



## City of San Marino

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**DATE:** December 18, 2020  
**TO:** Audit Firms Interested in Responding to a Request for Proposals  
**FROM:** Paul Chung, Finance Director  
**SUBJECT:** Notification of Interest

The City of San Marino is soliciting proposals from qualified firms of certified public accountants to audit the City of San Marino's financial statements for the fiscal years ending June 30, 2021 through June 30, 2023, with the option of auditing the City of San Marino's financial statements for two subsequent years. Enclosed for your consideration is a Request for Proposal (RFP).

To be considered for this engagement, your firm must meet the qualifications and satisfy the requirements set forth in the RFP. Completed proposals must be received by 5:00 pm on January 29, 2021, and must be submitted to:

Paul Chung  
Finance Director  
City of San Marino  
San Marino, CA 91108  
[pchung@cityofsanmarino.org](mailto:pchung@cityofsanmarino.org)

Mark Siegfried  
Accounting Manager/Controller  
City of San Marino  
San Marino, CA 91108  
[msiegfried@cityofsanmarino.org](mailto:msiegfried@cityofsanmarino.org)

All questions and correspondence should be directed to me at the above address or by e-mail at [pchung@cityofsanmarino.org](mailto:pchung@cityofsanmarino.org) and [msiegfried@cityofsanmarino.org](mailto:msiegfried@cityofsanmarino.org). All questions submitted by 5:00 pm on January 15, 2021, will be answered in writing, and copies will be sent or e-mailed to all firms responding with a Notification of Interest.

## **REQUEST FOR PROPOSALS**

**The Finance Department is requesting Proposals  
for:**

**Professional Audit Services**

**RELEASE DATE: December 18, 2020**

**INQUIRY DEADLINE: 5PM, January 15, 2021**

**RESPONSE DUE: 5PM, January 29, 2021**

## CITY OF SAN MARINO REQUEST FOR PROPOSALS

### I. INTRODUCTION

#### A. General Information

The City of San Marino is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal years ending June 30, 2021 through June 30, 2023, with the option of auditing its financial statements for each of the two subsequent fiscal years. These audits are to be performed in accordance with generally accepted auditing standards, the standards set forth for financial audits in the US General Accounting Office's (GAO) Government Auditing Standards (1994), the provision of the Single Audit Act amendments of 1996, and the US Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

There is no expressed or implied obligation for the City of San Marino to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

Any inquiries concerning the request for proposals should be addressed to Paul Chung, Finance Director and Mark Siegfried, Accounting Manager/Controller.

To be considered, electronic copies of a proposal must be received by Paul Chung and Mark Siegfried by 5:00 pm on January 29, 2021. In lieu of physical copies, electronic copies will be accepted to [pchung@cityofsanmarino.org](mailto:pchung@cityofsanmarino.org) and [msiegfried@cityofsanmarino.org](mailto:msiegfried@cityofsanmarino.org); however, the file must be in PDF format and errors in electronic transmission will not be accepted as a reason for late submission. The City of San Marino reserves the right to reject any or all proposals submitted. Proposals submitted will be evaluated by a Committee consisting of Paul Chung, Finance Director, and Mark Siegfried, Accounting Manager/Controller.

During the evaluation process, the Committee and the City of San Marino reserve the right, where it may serve the City of San Marino's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. Firms selected as finalists may be requested to make oral presentations as part of the evaluation process.

The City of San Marino reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is

selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of San Marino and the firm selected.

It is anticipated the selection of the firm will be completed and approved by City Council on March 17, 2021.

**B. Term of Engagement**

A five-year contract is contemplated, subject to the annual review and recommendation of the Committee, the satisfactory negotiation of terms (including a price acceptable to both the City of San Marino and the selected firm), the concurrence of the City Council, and the annual availability of an appropriation.

**II. NATURE OF SERVICES REQUIRED**

**A. General**

The City of San Marino is soliciting the services of qualified firms of certified public accountants to audit its financial statements for the fiscal years ending June 30, 2021 through June 30, 2023, with the option to audit the City of San Marino's financial statements for each of the two subsequent fiscal years. These audits are to be performed in accordance with the provisions contained in this request for proposals. In prior years, the City of San Marino has not prepared a Comprehensive Annual Financial Report (CAFR), but rather a less formal annual financial statements. The City of San Marino is looking to prepare a CAFR in the near future so we are looking for a firm to include the preparation of a CAFR in the scope of work to be performed. Please include a fee schedule for financial statements as they are currently prepared as well as a fee schedule for preparation of a CAFR.

**B. Scope of Work to be Performed**

The City of San Marino desires the auditor to express an opinion on the fair presentation of its general purpose financial statements in conformity with generally accepted accounting principles.

**C. Auditing Standards to be Followed**

To meet requirements of this request for proposals, the audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, the standards for financial audits set forth in the US General Accounting Office's Government Auditing Standards (1994), the provisions of the Single Audit Act amendments of 1996, and US Office

of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

#### **D. Reports to be Issued**

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue:

1. A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles including preparation of the financial statements.
2. A report on compliance and on internal control over financial reporting based on an audit of financial statements performed in accordance with government auditing standards.
3. A report on compliance with requirements applicable to each major program and internal control over compliance with OMB Circular A-133, if required.
4. The schedule of expenditures of federal awards, if applicable.
5. The schedule of findings and questioned costs, if required.
6. The status of prior year's findings and questioned costs, if required.
7. A report on compliance with California Constitution Article XIII B – Appropriation Limit.
8. In the required report(s) on internal controls, the auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

Reportable conditions that are also material weaknesses shall be identified as such in the report.

Non-reportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referred to in the report(s) on internal controls.

The report on compliance shall include all material instances of non-compliance. All non-material instances of non-compliance shall be reported

in a separate management letter, which shall be referred to in the report on compliance.

**Irregularities and illegal acts.**

Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties unless either is complicit in the irregularity or illegal act, in which case the information shall be provided to the appropriate authority:

1. City Manager
2. City Attorney

**E. Additional Reports to be Prepared**

The City also requests the following services to be included in the quote:

1. Preparation of financial statements. Please include a quote for preparation of financial statements as the currently issues them as well as a quote for preparation of a CAFR if City Council approves this additional fee.
2. Preparation by the audit firm of the statistical section of the CAFR, if applicable.
3. Preparation and publishing by the audit firm of ten copies of the annual financial statements.

