all services not shown in Scope of Services) will be computed based on the Engineer's standard hourly rates, plus reimbursable expenses, plus a service charge of ten (10) percent of reimbursable expense and ten (10) percent of subcontracts and outside services.

Initial Per Diem Rates for 2015

<u>Labor Classification</u>	<u>Per Diem Rate (\$ per hour)</u>
Project Principal	\$200
Senior Project Manager	\$190
Senior Technology Consultant	\$195
Senior Project Engineer	\$190
Project Engineer	\$145
Cost Estimator	\$160
Junior Project Engineer (EIT)	\$100
Senior Technician	\$116
Junior Technician/CAD	\$87
Project Accountant	\$80
Administrative Assistant	\$80

The Engineer will make every reasonable effort to complete the work within the budget and will keep the City informed of progress toward that end so that the budget or work effort can be adjusted if necessary.

Attachment B
City of San Marcos, Texas
Terms and Conditions for Standard Professional Services Agreements

1. Standards of Performance

- (a) The performance of all services by the Consultant under this Agreement will be by persons or persons under the supervision of persons appropriately licensed or registered under State, local and Federal laws as applicable.
- (b) In performing all services under this Agreement, the Consultant will use that degree of care and skill ordinarily exercised for similar projects by professional consulting firms who possess special expertise in the types of services involved under this Agreement.
- (c) Any provisions in this Agreement pertaining to the City's review, approval and /or acceptance of written materials prepared by the Consultant and/or its subconsultants in connection with this Agreement will not diminish the Consultant's responsibility for the materials.
- (d) The Consultant will perform all of its services in coordination with the City. The Consultant will advise the City of data and information the Consultant needs to perform its services and the Consultant will meet with City representatives at mutually convenient times to assemble this data and information.
- (e) In performing all services under this Agreement, the Consultant will comply with all local, state and federal laws.

2. City's Responsibilities

- (a) The City will provide information to the Consultant regarding the City's requirements for the Consultant's services under this Agreement. The City will furnish the Consultant with copies of data and information in the City's possession needed by the Consultant, at the Consultant's request. The City will provide this information and render decisions expeditiously for the orderly progress of the Consultant's services.
- (b) The City will designate an authorized representative to act on the City's behalf with respect to this Agreement. The City will examine documents and information submitted by the Consultant, and promptly render responses to the Consultant on issues requiring a decision by the City.
- (c) The City will be responsible for any other item listed specifically as the City's responsibility under Attachment A, Scope of Work.

3. Consultant's Records

- (a) All expense records of the Consultant related to this Agreement will be kept on a recognized accounting basis acceptable to the City and will be available to the City at mutually convenient times. (applies only if the Consultant is to be reimbursed for any expenses).
- (b) The City, its auditors and federal and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to any books, documents, papers and records of the Consultant which

are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.

(c) The Consultant will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement. Information provided pursuant to this subsection will be held in strict confidence to the extent permitted by applicable law.

4. Ownership and Use of Documents

(a) All documents prepared by the Consultant in connection with this Agreement are the property of the City whether any project related to this Agreement is executed or not.

(b) The Consultant will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of three years, except that in the event the Consultant goes out of business during that period, it will turn over to the City all of its records relating to the Project for retention by the City.

5. Patent Fees and Royalties

(a) If applicable, the Consultant will pay all license fees, royalties, and other costs incident to the use of any invention, design, process, product or device subject to a patent right or copyright held by others in performing the work or in the completed project.

(b) The Consultant will hold harmless, indemnify and defend the City, its officers, agents and employees from and against all claims, damages, losses and expenses, including attorney's and expert witness fees, arising out of any claim of infringement of a patent right or copyright in the performance of the work or the incorporation in the work of any invention, design, process, product or device.

6. Consultant as Independent Contractor

It is expressly agreed that the Consultant is an independent contractor, and not an employee, agent, partner or joint venturer with the City. The Consultant will not pledge or attempt to pledge the credit of the City.

7. Designation of Consultant's Contact Person

The Consultant agrees to designate in writing a single contact person assigned to coordinate the Consultant's performance of obligations under this Agreement. Any changes to this designation must be made by the Consultant in writing to the City.

8. Breach

The City will have the right to declare the Consultant in breach of this Agreement for cause when the City determines that this Agreement has not been performed in accordance with its written terms and conditions.

