

CONSULTANT SERVICES AGREEMENT NO. _____
BETWEEN CITY OF SAN MARCOS AND
COMPANY NAME

This Agreement for CONSULTANT Services ("Agreement") is entered into as of _____[date], between the CITY of San Marcos, a chartered municipal corporation ("CITY"), and NAME OF CONSULTANT/SERVICE PROVIDER a COMPANY DESCRIPTION ("CONSULTANT") hereinafter referred to individually as "Party" and collectively, the "Parties".

RECITALS

WHEREAS, CITY desires to obtain the services of CONSULTANT to perform various municipal stormwater program implementation support services on behalf of the City's Watershed Program ("Project"); and

WHEREAS, CONSULTANT is a(n) CONSULTANT SPECIALTY and has represented that CONSULTANT possesses the necessary qualifications to provide such services to CITY; and

WHEREAS, CITY has authorized the preparation and execution of this Contract by Council Resolution NUMBER to retain the services of CONSULTANT as set forth below.

NOW, THEREFORE, the Parties agree as follows:

1. Exhibits, Attachments, Recitals and Headings

All Exhibits, Attachments and Recitals referenced in this Agreement, are hereby incorporated by reference into this Agreement as though set forth in full. Headings are provided for the convenience of the parties and shall not be used to construe the meanings or intent of any term.

Exhibits and Attachments shall include, but not be limited to:

- ☐ Exhibit "A", Scope of Work
- ☐ Exhibit "B", Fee (and Price) Schedule, and Project Schedule, if applicable
- ☐ Exhibit "C", Insurance RequirementsIT
- ☐ Exhibit "D", Not Used
- ☐ Exhibit "E", Forms and Certifications

- ☐ Attachment 1, [REDACTED]
- ☐ Attachment 2, [REDACTED]

2. Scope of Work

CONSULTANT will provide services to CITY as described in Exhibit "A" entitled "Scope of Work" attached hereto and incorporated by reference. CONSULTANT must timely perform the Scope of Work in

accordance with the schedule in Exhibit C and approved by CITY, but in no event will any work be performed under this Agreement before the same is executed by both Parties.

CITY must consent in writing to any changes to the Scope of Work, with such consent to be in CITY's sole discretion, affected by written addendum or amendment to this Agreement. Exhibit "A" will be deemed revised in accordance with any revisions for which CITY's consent has been issued. Any revisions to the Scope of Work for which CITY's consent has not been issued will be null and void.

3. Funding

This project is funded with Local/City funds and/or Other Eligible funds as may be identified.

4. Compensation and Reimbursement

CITY shall compensate and reimburse CONSULTANT in accordance with their rate sheet, attached hereto as Exhibit "B", Fee Schedule, incorporated by reference and subject to available funds in the City's approved annual budget from which payment for contract purposes can be made.

For the term of this Agreement, CITY will compensate CONSULTANT a ☐ Lump Sum, ☐ Not to Exceed amount of ALPHA NUMERIC VALUE Dollars and CENTS/100 (\$NUMERIC VALUE).

CITY must consent in writing to any changes to the amount, with such consent to be in CITY's sole discretion, affected by written addendum or amendment to this Agreement.

CONSULTANT agrees to bill CITY on a monthly basis for all allowable costs. CONSULTANT must submit invoices to CITY no more frequently than monthly. CITY shall pay CONSULTANT in arrears only after receipt and approval of invoice and shall be NET 30 days from invoice receipt or material/service approval of invoice, whichever is later unless otherwise stated. All invoices must include a contract number assigned by CITY, a summary of work performed for the period being billed, a percentage of work completed for each task, and an overall percentage of work completed for services as may be applicable and as identified in the Scope of Work. CONSULTANT will submit invoices no later than the expiration of sixty (60) days following completion of work under this Agreement. Invoices submitted after 60 days may be subject to rejection in CITY's sole discretion.