**F. Special Considerations**

1. The City of San Marino intends to send its CAFR to the Government Finance Officers Association of the United States and Canada (GFOA) for review in their Certificate of Achievement for Excellence in Financial Reporting program. Some special assistance from the auditor might be required by the City of San Marino to meet the requirements of that program. The City has not previously received an award from the GFOA.
2. The City of San Marino's uses Springbrook accounting system for all of its finance department reporting.
3. The schedule of expenditures of federal awards and related auditor's report, if required, as well as the reports on the internal control structure and compliance are not to be included in the comprehensive annual financial report but are to be issued separately.

**G. Working Paper Retention and Access to Working Papers**

All working papers and reports must be retained, at the auditor’s expense, for a minimum of three (3) years unless the firm is notified in writing by the City of San Marino of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

City of San Marino

US General Accounting Office (GAO)

State of California, State Controller

Los Angeles County, Auditor/Controller

Parties designated by the federal or state governments or by the City of San Marino as part of an audit quality review process

Auditors of entities of which the City of San Marino is a sub-recipient of grant funds

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

**III. DESCRIPTION OF THE GOVERNMENT**

**A. Name of Contact Person**

The auditor’s principal contact with the City of San Marino will be Paul Chung, Finance Director, who will coordinate the assistance to be provided by the City of San Marino to the auditor.

**B. Background Information**

The City of San Marino is located in San Gabriel Valley and is home to approximately 14,000 residents. The City is known for uniquely residential - single-family homes on large lots surrounded by beautiful gardens, with wide streets and well maintained parkways. The City is also the home of The Huntington Library, Art Museum, and Botanical Garden.

The City’s basic services are considered to be governmental activities, including (1) public safety, (2) fire, (3) community development, (4) community services, (5) public works, and (6) general government. Property taxes and charges for services fund most of these activities.

The City of San Marino serves its community of residents and visitors alike with annual funding from grants, fees, collections of taxes and contracts. The City is governed by an elected City Council comprised of a Mayor and four Council Members.

The City operations are managed by the City Manager. The City Manager manages a staff of six department leaders and their respective staffs of approximately 103 full-time and 29 part time employees located in three facilities across San Marino.

The interim audit portion of the City’s audit would take place in May while final fieldwork would be performed in early September, with a report to be completed and published by November 15, 2021. In addition, the City of San Marino requires that a meeting of the auditors and staff members be held to discuss a draft version of the financial statements.

More detailed information on the government and its finances can be found in:

1. June 30, 2020 Annual Financial Report – Available on the City’s website:  
[https://www.cityofsanmarino.org/government/departments/finance/financial\\_compliance.php](https://www.cityofsanmarino.org/government/departments/finance/financial_compliance.php)
  
2. 2020-2021 Annual Budget. Available on the City’s website:  
[https://www.cityofsanmarino.org/government/departments/finance/annual\\_city\\_budget.php](https://www.cityofsanmarino.org/government/departments/finance/annual_city_budget.php)

**C. Fund Structure**

The City of San Marino uses the following fund types and account groups in its financial reporting:

Fund Type / Account Group	Number of Individual Funds	Number of Funds as Combined in Financial Statements
General Fund	7	1
Special Revenue Funds	19	19
Debt Service Funds	1	1
Capital Projects Funds	1	1
Internal Service Funds	1	1

**D. Budgetary Basis of Accounting**

The City of San Marino prepares its budget on a basis consistent with generally accepted accounting principles.

**E. Pension Plans**

The City of San Marino participates in the California Public Employees' Retirement System (PERS), an agent multiple-employer public employee retirement system that acts as a common investment and administration agent for the participating public entities within the State of California.

**F. Joint Ventures**

The City of San Marino participates in no joint ventures.

**G. Magnitude of Finance Operations**

The Finance Department is headed by Paul Chung, Finance Director. The department consists of the Finance Director, an Accounting Manager/Controller and 2 Account Clerks.

**H. Internal Audit Function**

The City of San Marino does not maintain an internal audit function.

**I. Availability of Prior Audit Reports and Working Papers**

Interested proposers who wish to review prior years' audit reports and management letters to aid their response to this request for proposals can find them at the City's Financial Compliance & Transparency webpage:

[https://www.cityofsanmarino.org/government/departments/finance/financial\\_compliance.php](https://www.cityofsanmarino.org/government/departments/finance/financial_compliance.php)

Prior auditor working papers will only be made available to the successful proposer.

#### **IV. TIME REQUIREMENTS**

##### **A. Proposal Calendar**

The following is a list of key dates up to and including the date proposals are due to be submitted:

Request for proposals issued	December 18, 2020
Due date for written questions	January 15, 2021
Due date for proposals	January 29, 2021
Selected firm notified	March 17, 2021

##### **B. Schedule for the 2021 Fiscal Year Audit**

###### **1. Interim Work**

Interim work may begin immediately upon selection of auditor by the Committee and confirmation received by the City Council on March 17, 2021 and should be completed no later than May 31, 2021.

###### **2. Year-end Field Work**

City staff shall provide an adjusted trial balance and all supporting schedules to auditor no later than August 31, 2021. Auditor shall complete all field work and adjustments by September 30, 2021.

###### **3. Draft Reports**

The auditor shall have drafts of the audit report(s), financial statements, and recommendations to management available for review by the Committee by October 15, 2021.

##### **C. Date Final Report is Due**

The Finance Director and the Committee will complete their review of the draft report as expeditiously as possible. It is anticipated that this process will be completed and the final report delivered on November 15, 2021, for the Council meeting on the second Wednesday of December 2021. A representative of the audit firm will need to be present at that meeting of the City Council to present the audit findings.

## **V. ASSISTANCE TO BE PROVIDED TO THE AUDITOR AND REPORT PREPARATION**

### **A. Finance Department Assistance**

The Finance Department personnel will be available during the audit to assist the firm by providing information, documentation and explanations. The preparation of confirmation letters will be the responsibility of the audit firm.