9. Term; Termination of Agreement

- (a) The term of this Agreement begins on the effective date established on the first page of the Letter Agreement and will end upon the Consultant's completion, and the City's acceptance of all services described in this Agreement unless this Agreement is terminated under subsections (b) or (c) below.
- (b) This Agreement may be terminated by either party upon 15 calendar days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. The Consultant will provide the City with at least a 30 calendar day period of opportunity to cure before the Consultant initiates termination.
- (c) This Agreement may be terminated for convenience and without cause by the City upon at least 15 calendar days prior written notice to the Consultant.
- (d) In the event of termination as provided in this Section, the Consultant will immediately discontinue any and all services under this Agreement at the City's request. The Consultant will be compensated for all services performed to the termination date which are deemed by the City to be in accordance with this Agreement. This amount will be paid by the City upon the Consultant's delivering to the City all information and materials developed or accumulated by the Consultant in performing the services described in this Agreement, whether completed or in progress. The expense of the reproduction of these items will be borne by the City.

10. Insurance and Indemnity

- (a) The Consultant will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising solely from the negligent or intentional wrongful acts errors or omissions of the Consultant, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property alleged or actual infringement of patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of the Consultant and/or its agents and/or employees. This obligation by the Consultant will not be limited because of the specification of any particular insurance coverage required under this Agreement.*
- (b) The Consultant will procure and maintain at its own expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by the Consultant or its agents, subcontractors or employees. Before commencing the work the Consultant will furnish to the City a certificate or certificates in a form satisfactory to the City, showing that the Consultant has complied with this paragraph. All certificates will provide that the policies will not be canceled until at least 30 calendar days prior written notice has been given to the City. Failure of the Consultant to demand a certificate or other sufficient evidence of full compliance with these insurance requirements or failure of the Consultant to identify a deficiency from the evidence that is provided as proof of insurance will not be construed as a waiver of the Consultant's obligation to maintain the required insurance coverage specified herein. Commercial general liability and motor vehicle insurance will be

written with the City as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance and/or Employer's Liability: In accordance with the provisions of the Workers' Compensation Act of the State of Texas and/or \$500,000.00/\$500,000.00 for Employer's Liability.

Liability Insurance: (1) Commercial general liability insurance (standard ISO version) with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate, providing coverage for, but not limited to, bodily injury and property damage, premises /operations, products/completed operations, independent consultants as applicable. (2) Business Motor Vehicle liability insurance (standard ISO version) in an amount not less than \$1,000,000 per occurrence. Should the Contractor not own any automobiles, the business auto liability requirement will be amended to allow the Contractor to agree to maintain only Hired and Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability or separate Business Auto Policy. (3) professional liability coverage to cover lawful claims arising in connection with the Project in the combined single limit amount of at least \$1,000,000.00 as applicable.

(c) The stated limits of insurance required by this Section are **minimum only**--they do not limit the Consultant's indemnity obligation, and it will be the Consultant's responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release the Consultant from compliance with these requirements.

11. No Waiver of Immunity

The City's execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or liability to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

12. Remedies; No Waiver.

In the event of a default or breach of this Agreement by the Consultant, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Consultant will not waive the City's ability to enforce this Agreement after that time.

13. "Green" Procurement

It is the City's intent to be proactive with regard to the environment. The City encourages "Value Purchasing" of environmentally friendly products. The Consultant is encouraged to identify and utilize green solutions in performing any services under this Agreement, as appropriate.

14. Funding Out

As applicable, the Consultant understands that funds for the payment for work performed by the Consultant under this Agreement have been provided through the City's budget approved by City Council for the

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current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The City cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. The Consultant acknowledges and agrees that it will have no recourse against the City for its failure to appropriate funds for the purposes of this Agreement in any fiscal year other than the year in which this Agreement was executed. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.

15. Safety

The work to be performed under this contract will be performed entirely at the Consultant's risk. The Consultant will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work to be performed under this contract. The Consultant will take all reasonable precautions for the safety of and will provide all reasonable protection to prevent damage, injury, or loss to employees, the work, the endangered species, or the property affected by this contract. All damage or loss to any property caused in whole or in part by the Consultant, any subcontractor, or anyone directly or indirectly employed by any of them will be remedied by the Consultant.

16. Notice

As required under this Agreement, notice will be delivered in writing to the parties at the following locations:

To the City:

City of San Marcos
Jared Miller, City Manager
630 E. Hopkins
San Marcos, Texas 78666

To the Engineer:

CH2M HILL Engineers, Inc.,
Joseph W. Jenkins, P.E., Senior Engineer
12301 Research Boulevard
Building 4, Suite 250
Austin, Texas 78758

17. Taxes

The Consultant will not include Federal taxes or State of Texas limited sales excise and use taxes in its invoices or vouchers and statement of costs. The City is exempt from payment of such taxes and the Consultant may retrieve a resale certificate for use on this Project from the State of Texas Comptroller's website.