5. Term of Agreement

The term of this Agreement ("Term") shall be effective on Date and shall automatically continue in full force and effect for a period of Number years, with Number, Number-year Option to Renew by mutually agreed upon written amendment executed by CITY and CONSULTANT or unless sooner terminated as provided in Termination Section of this Agreement, below.

CONSULTANT is advised that any recommendation for Agreement award is not binding on CITY until the Agreement is fully executed and approved by CITY.

6. Time of Essence

Time is of the essence with respect to the obligations of each Party under this Agreement.

7. Time for Completion of Work - Extensions

CITY and CONSULTANT have agreed on a time schedule, as provided in Exhibit “C” entitled “Project Schedule” attached hereto and incorporated by reference. All professional services required by this Agreement must be satisfactorily completed within the indicated time after CONSULTANT receives written authorization from the CITY to proceed.

Should CONSULTANT begin work in advance of receiving written authorization to provide any professional services performed by it, then such services will be considered as having been done by CONSULTANT at its own risk and as a volunteer unless said professional services are authorized by the CITY.

Any delay determined to be occasioned by causes beyond the control of CONSULTANT will be reason for the granting of extension of time for the completion of such services. When such delay occurs, CONSULTANT must immediately notify the CITY in writing of the cause and the extent of the delay, whereupon the CITY will ascertain the facts and the extent of the delay and grant an extension of time for the completion of the professional services when, in his or her judgment, his or her findings of fact justify such an extension of time. The CITY’s findings of fact will be final and conclusive as to the Parties. This is not intended to deprive CONSULTANT of its civil legal remedies in the event of a dispute.

8. Termination

This Agreement may be terminated with or without cause by CITY. Termination without cause will be effective only upon 15-day written notice to CONSULTANT. During said 15-day period CONSULTANT must continue to perform all consulting services in accordance with this Agreement, after which CITY will pay CONSULTANT for its reasonable costs and expenses incurred prior to receipt of the termination notice. This Agreement may be terminated by CITY for cause in the event of any of the following: (i) a material breach of this Agreement by CONSULTANT; (ii) misrepresentation by CONSULTANT in connection with the formation of this Agreement or the performance of services; and/or (iii) CONSULTANT’s failure to perform services under this Agreement as directed by CITY. Termination for cause will be effective immediately upon the delivery of written notice of termination to CONSULTANT, after which CITY will pay CONSULTANT for its reasonable costs and expenses incurred prior to receipt of the termination notice. Upon termination of this Agreement, CONSULTANT must return any confidential information which was provided by CITY, in the event such information is in a format that makes it feasible to return to CITY.

Executive Order N-6-22 Russia Sanctions: On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs State agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities that shall be grounds for termination of this Agreement. The State

and/or City shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State and/or City.

9. Office Space and Clerical Support

Unless otherwise specified in Exhibit "B," CONSULTANT will provide its own office space and clerical support at its sole cost and expense.

10. Confidential Relationship

CITY may from time to time communicate to CONSULTANT certain information to enable CONSULTANT to effectively perform the services. CONSULTANT must treat all such information as confidential, whether or not so identified, and must not disclose any part thereof without the prior written consent of CITY. CONSULTANT must limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Section, however, will not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of CONSULTANT without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

CONSULTANT must not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of CITY. In its performance hereunder, CONSULTANT will comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

Consultant must only use and/or disseminate such confidential information for purposes required by this Agreement and/or otherwise required by federal, state or local law. Consultant acknowledges and agrees that it is responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, used and disclosure of such confidential information under its control or in its possession by Consultant and/or its employees, agents, contractors and representatives. If such confidential information is disseminated by Consultant under circumstances not authorized by this Agreement or City, Consultant must contact City immediately and work with City to remedy the wrongful dissemination of such confidential information, including but not limited to cooperating with and assisting City with any investigation of the data or security breach, providing City with access to all relevant records, logs, files, data reporting and other materials required by City, and facilitating interviews between the City and its employees, agents, contractors and/or representatives. Any act or omission by Consultant and/or its employees, agents, contractors and representatives that compromises either the security, confidentiality or integrity of the Confidential Information or the safeguards put in place by City or Consultant relating to the protection of the security, confidentiality or integrity of confidential information constitutes a material breach of this Agreement for which City may immediately terminate the Agreement without further liability or obligation to Consultant.