### **B. Report Preparation**

Report preparation, editing and printing, including the Annual Financial Statements or CAFR for the City shall be the responsibility of the auditor.

## **VI. PROPOSAL REQUIREMENTS**

### **A. General Requirements**

#### **1. Inquiries**

Inquiries concerning the request for proposals and the subject of the request for proposals must be made to:

Paul Chung, Finance Director  
City of San Marino  
[pchung@cityofsanmarino.org](mailto:pchung@cityofsanmarino.org)

Mark Siegfried  
City of San Marino  
[msiegfried@cityofsanmarino.org](mailto:msiegfried@cityofsanmarino.org)

#### **2. Submission of Proposals**

The following material is required for a proposing firm to be considered:

a. A master copy (so marked) of a Technical and Comprehensive Dollar Cost Proposal to include the following:

i. Title Page showing the request for proposals' subject; the firm's name; the name, address and telephone number of a contact person; and the date of the proposal.

ii. Table of Contents

iii. Transmittal Letter, signed, briefly stating the proposer's understanding of the work to be done, the commitment to perform the work within the time period, a statement why the firm believes itself to be best qualified to perform the engagement and a statement that the proposal is a firm and

irrevocable offer for 60 days.

- iv. Detailed Proposal following the order set forth in Section VI B and C of this request for proposals.
  
- b. The proposer shall include a comprehensive dollar cost bid within the proposal.
  
- c. Proposers should send the completed proposal to the following address:

Paul Chung, Finance Director  
City of San Marino  
[pchung@cityofsanmarino.org](mailto:pchung@cityofsanmarino.org)

Mark Siegfried  
City of San Marino  
[msiegfried@cityofsanmarino.org](mailto:msiegfried@cityofsanmarino.org)

## **B. Technical Proposal**

### **1. General Requirements**

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firms seeking to undertake an independent audit of the City of San Marino in conformity with the requirements of this request for proposals. As such, the Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement.

The Technical Proposal should address all the points outlined in the request for proposals. The proposal should be prepared simply and economically, providing a straight forward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposals. While additional data may be presented, the following subjects, item Nos. 2 through 7 must be included. They represent the criteria against which the proposal will be evaluated.

### **2. Independence**

The firm should provide an affirmative statement that it is independent of the City of San Marino as defined by generally accepted auditing standards / the US General Accounting Office's Government Auditing Standards (1994).

The firm should also list and describe its professional relationships involving the City of San Marino for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of

interest relative to performing the proposed audit.

In addition, the firm shall give the City of San Marino written notice of any professional relationships entered into during the period of this agreement.

3. License to Practice in California

An affirmative statement should be included indicating that the firm and all assigned key professional staff are properly licensed to practice in California.

4. Firm Qualifications and Experience

The proposal should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed, the number and nature of the professional staff to be employed in this engagement on a full-time basis, and the number and nature of the staff to be so employed on a part-time basis.

If the proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium should be separately identified and the firm that is to serve as the principal auditor should be noted, if applicable.

The firm is also required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.

The firm shall also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the firm shall provide information on the circumstances of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

The firm should also identify any engagements similar to the City of San Marino, with special emphasis on governmental agencies which have received the Certificate of Excellence from GFOA.

5. Partner, Supervisory and Staff Qualifications and Experience

The firm should identify the principal supervisory and management staff, including partners, managers, other supervisors and specialists, who would be assigned to the engagement and indicate whether such person is licensed to practice as a certified public accountant in California. The firm also should provide information on the government auditing experience of

each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

The firm should provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. The firm also should indicate how the quality of staff over the term of the agreement will be assured.

Partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted, or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the City of San Marino. However, in either case, the City of San Marino retains the right to approve or reject replacements.

Consultants and firm specialists mentioned in response to this request for proposals can only be changed with the express prior written permission of the City of San Marino which retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

6. Similar Engagements with Other Government Entities

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (maximum of 5) performed in the last five years that are similar to the engagement described in this request for proposals. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

7. Identification of Anticipated Potential Audit Problems

The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems, and any special assistance that will be requested from the City of San Marino.

**C. Comprehensive Cost Bid**

1. Total All-Inclusive Maximum Price

The comprehensive dollar cost bid should contain all pricing information

relative to performing the audit engagement as described in this request for proposals. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs, including all out- of-pocket expenses.

The City of San Marino will not be responsible for expenses incurred in preparing and submitting the technical proposal or the comprehensive dollar cost bid. Such costs should not be included in the proposal.

The first page of the comprehensive dollar cost bid should include the following information.

- a. Name of Firm
  - b. Certification that the person signing the proposal is entitled to represent the firm, empowered to submit the bid and authorized to sign a contract with the City of San Marino. Person shall also certify that they can comply with the requirements of the City's standard professional services agreement and insurance requirements.
  - c. A total all-inclusive maximum price for e a c h o f the fiscal years ended June 30, 2021 through June 30, 2023 engagements. Please provide all-inclusive price options for a financial statement report as the City currently has it as well as a CAFR option if the City decides to change to a CAFR format moving forward.
  - d. Estimated All-Inclusive Maximum Price for the 2024 and 2025 engagement option.
2. Rates by Partner, Specialist, Supervisory and Staff Level Times Hours Anticipated for Each

The second page of the comprehensive dollar cost bid should include a schedule of professional fees and expenses that supports the total all-inclusive maximum price for the City.

3. Out-of-Pocket Expenses Included in the Total All-Inclusive Maximum Price and Reimbursement Rates

All estimated out-of-pocket expense reimbursements will be charged against the total all-inclusive maximum price submitted by the firm. The audit firm will be expected to make all travel arrangements for its staff and include these in this category.

4. All-Inclusive Maximum Price Estimates for Subsequent Years

Engagement options for subsequent year's audits shall be negotiated with

the City prior to commencement of each year's audit. Price considerations for subsequent audits shall be limited to (1) justifiable increases in audit hour and / or rates, and (2) additional special services requested and / or needed.