18. Miscellaneous Provisions

(a) This Agreement is governed by the law of the State of Texas. This Agreement is to be performed in Hays County and exclusive venue for any dispute arising under this Agreement is in Hays County, Texas.

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In the event of a dispute in federal court, venue will be in the United States District Court for the Western District of Texas, Austin Division.

(b) As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act or failure to act.

(c) The Consultant agrees not to use funds received by it under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

(d) The Consultant hereby affirms that neither the Consultant, the Consultant's firm nor any of its associates or employees have made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide professional services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the San Marcos City Code will not be considered as a valuable gift for the purposes of this Agreement. The Consultant further agrees that none of its paid personnel will be employees of the City or have any contractual relationship with the City. All activities, investigations, and other efforts made by Consultant pursuant to this Agreement will be conducted by employees, associates, or independent contractors of the Consultant.

(e) In performing the services required under this Agreement, the Consultant will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry. The Consultant agrees not to engage in employment practices which have the purpose or effect of discriminating against employees because of race, color, sex, religion, national origin, age, disability or ancestry. A breach of this covenant may be regarded as a default of the Consultant of this Agreement.

(f) All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Agreement.

(g) Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable. Paragraph and Section headings included in this Agreement are for convenience only and are not intended to define or limit the scope of any provisions of this Agreement.

(h) All services provided pursuant to this Agreement are for the exclusive use and benefit of the City and this Agreement will not give rise to any rights in third parties.

(i) The City of San Marcos is governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code, as amended. This Agreement and all written information generated under this Agreement may be subject to release under the Act. The Consultant will not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.

(j) In the event that the performance by either the City or the Consultant of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil

commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of such events.

(k) The City and the Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The City and the Consultant may not assign, sublet or transfer any of their rights or delegate or subcontract any of their duties under or interest in this Agreement in whole or in part, without the written consent of the other. Any work or services subcontracted under this Agreement will be specified by separate written agreement and will be subject to each provision of this Agreement. The Consultant will notify the City, in writing, of any change in its partnership/ownership within 30 calendar days of such change.

(l) The Consultant, will complete the work in accordance with the schedule negotiated with the City and the Consultant, has taken into consideration and made allowance for all hindrances and delays incident to such work, whether growing out of delays in securing material, workers, weather or otherwise. No charge will be made by the Consultant for any hindrance or delay from any cause whatever during the progress of any portion of its work contemplated by the specifications, but the City may grant an extension of time for the completion of the work, provided it has satisfied that such delays or hindrances were due to extraordinary causes or to the acts of omission or commission by the City. It is agreed that the granting of such extensions of time will in no instance exceed the time actually lost by Consultant for reason of such causes, provided that the Consultant will give the City immediate notice in writing of the cause of the detention or delay. Any such extension of time will be provided utilizing the City's Authorization of Change in Services form included as Attachment C.

(m) This Agreement including any appendices and referenced attachments or exhibits represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations or agreements either written or oral. In the event of a dispute between the parties regarding the intent of this Agreement, both parties agree that this Agreement will be construed in a manner consistent with the City's Request for Proposals, the Consultant's Proposal Response, and the public record of the City Council's approval of this Agreement as applicable. This Agreement may be amended only by written instrument, which must be signed by both the City and the Consultant. The San Marcos City Council must approve any such authorization of change in services or amendment if it results in a change, the compensation for which exceeds \$50,000.00.

(n) Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein. In the event of any conflict between these Terms and Conditions and the provisions of any exhibit or attachment to this Agreement, these Terms and Conditions will govern and control.

(o) The Consultant's attention is called to the fact that 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 Consultants, their subconsultants and employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within 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 this Agreement for noncompliance with this ordinance.

**ATTACHMENT C
AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS**

PROJECT: Miscellaneous Improvements at the San Marcos
Wastewater Treatment Plant Project
ENGINEER: CH2M HILL Engineers, Inc.,
AUTHORIZATION NO.:
ORIGINAL CONTRACT DATE:
AUTHORIZATION DATE:

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

Previous contract amount:	\$ _____
Net increase/decrease in contract amount:	\$ _____
Revised contract amount:	\$ _____

CH2M HILL Engineers, Inc.,

By: _____

Date: _____

Printed Name/Title

Approved by:

City of San Marcos:

Date: _____

By: _____

Printed Name/Title