Artificial Intelligence (AI). CONSULTANT shall disclose its use of AI during the term of this Agreement. AI is defined as a set of technologies that allow computers to perform tasks that typically require human knowledge. All AI that CONSULTANT may use during the course of its work under this Agreement and any and all data used or adduced by CONSULTANT and AI platform used by CONSULTANT must be safeguarded by CONSULTANT and such AI platform, including by encryption, secure network configuration, data transfer restrictions, restricted employee access, or other measure that meets or exceeds industry standards.

In the event of termination of this Contract, CONSULTANT agrees that it will return any confidential information which was provided by CITY. In the event such information is in a format that makes it feasible to return same to CITY.

11. Covenant Against Contingent Fees

CONSULTANT declares that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach of violation of this warranty, CITY has the right, but not the obligation, to annul this Agreement without liability, or, at its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

12. Ownership of Records and Documents

All memoranda, reports, plans, specifications, maps and other documents prepared or obtained under the terms of this Agreement will be the property of CITY. CONSULTANT must promptly provide such documentation to CITY in electronic and/or other format as determined by CITY. In the event of any re-use or alteration of the documents, such re-use or alteration will be the responsibility of CITY. Upon expiration or earlier termination of this Agreement, CONSULTANT must return to CITY any and all equipment, documents or materials and all copies made thereof which CONSULTANT received from CITY or produced for CITY for the purposes of this Agreement.

13. Conflict of Interest and Political Reform Act Obligations

During the term of this Agreement, CONSULTANT will not act as Consultant or perform services of any kind for any person or entity whose interests conflict in any way with those of CITY. CONSULTANT will at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. CONSULTANT will immediately disqualify itself and will not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents and warrants that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for CITY.

CONSULTANT must comply with all of the reporting requirements of the Political Reform Act and local ordinance. Specifically, if applicable, CONSULTANT must file Statements of Economic Interest with the

CITY Clerk in a timely manner on forms which CONSULTANT must obtain from the CITY Clerk. Additional information can be found on the City's website at <https://www.sanmarcosca.gov/City-Government/City-Clerk/Disclosures-Filings>.

14. No Assignments/Work by Subcontractor

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which CITY, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

All subcontractors listed (if any) must provide a meaningful element of work within the defined scope of work. Changes to the subcontractor list during the term of the Agreement shall be approved in writing by the City prior to the start of work by the subcontractor. If applicable, Subcontractor's subject to prevailing wage will be required to register with the Department of Industrial Relations (DIR).

15. Maintenance of Agreement Documentation

CONSULTANT must maintain all books, documents, papers, employee time sheets, accounting records and other evidence pertaining to costs incurred and must make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by CITY and copies thereof must be furnished, if requested.

For Federally funded projects, where applicable, Contractor shall retain records in accordance with 2 CFR 200.334 – 200.338 and shall have financial managements systems that can track grant funds, establish internal controls and payments in accordance with 2 CFR 200.302, -303, -305.

16. Independent Contractor, Consultant Not an Agent

At all times during the term of this Agreement, CONSULTANT will be an independent contractor and will not be an employee, agent, partner or joint venturer of CITY. Except as CITY may specify in writing, CONSULTANT has no authority, expressed or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT has no authority, expressed or implied, pursuant to this Agreement to bind CITY to any obligation whatsoever. CITY has the right, but not the obligation, to control CONSULTANT insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, CITY does not have the right to control the means by which CONSULTANT accomplishes such services.

17. Warranties and Representations

CONSULTANT warrants and represents that CONSULTANT possesses the requisite skills and resources to perform the services required by the Scope of Work in a reasonable and worker like manner. CONSULTANT further represents and declares to CITY that it has all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession, and that it will at its sole cost and expense, keep in effect at all times during the term of this Agreement, any such license, permit or approval.