5. Rates for Additional Professional Services

If it should become necessary for the City of San Marino to request the auditor to render any additional services to either supplement the services requested in this request for proposals or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the City of San Marino and the firm. Any such additional work agreed to between the City of San Marino and the firm shall be performed at the same rates set forth in the schedule of fees and expenses included in the comprehensive dollar cost bid.

6. Manner of Payment

Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's dollar cost bid proposal. Interim billings shall cover a period of not less than a calendar month. Ten percent (10%) of the contract will be withheld from the final billing pending delivery of the firm's final reports.

**VII. EVALUATION PROCEDURES**

**A. Committee**

Proposals submitted will be evaluated by a Committee consisting of the Finance Director and the Accounting Manager/Controller.

**B. Review of Proposals**

The Committee will use a point formula during the review process to score proposals. The Audit Committee will score each proposal by each of the criteria described in Section VII C below.

The City of San Marino reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected.

## C. Evaluation Criteria

Proposals will be evaluated using three sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria which will be considered during the evaluation process.

1. Mandatory Elements
  - a. The audit firm is independent and licensed to practice in California and has at least five years of experience in performing audits of governmental entities.
  - b. The audit firm's professional personnel have received adequate continuing professional education within the preceding two years and have at least five years of experience in performing audits of other governmental entities.
  - c. The firm has no conflict of interest with regard to any other work performed by the firm for the City of San Marino.
  - d. The firm submits a copy of its most recent external quality control review report and the firm has a record of quality audit work.
  - e. The firm adheres to the instructions in this request for proposal on preparing and submitting the proposal.
2. Technical Qualifications: (Maximum Points – 70)
  - a. Expertise and Experience
    1. The firm's past experience and performance on comparable government engagements, especially those which have received the Certificates of Excellence from GFOA and CSMFO.
    2. The quality of the firm's professional personnel to be assigned to the engagement and the quality of the firm's management support personnel to be available for technical consultation.
  - b. Commitment to Governmental Accounting
    1. The firm's membership in governmental accounting organizations and past results in the various award programs through GFOA and CSMFO.

2. The firm's commitment to San Marino's audit schedule deadlines.
3. Price: (Maximum Points – 30)

**D. Oral Presentations**

During the final phase of the evaluation process, the Committee may convene a panel to conduct oral presentations. Such presentations will provide firms with an opportunity to answer any questions the Committee may have on a firm's proposal.

**E. Final Selection**

The selection of the audit firm will be made by the Committee, with ratification by the City Council.

**F. Right to Reject Proposals**

Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of San Marino and the firm selected. The City of San Marino reserves the right without prejudice to reject any or all proposals.

# CITY OF SAN MARINO

## STANDARD PROFESSIONAL SERVICES AGREEMENT TEMPLATE

(Current as of January 23, 2019)



The City Attorney has prepared this Standard Professional Services Agreement Template to streamline the negotiation and approval of contracts for professional services provided by outside companies or individuals (“Consultants”). **This Template should not be used for purchasing goods, equipment, or software; public works projects; or professional services that include design professional services. “Design Professionals” are licensed architects, landscape architects, and professional land surveyors, and registered professional engineers. (See Cal. Civ. Code § 2782.8.) Other templates may be available for these purposes.**

To use the Template, first review Section 02.06.05 of the City Code (“Procurement of Goods, Services and Contracts for Public Projects”), a copy of which appears on the next page. Failure to comply with this Section may delay or nullify contract approval.

Second, contact the City Clerk to ensure you have the latest version of the Template. Always begin with the latest version rather than editing an agreement created for another contract because the Template may be updated from time-to-time to incorporate changes needed to address changes in the law or to incorporate new ideas. This will ensure you don’t omit any important updates or inadvertently include provisions that were approved only for use in that other contract. If you have any ideas for changes to the Template, please feel free to share them.

Third, complete the Template. The highlighted text and instructions show you what information is needed (*e.g.*, the Consultant’s name, its contact information, the contract amount, the scope of services, and how and how much the Consultant will be paid). Because the Scope of Services and Fee Schedule are the most variable terms from contract-to-contract, the Template includes them as separate Exhibits. You must provide the content of the Exhibits. When you are done, remove the highlighting, instructions, and these cover pages before releasing it to the Consultant.

You can also share a blank version of the Template with prospective Consultants (*e.g.*, in RFPs and RFQs) to show them the terms the City expects Consultants to meet if selected. This might also make it less likely a Consultant will object to the City’s terms after selection. If you do this, do so only after removing all highlighting and cover pages and replacing the instructional notes with blanks.

Finally, not every provision of the Template will work for every contract. You or the Consultant might find changes are needed for practical reasons related to the services the City wants. The Consultant might also request changes for business reasons. This

Template might also require modification for contracts that rely on state, federal, or other grant funding. Please consult with the City Attorney's office regarding any proposed changes early in the process so we may respond in a timely manner.

This is a reproduction of portions of the San Marino City Code.  
Always refer to an official copy of the Code and check with the City Clerk regarding recent possible amendments to ensure you are working with the most current version.

San Marino City Code  
Section 02.06.05

PROCUREMENT OF GOODS, SERVICES AND CONTRACTS FOR PUBLIC  
PROJECTS

A. General Requirements:

1. **Conformance With The City Budget:** No procurement of goods, services or public projects, as defined in subsection C2 of this section, is authorized unless the person making the procurement for the city signs a statement prepared by the finance officer certifying that the proposed procurement conforms to the budget adopted by the city council.
2. **Applicable Procedures:** Procurements of goods and services, but excluding contracts for public projects shall conform to the procedures in this subsection A and subsection B of this section. Contracts for public projects shall conform to the procedures in this subsection A and subsection C of this section.
3. **Execution Of Contracts For Public Projects And Professional Services:** No contract for professional services or for a public project of thirty thousand dollars (\$30,000.00) or more shall be executed unless previously approved by the city council and shall be executed only by the mayor or city manager. Contracts for public projects and professional services between five thousand dollars (\$5,000.00) and thirty thousand dollars (\$30,000.00) shall be executed and approved by the city manager.
4. **Change Orders:** Change orders may be approved only by a person authorized to originally procure the goods, services or public projects, provided that the price, as amended by the change order, does not exceed that person's authority under subsection A3 or B1 of this section.
5. **Prohibition Against Splitting Procurements:** No procurement shall be split or separated into smaller procurements for the purpose of evading the limitations of subsection B of this section.
6. **Bonds And Insurance:** The finance officer may require liability and other insurance and performance and payment bonds in such amounts as the finance officer deems reasonably necessary to protect the city's interests. Bond and insurance requirements, if any, shall be included in the procurement documents.
7. **Procurement With State Or Federal Funds:** All procurements of goods, services and public projects for which payment is to be made, in whole or in part, with federal or state funds, regardless of the estimated value, shall be in accordance with the procedures contained in this section and in accordance with applicable federal or state regulations, whichever are more restrictive.

This is a reproduction of portions of the San Marino City Code.  
Always refer to an official copy of the Code and check with the City Clerk regarding recent possible amendments to ensure you are working with the most current version.

8. Emergency Procurements: The city council delegates to the city manager the power to declare a public emergency, as defined in Public Contract Code section 1102, to immediately take all actions directly required by the emergency, to procure needed goods, services and public projects and to contract for public projects without informal or formal bidding. The work may be done by City forces by force account, by negotiated contract or purchase order, or by a combination thereof. At the next meeting of the City Council occurring not later than fourteen (14) days after the emergency action, the City Manager shall provide a full report on the emergency, including an explanation of why the emergency did not permit a delay that would result from a competitive solicitation of bids, and why the City Manager's actions were necessary to respond to the emergency. At that meeting, and each meeting thereafter until the emergency action is terminated, the City Council shall determine by a four-fifths (4/5) vote that there is a need to continue the remedial action and whether that work should continue without the benefit of informal or formal bidding.

B. Procurement Of Goods And Services Other Than Public Projects: Procurement of goods and services, but excluding contracts for public projects, shall comply with the following procedures:

1. Persons Authorized To Procure Goods And Services: The Assistant City Manager and each Department Director shall designate in writing those persons who are authorized to procure goods and services for his or her department in the following amounts: a) up to and including one thousand dollars (\$1,000.00); b) up to and including five thousand dollars (\$5,000.00); and c) up to and including thirty thousand dollars (\$30,000.00). No person authorized by the Assistant City Manager or a Department Director to procure goods and services may complete a procurement until the Finance Officer has received written notification of the authorization. The authorization shall include the manual signature of the authorized person. Only the Assistant City Manager and Department Directors may procure goods and services for their respective departments that exceed thirty thousand dollars (\$30,000.00).

2. General Requirements:

a. Purchase Orders Not Required: Purchase orders are not required, but will be provided at the request of the vendor or at the direction of the Assistant City Manager or Department Director.

b. Waiver Of Bidding: Bidding required by this subsection B for procurements of thirty thousand dollars (\$30,000.00) or less may only be dispensed with when the Assistant City Manager or the Director of the department undertaking the procurement determines in writing that the goods or services are only available from one (1) source or that the best interests of the City are served by dispensing with competitive bids. Bidding required by this subsection B for procurements over thirty thousand dollars (\$30,000.00) may only be

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dispensed with when the Finance Officer determines in writing that the goods or services are only available from one (1) source or that the best interests of the City are served by dispensing with competitive bids.

3. Procurements Of One Thousand Dollars Or Less: No price comparison is required. The procurement shall be effected by purchase order, if requested by the vendor, or by City credit card, petty cash, or check. Procurements of the same goods or services from the same vendor during a fiscal year shall not exceed one thousand dollars (\$1,000.00) unless the procedures are followed that apply to the aggregate dollar amount of the procurements, including approval by an individual authorized to make the procurement in that amount.
4. Procurements Greater Than One Thousand Dollars And Up To And Including Thirty Thousand Dollars: Three (3) written bids shall be obtained. With the exception of contracts for services, the award shall be made to the lowest responsible bidder. Contracts for services shall be awarded to the firm or individual that, in the opinion of the person in charge of the procurement, offers the best combination of quality and price. Procurements of the same goods or services need not be rebid more often than once each fiscal year, but the total dollar amount of the same goods or services procured from the same vendor during a fiscal year shall not exceed five thousand dollars (\$5,000.00) unless the appropriate procedures for a purchase in the aggregate dollar amount are followed, including approval by an individual authorized to make the procurement in that amount. The vendor shall send an invoice to the City.
5. Procurements Greater Than Thirty Thousand Dollars: Written notices inviting bids for procurement of goods and written requests for proposals to procure services shall be provided to at least three (3) vendors and to all vendors requesting to receive notices inviting bids and requests for proposals for the types of services or goods to be procured. With the exception of contracts for services, the award shall be made to the lowest responsible bidder. Contracts for services shall be awarded to the firm or individual that, in the opinion of the person in charge of the procurement, offers the best combination of quality and price. The award shall be made by the City Council. (Ord. 0-07-1192, 12-12-2007)
6. Cooperative Purchasing: Purchases of supplies, materials and equipment and sales of personal property made under a cooperative purchasing program utilizing purchasing agreements or bids received by the County, State, or other public agency are exempt from the requirements of this subsection. (Ord. 0-17-1322, 3-31-2017)

C. Public Projects:

1. Applicability Of The Uniform Public Construction Cost Accounting Act: Public projects, as defined in subsection C2 of this section, shall be awarded in

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accordance with the uniform public construction cost accounting act<sup>1</sup>, and in compliance with the provisions of this subsection C.

2. Definitions: The following terms are defined as set forth below:

**FACILITY:** Any plant, building, structure, ground facility, utility system, real property, streets and highways, or other public work improvement.

**PUBLIC PROJECT:**

a. Any of the following:

(1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, or repair work involving any publicly owned, leased or operated facility;

(2) Painting or repainting of any publicly owned, leased or operated facility.

b. "Public project" does not include maintenance work. For purposes of this subsection C, "maintenance work" includes all of the following:

(1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes;

(2) Minor repainting;

(3) Resurfacing of streets and highways at less than one inch (1");

(4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems;

(5) Work performed to keep, operate and maintain publicly owned water, power or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of two hundred thirty thousand (230,000) volts and higher.