18. Digital and Electronic Accessibility

CONSULTANT shall ensure that any and all electronic documents and other digital materials produced under this Agreement comply with all applicable accessibility requirements, including Title II of the Americans with Disabilities Act (ADA), Section 508 of the Rehabilitation Act, and Web Content Accessibility Guidelines (WCAG) Version 2.1 Level AA, or successor standards.

CONSULTANT shall promptly remediate any accessibility deficiencies brought to its attention, and shall do so at no additional cost to CITY.

19. Recovered Organic Waste

Where applicable, CONSULTANT agrees that all Compost or Mulch provided through this Agreement shall comply with the municipal procurement requirements of SB 1383, including being generated from California Organic Waste Products, as defined by SB 1383 for each applicable material type.

20. Recycled-Content Paper.

To the extent applicable, CONSULTANT shall comply with the requirements set forth in SB 1383 and Public Contracts Code Section 22150 for the procurement of recycled paper products. To the extent that the fitness and quality are equal, CONSULTANT shall purchase recycled products, as defined in Public Contracts Code Section 12200 instead of non-recycled products.

21. Personnel

CONSULTANT must assign qualified and certified personnel to perform services under this Agreement. CONSULTANT's personnel must at all times comply with CITY's drug and alcohol policies then in effect. CITY has the right, but not the obligation, to review and disapprove personnel performing work under this Agreement. CITY has the unrestricted right, but not the obligation, to require the removal of any person(s) assigned by CONSULTANT by giving oral or written notice to CONSULTANT to such effect.

CONSULTANT's performance may be evaluated by CITY. A copy of the evaluation may be sent to CONSULTANT for comments. The evaluation together with the comments, if any, shall be retained as part of the Contract record.

22. Non Discrimination

In the performance of this Agreement, CONSULTANT shall not refuse or fail to hire or employ any qualified person, or bar or discharge from employment any person, or discriminate against any person, with respect to such person's job training, compensation, advancement or discharge of employment, and other terms, conditions or privileges of employment because of such person's age; religion; religious creed; race; color; national origin; ancestry; physical, psychological, emotional and/or mental disability; medical condition (including HIV and AIDS); marital status; familial status; income; sex (including pregnancy, childbirth, breastfeeding and/or medical conditions related to pregnancy,

childbirth or breastfeeding); gender; gender identity; gender expression; sexual orientation; genetic information; and military and/or veteran status. Where applicable, Federal non-discrimination Requirements are set forth in Exhibit D – N/A.

23. Licenses, Permits, Etc.

CONSULTANT represents and declares to CITY that it has all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. CONSULTANT represents and warrants to CITY that CONSULTANT will, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit or approval which is legally required for CONSULTANT to practice its profession.

In accordance with City's Municipal Code Chapter 3.08, a business license shall be required when doing business with the City. Additional information and application can be found on the City's website at: <https://www.san-marcos.net/departments/finance/business-licenses>.

24. Safety (where applicable)

CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by CITY Safety Officer and other CITY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

Pursuant to the authority contained in Vehicle Code §591, CITY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

Any subcontract entered into with respect to this Agreement must contain all of the provisions of this Section.

25. Insurance

Contractor shall obtain and maintain during the entire Term of this Agreement insurance policies from companies admitted or authorized in the State of California and in accordance with Exhibit C Insurance Requirements, attached hereto and incorporated by reference.

26. Insurance Certificates

CONSULTANT must provide CITY with certificates of insurance and accompanying endorsements showing the insurance coverages described in the paragraphs above, in a form and content approved by CITY, prior to beginning any work under this Agreement.

CITY utilizes an online Evidence of Coverage database, PINS Advantage, to electronically maintain the insurance documents required by this Section. CITY will send CONSULTANT an automatic email through the PINS system with information to provide to CONSULTANT's insurance representative to upload insurance documents into the CITY's system.