3. General Requirements:

a. Designation Of Projects: The assistant city manager shall review all proposed public projects and shall classify each project as follows:

(1) Projects of thirty thousand dollars (\$30,000.00) or less, which may be performed with the city's own forces by force account, by negotiated contract, or by purchase order.

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<sup>1</sup> Pub.Con.C. §22000 et seq.

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- (2) Projects between thirty thousand dollars (\$30,000.00) and one hundred twenty five thousand dollars (\$125,000.00), which may be let by contract after informal bidding.
  - (3) Projects of one hundred twenty five thousand dollars (\$125,000.00) or more, which must be let by contract after formal bidding.
- b. Prohibition Against Splitting Projects: Projects shall not be split or separated to avoid any of the bidding requirements contained herein or in Public Contract Code section 22000 et seq.
4. Procedures For Public Projects Of Thirty Thousand Dollars Or Less: Contracts for public projects of thirty thousand dollars (\$30,000.00) or less may be approved and entered into for a department by the person or persons designated by the assistant city manager or the department director to procure goods and services pursuant to subsection B of this section.
5. Informal Bidding Procedures For Public Projects From Thirty Thousand Dollars To And Including One Hundred Twenty Five Thousand Dollars:
  - a. List Of Consultants: The assistant city manager shall develop a list of qualified contractors eligible to submit bids for public projects between thirty thousand dollars (\$30,000.00) and up to one hundred twenty five thousand dollars (\$125,000.00). The list shall be organized in accordance with the license classifications of the contractors state license board. Any licensed California contractor may be added to the list at any time by filing with the assistant city manager a completed application on a form provided by the city.
  - b. Plans, Specifications And Working Details: The person in charge of the procurement shall cause to be prepared plans, specifications, and working details necessary to enable a qualified contractor to perform the required work.
  - c. Notice Inviting Bids: The person in charge of the procurement shall mail the notice inviting bids to all contractors on the list of qualified contractors for the category of work being bid, and to all construction trade journals as specified by the California uniform cost accounting commission pursuant to Public Contract Code section 22036. The notice inviting bids shall describe the project in general terms and how to obtain more detailed information about the project, and shall state the time and place for the submission of bids. The notices inviting bids shall be mailed no less than ten (10) calendar days before bids are due.
  - d. Receipt Of Bids: At the time specified in the notice inviting bids, the person in charge of the procurement shall open all bids timely received and shall recommend award of the contract to the lowest responsible bidder. If two (2)

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or more responsive bids are the same and lowest, the award of the contract shall be determined by drawing lots. If no bids are received, bids may be again solicited, or the public project may be performed by city forces, or the city may enter into a negotiated contract with any qualified person or firm.

- e. Bids Over One Hundred Twenty Five Thousand Dollars: If all bids received are in excess of one hundred twenty five thousand dollars (\$125,000.00), the city council may, by adoption of a resolution by a four-fifths (4/5) vote, award the contract, at one hundred thirty seven thousand five hundred dollars (\$137,500.00) or less, to the lowest responsible bidder, if the city council determines that the city's cost estimate was reasonable.
6. Procedures For Public Projects Exceeding One Hundred Twenty Five Thousand Dollars: Contracts for public projects estimated by the assistant city manager to exceed one hundred twenty five thousand dollars (\$125,000.00) shall be awarded pursuant to formal bidding in accordance with the provisions of Public Contract Code sections 22037 and 22038. If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two (2) or more bids are the same and the lowest, the city council may accept either bid. If no bids are received, the public project may be performed by the city's own forces by force account, or by negotiated contract, without further compliance with the uniform public construction cost accounting act or this code. (Ord. 0-07-1192, 12-12-2007)

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# PROFESSIONAL SERVICES AGREEMENT

between

**The City of San Marino**  
2200 Huntington Drive  
San Marino, CA 91108



&

**CONSULTANT'S NAME**  
**CONSULTANT'S ADDRESS**  
**CONSULTANT'S ADDRESS**

This Professional Service Agreement (“the Agreement”) is made as of **INSERT DATE** (the “Effective Date”), by and between **CONSULTANT'S NAME** (“Consultant”), **FORM OF CONSULTANT'S LEGAL ENTITY [E.g. “a California corporation”]**, and the City of San Marino (“City”), a California municipal corporation, (collectively, “the Parties”).

## RECITALS

A. City desires certain professional services as specified in this Agreement.

B. Consultant represents that it is qualified and able to provide City with such services.

NOW THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows:

## AGREEMENT

### 1.0 Scope of Services

1.1. Consultant shall provide those services ("Services") set forth in the attached Exhibit A.

1.2. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

1.3. In performing this Agreement, Consultant shall comply with all applicable provisions of federal, state, and local laws, ordinances, codes, and regulations.

1.4. Consultant shall not be compensated for any work performed unless it is specified in Exhibit A or City authorizes such work in advance and in writing. Any work so authorized by City shall become part of the Services for purposes of this Agreement.

### 2.0 Term

The term of this Agreement shall commence as of the Effective Date and shall continue through **INSERT END DATE** unless sooner terminated as provided in Section 5.0 of this Agreement.

### 3.0 Consultant's Compensation

City will pay Consultant in accordance with the fee schedule set forth in Exhibit B but in no event will the City pay more than \$**INSERT AMOUNT-NOT-TO-EXCEED FOR THIS CONTRACT**. Any additional work authorized by the City pursuant to Section 1.4 will be compensated in accordance with the fee schedule set forth in Exhibit B, unless otherwise approved by City in writing. Pursuant to Section 02.06.05 of the San Marino City Code, this Agreement shall not be effective unless previously approved by the City Council if it is for professional services of greater than thirty thousand dollars (\$30,000.00).

#### **4.0 Method of Payment**

4.1. Consultant shall submit to City monthly invoices for all services rendered pursuant to this Agreement. Such invoices shall be submitted within 15 days of the end of the month during which the services were rendered and shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period. City will pay Consultant all undisputed charges within 30 days of receiving Consultant's invoice. City will not withhold any applicable federal or state payroll and other required taxes, or other required or authorized deductions from payments made to Consultant.

4.2. Upon 24-hour notice from City, Consultant shall allow City or City's agents or representatives to inspect at Consultant's offices during reasonable business hours all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement. City's rights under this Section 4.2 shall survive for two years following the expiration or earlier termination of this Agreement.

#### **5.0 Termination**

5.1. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least five (5) calendar days before the termination is to be effective.

5.2. Consultant may terminate this Agreement for cause in the event City fails to cure a default under this Agreement within thirty (30) days after Consultant has given City notice of such default.

5.3. Upon termination of this Agreement, Consultant shall cease all work under this Agreement and deliver to City all materials, reports, documents, notes or other written materials compiled through the last working day this Agreement is in effect. City shall pay Consultant for all services satisfactorily rendered through the last working day this Agreement is in effect; provided that in no event, including but not limited to termination, shall Consultant be entitled to receive more than the maximum compensation set forth in Section 3. Neither party shall have any other claim against the other party by reason of termination pursuant to this Section 5.0.

#### **6.0 Reports, Information, and Work Product**

6.1. Consultant shall deliver to City: (1) any reports on the status of the Services upon City's request and in such time and in such form as City may require; and (2) all material furnished to Consultant by City upon City's request and/or upon the expiration or termination of this Agreement.

6.2. Unless the Parties agree in writing, all draft and final reports, documents, and other written material, and any and all images, ideas, concepts, designs including without limitation any website designs, source code, object code, electronic data and files, and/or other media whatsoever created or developed by Consultant in the performance of this Agreement (collectively, "Work Product") shall be considered to be

“works made for hire” for the benefit of City. All Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City upon final payment being made. Consultant shall not obtain or attempt to obtain copyright protection as to any of the Work Product. Consultant hereby assigns to City all rights of ownership to the Work Product, including but not limited to any and all related intellectual property and proprietary rights that are not otherwise vested in the City pursuant to this paragraph.

6.3. Consultant warrants and represents that it has secured all necessary licenses, consents or approvals necessary to the production of the Work Product, and that upon final payment, City shall have full legal title to the Work Product, and full legal authority and the right to use and reproduce the Work Product for any purpose. Consultant shall defend, indemnify, and hold City, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city officials, harmless from any loss, claim, or liability in any way related to a claim that any use by the City of any of the Work Product violates federal, state, or local laws, or any contractual provisions, or any rights or laws relating to trade names, licenses, franchises, copyrights, patents, or other means of protecting intellectual property rights, and/or interests in products, ideas, or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret, or trademarked documents, materials, equipment, devices, or processes in connection with its provision of the Work Product produced under this Agreement. If any use by city of any of the Work Product or other deliverables is held to constitute an infringement and the use of any of the same is enjoined, Consultant, at its expense, shall: (a) secure for City the right to continue using such Work Product and/or other deliverables by suspension of any injunction, or by procuring a license or licenses for City; or (b) modify the Work Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement.

6.4. Consultant’s obligations under this Section 6.0 shall survive the expiration or termination of this Agreement.

## **7.0 Party Representatives**

7.1. City’s representative for purposes of this Agreement is the City Manager or the person designated in writing by the City Manager. The City Manager’s designee may exercise the authority of the City Manager provided in this Agreement excepting approval of any expenditure that would exceed a total compensation allowed under the Agreement.

7.2. **INSERT NAME OF CONSULTANT’S REPRESENTATIVE** is Consultant’s representative for purposes of this Agreement.

## 8.0 Notices

8.1. All notices permitted or required under this Agreement shall be deemed made when personally delivered or when mailed 48 hours after deposit in the United States Mail, first class postage prepaid and addressed to the party at the following addresses:

To City: City of San Marino  
2200 Huntington Drive  
San Marino, California 91108  
Attn: City Manager

To Consultant: CONSULTANT'S NAME  
CONSULTANT'S ADDRESS  
CONSULTANT'S ADDRESS  
Attn: \_\_\_\_\_

8.2. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

## 9.0 Independent Consultant

9.1. Consultant is an independent contractor and not an employee of City. All services provided pursuant to this Agreement shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the services. Any additional personnel performing services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

9.2. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from Consultant's personnel practices. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section. All duties of Consultant under this Section 9.2 shall survive termination of this Agreement.

9.3. In the event that Consultant provides any of the Services by or through any employee or any person whose work under this Agreement becomes cause for any payment or contribution required by law, including but not limited to the California Public Employees' Pension Reform Act (PEPRA), to the Public Employee Retirement System,

Consultant shall be solely responsible for all such payments or contributions. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from Consultant's failure to make any such payment or contribution. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section. All duties of Consultant under this Section 9.3 shall survive termination of this Agreement.

## **10.0 Subcontractors**

Unless otherwise specified in Exhibit A, no portion of this Agreement shall be subcontracted without the prior written approval of the City Manager. Consultant is fully responsible to City for the performance of any and all subcontractors, if any.

## **11.0 Assignment**

Consultant shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of City Manager. Any purported assignment without such consent shall be void and without effect.

## **12.0 Insurance**

12.1. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to City that Consultant has secured all insurance required under this Section. Consultant shall furnish City with original certificates of insurance and endorsements, including but not limited to additional insured endorsements, effecting coverage required by this Agreement on forms satisfactory to City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by City, if requested. All certificates and endorsements shall be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

12.2. Consultant shall, at its expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of this Agreement. Insurance is to be placed with insurers licensed to do business in California with a current A.M. Best's rating no less than A:VIII unless otherwise approved in writing by City. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability Coverage form (CG 0001); (2) Workers' Compensation: Consultant shall maintain Workers' Compensation insurance as required by the State of California and Employer's Liability insurance with limits of at least \$1,000,000 per occurrence; (3) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any

auto); and, (4) Professional Liability: Insurance Services Office Professional Liability Coverage form RHIC 6101. Consultant shall maintain limits no less than: (1) General Liability: **\$2,000,000** per occurrence for bodily injury, personal injury and property damage and if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Workers' Compensation: Consultant shall maintain Workers' Compensation insurance as required by the State of California and Employer's Liability insurance with limits of at least \$1,000,000) per occurrence; (3) Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage; and (4) Professional Liability: **\$1,000,000** per claim/aggregate.