27. Indemnification

With respect to professional services performed under this Agreement, and to the full extent permitted by law, CONSULTANT shall indemnify, protect, defend and hold harmless the CITY of San Marcos and its elected and appointed boards, officers, agents and employees (collectively, "CITY Indemnified Parties") from and against any liability, including without limitation liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by CONSULTANT or by any individual or agency for which CONSULTANT is legally liable, including, but not limited to, officers, agents, employees or subcontractors of CONSULTANT.

CONSULTANT will work in good faith to procure applicable insurance for the cost of any defense arising from its obligations under this Agreement, and acknowledges that the provisions of this section are not limited by the insurance requirements set forth in section 20. Further, CONSULTANT agrees to pay any and all costs incurred by City Indemnified Parties to enforce the indemnity and hold harmless provisions of this section.

28. Dispute Resolution

The Parties agree to make a diligent, good faith attempt to resolve any claim, controversy or dispute arising out of or relating to this Agreement, or concerning the breach or interpretation thereof. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving Party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each Party's position and a summary of arguments supporting that position, and (b) the authorized representative who will represent that Party and of any other person(s) who will accompany the authorized representative for good faith negotiations. If a dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, and within a reasonable timeframe which shall be no greater than thirty (30) days from start of good faith negotiations unless unforeseen delays occur for which each Party shall agree to an extension of time, the Parties agree to resolve the dispute pursuant to the following procedures:

- 24.1** Each Party shall designate an authorized representative to negotiate the dispute, and said representative will attempt to resolve the dispute by any means within their authority.
- 24.2** Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Contract to arbitrate,

shall be determined by binding arbitration in County of San Diego, California, before one arbitrator. The arbitration shall be administered by JAMS or arbitrator within County of San Diego as mutually agreed upon by the Parties pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

24.3 Fees and Costs. The Parties shall each bear one-half of the arbitration fees, as well as all of their own attorneys' fees and costs in any arbitration proceeding or with respect to any other provisional remedy which may be employed by the Parties. Arbitrator may include in the Award that the prevailing party's share of the fees of the arbitrator be paid to the prevailing Party.

24.4 Continuance of Performance During Dispute. Unless otherwise directed in writing by the City, at all times during the course of any dispute resolution procedure or legal proceeding, the Consultant shall continue with the performance of the Agreement Services in a diligent manner and in accordance with the applicable provisions of this Agreement. The City shall continue to satisfy its uncontested payment obligations to the Consultant during the pendency of any such dispute, subject to the terms and conditions of this Agreement. Records of the Agreement for Services performed during such time shall be kept in accordance with the applicable provisions of this Agreement.

24.5 Agreement of Dispute Resolution Process. This provision is not intended to, nor shall it be construed to, change the time periods for filing any claim or action under Government Code Sections 900, et seq. This dispute resolution process is a material condition to this Agreement. By executing this Agreement, you are agreeing to the dispute resolution process described in this Section and are giving up any rights you might possess to have the dispute litigated in a court or by jury trial.

24 DISPUTE RESOLUTION	
DB (Initials)	CITY (initials)

25 Notices

All notices, billings and payments which are required or permitted to be made hereunder shall be in writing and shall be delivered personally (by courier or otherwise), by electronic mail, by facsimile, sent by certified or registered mail, postage prepaid and return receipt requested, or by express mail or other nationally recognized overnight or same-day delivery service. Notices shall be deemed to have been received: upon delivery if personally delivered; seventy-two (72) hours after deposit in the U.S. Mail; on the day of transmission via electronic mail or facsimile unless sent after business hours and in that event, on the next business day. Notices may be sent to the following addresses; the parties may deliver notice of change of address or delivery information in the manner outlined in this Section.

CITY:	City of San Marcos, CA
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Department:	
Attention:	
Email:	
Address:	
Phone:	
Facsimile:	

CONSULTANT:	
Attention:	
Email:	
Address:	
Phone:	
Facsimile:	
Website/Other:	

26 Entire Agreement, Modification

This Agreement, and any exhibits and attachments hereto, constitutes the entire understanding between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, discussions, representations, agreements and/or understandings concerning the same. This Agreement may not be amended, modified or altered except by an agreement in writing and signed by both Parties. No verbal amendment or implied covenant will change any provision of this Agreement.