12.3. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by City to state: (1) coverage shall not be suspended, voided, reduced or canceled by Consultant except after 30 days prior written notice by certified mail, return receipt requested, has been given to City; (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City, its directors, officials, or officers; (3) coverage shall be primary insurance as respects City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage and that any insurance or self-insurance maintained by City, its directors, officials, officers, employees, agents and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it; (4) for general liability insurance, that City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the services or operations performed by or on behalf of Consultant, including materials, parts or equipment furnished in connection with such work; and (5) for automobile liability, that City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Consultant or for which Consultant is responsible.

12.4. All insurance required by this Section shall contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to City, its directors, officials, officers, employees, agents, and volunteers.

12.5. Any deductibles or self-insured retentions shall be declared to and approved by the City Manager. Consultant guarantees that, at the option of the City Manager, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its directors, officials, officers, employees, agents, and volunteers; or (2) Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

12.6. Consultant waives any right to subrogation that any insurer of Consultant may acquire by virtue of payment of any loss under the policies required by this

Agreement. Consultant shall obtain any endorsement that may be necessary to affect this waiver of subrogation.

### **13.0 Indemnification, Hold Harmless, and Duty to Defend**

13.1. To the maximum extent permitted by law, Consultant shall defend, indemnify, and hold City, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of city officials (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts or omissions of Consultant, its employees, its agents, or its subcontractors in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of City. With respect to any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against Indemnitees, Consultant shall defend Indemnitees, at Consultant's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, City, its directors, officials, officers, employees, agents or volunteers. All duties of Consultant under this Section shall survive termination of this Agreement.

13.2. Consultant must obtain executed indemnity agreements with provisions identical to those in Section 13.1 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of the Services. If Consultant fails to obtain such indemnities, Consultant shall be fully responsible and indemnify, hold harmless, and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged, or threatened, arising or claimed to arise out of, pertaining to, or relating to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors, or their respective officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.

### **14.0 Equal Opportunity**

Consultant shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, sexual orientation, or age. Such non-discrimination includes, but is not

limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

## **15.0 Labor Certification**

15.1. By its signature hereunder, Consultant certifies it is aware of the provisions of Section 3700 of the California Labor Code that require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. Consultant shall provide evidence of such coverage before commencing the performance of the Services.

15.2. Consultant certifies that in the performance of the Services, Consultant shall not, in any manner, employ any person or contract with any person so that any Services so performed by such person would be subject to the workers' compensation laws of the State of California unless and until Consultant gives City a certificate of consent to self-insure or a certificate of Workers' Compensation Insurance Coverage.

15.3. In the event Consultant hires a subcontractor who has employees to perform the Services or any part thereof, then Consultant shall either require the subcontractor to obtain Workers' Compensation Insurance Coverage, or must obtain Workers' Compensation Insurance Coverage for the subcontractor's employees.

15.4. Any Workers' Compensation Insurance Coverage required by or for this Agreement shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, its agents, and its subcontractors.

## **16.0 Entire Agreement**

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by a writing signed by both parties.

## **17.0 Severability**

The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

## **18.0 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

## **19.0 No Third Party Rights**

No third party shall be deemed to have any rights hereunder against either party as a result of this Agreement.

## **20.0 Waiver**

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

## **21.0 Headings**

Headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

## **22.0 Force Majeure**

Consultant shall not be liable for any failure to perform any obligation under this Agreement if Consultant presents that City in its sole judgment deems acceptable that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

## **23.0 Final Payment Acceptance Constitutes Release**

Consultant's acceptance of City's final payment under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for the Services or anything done or furnished relating thereto. Neither City's payment to Consultant nor approval of payment constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, sub-contractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such or payment or approval be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

## **24.0 Prohibited Interests; Conflict of Interest**

24.1. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Consultant shall not accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code §§1090 and 87100) in any decision made by City on any matter in connection with which Consultant has been retained.

24.2. Consultant further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Consultant, to solicit or obtain this Agreement. Nor has Consultant paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Consultant, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Consultant hereunder the full amount or value of any such fee, commission, percentage or gift.

24.3. Consultant warrants and maintains that it has no knowledge that any officer or employee of City has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of Consultant, and that if any such interest comes to the knowledge of Consultant at any time during the term of this Agreement, Consultant shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws as described in this subsection.

## **25.0 Attorneys' Fees**

If either party commences any legal, administrative, or other action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith.

## **26.0 Exhibits**

Each exhibit referenced in this Agreement is hereby incorporated into the Agreement as if set forth in full herein. In the event of any material discrepancy between the terms of any exhibit so incorporated and the terms of this Agreement, the terms of this Agreement shall control.

## **27.0 Corporate Authority**

27.1. Each person executing this Agreement on behalf of Consultant warrants that he or she is duly authorized to execute this Agreement on behalf of Consultant and that by his or her execution, Consultant is formally bound to the provisions of this Agreement.

27.2. Consultant certifies it is aware of the requirements of Sections 313 of the California Corporations Code. If Consultant is a corporate entity, it shall either: (a) provide City written proof that each person executing this Agreement on Consultant's behalf is duly authorized to bind Consultant; or (b) provide two signatories to this Agreement, of whom the first must be Consultant's chairman of the board, president, or a vice president and the second must be Consultant's secretary, an assistant secretary, its chief financial officer, or an assistant treasurer.

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the Effective Date.

CITY OF SAN MARINO

CONSULTANT

By: \_\_\_\_\_  
Marcella Marlowe, Ph.D.  
City Manager

By: \_\_\_\_\_  
(Sign)

Attest:

Name: \_\_\_\_\_  
(Print)

By: \_\_\_\_\_  
City Clerk

Title: \_\_\_\_\_  
(Print)

Approved as to Form:

By: \_\_\_\_\_  
(Sign)

By: \_\_\_\_\_  
Steven L. Flower  
City Attorney

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

## **Exhibit A**

### **Scope of Services**

See attached proposal (**Page XXX**)

**Exhibit B**

**Fee Schedule**

See attached proposal (Page XXX)