27 Order of Precedence

In the event of conflicting provisions, the following order of precedence will apply: 1) Standard Federal Provisions (if any), 2) Special Provisions for Agreement (if any), 3) this Agreement 4) Exhibits and Attachments to this Agreement 5) the RFP/Bid and 6) Contractor's/Consultant's Proposal.

28 Construction

The terms and provisions of this Agreement will be liberally construed to effectuate the purpose of this Agreement. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase, or provision of this Agreement, no uncertainty or ambiguity will be construed or resolved against either Party under any rule of construction, including the Party primarily responsible for the drafting and preparation of this Agreement.

29 Binding Agreement

This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors.

30 Severability

The provisions of this Agreement are severable. In the event that any provision of this Agreement, or any element thereof, is found to be invalid, illegal, or unenforceable by any court of competent jurisdiction, the validity and enforceability of the remaining provisions will not be affected and will remain in full force and effect.

31 Waiver

No waiver by either Party of any term or provision of this Agreement will be deemed or will constitute a waiver of any other provision of this Agreement, nor will any waiver constitute a continuing waiver unless otherwise expressly provided in writing.

32 Definitions

The terms “shall” and “will” used throughout this Agreement are intended to be mandatory.

33 Gender

Whether referred to in the masculine, feminine, or as "it," CONSULTANT means the individual or corporate CONSULTANT and any and all employees of CONSULTANT providing services hereunder.

34 Applicable Laws

CONSULTANT shall observe and comply with all local, state and federal laws, rules, ordinances and regulations in the performance of its obligations under this Agreement.

35 Governing Law, Venue

This Agreement will be construed under and in accordance with the laws of the State of California, and appropriate venue for any action or proceeding arising from this Agreement shall be had in the Superior Court of San Diego County, North County Branch.

36 Labor Requirements

NOTICE IS HEREBY GIVEN that payment of prevailing wages and compliance with the requirements of California Labor Code Sections 1720-1743, 1770 et. seq. **IS NOT** required for this project. Where applicable, a summary of the prevailing wage requirements is set forth in Exhibit N/A, Prevailing Wage Requirements.

37 Counterparts and Electronic Signatures

This Agreement and other actions and documents related to this Agreement may be executed in any number of counterparts, each of which when executed and delivered will for all purposes be deemed to be an original, and all of which taken together will constitute one and the same document. The counterparts of this Agreement and all other actions and documents executed in connection herewith may be executed and delivered by facsimile or other electronic signature by any of the Parties to any other Party and the receiving Party may rely on the receipt of such document so executed and delivered

by facsimile or other electronic means as if the original had been received. The Parties agree that the electronic signature of a Party to this Agreement and any other actions and documents related to this Agreement, shall be as valid as an original signature of such Party and shall be effective to bind such Party to this Agreement. The Parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

38 Authority to Sign

The Parties each represent that all requisite approvals have been secured and that the persons executing this Agreement on their behalf have full authority to do so and to bind such Party to perform pursuant to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY:
City of San Marcos

CONSULTANT:
COMPANY NAME

By: _____
Michelle Bender, City Manager
or Delegated Designee

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Helen Holmes Peak, City Attorney

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Phillip Scollick, City Clerk

City Business License No.

Street Address

City, State, Zip Code

***The Signer(s), for all forms of business, shall provide evidence that the individual(s) signing the Agreement has full power to execute this Agreement and related documents on behalf of the Contractor/Service Provider/Consultant.**

EXHIBIT “A”

SCOPE OF WORK

The following Scope of Work outlines the tasks to be performed by CONSULTANT. CONSULTANT must provide the necessary qualified personnel to perform such services. In the performance of the services CONSULTANT will:

EXHIBIT “B”

FEE SCHEDULE AND PROJECT SCHEDULE

EXHIBIT “C”

INSURANCE REQUIREMENTS

EXHIBIT “D”

APPLICABLE COMPLIANCE FORMS AND CERTIFICATIONS