

# CITY OF SAN MARINO

## REQUEST FOR PROPOSALS FOR THE 2021-2029 HOUSING ELEMENT AND SAFETY ELEMENT UPDATE



The City of San Marino (the “City”) invites qualified Respondents to submit proposals to provide consulting services for the update of the Housing Element and Safety Element of the City’s General Plan. The City must update its Housing Element Update as mandated by State law for the 2021-2029 planning cycle, with completed certification by the State Department of Housing and Community Development (“HCD”) by no later than October 15, 2021.

### **BACKGROUND INFORMATION**

The City’s current Housing Element was adopted on February 12, 2014 by the City Council, and certified by HCD in April 3, 2014.

The Housing Element document can be found on the City’s website (<https://www.cityofsanmarino.org/FINAL%20HE%20Feb%202014.pdf>), and may be used as a foundation for understanding the City’s unique vision and needs. HCD has established October 15, 2021 as the deadline for certification of the City’s adopted Housing Element for the 2021-2029 planning period. In addition, the Safety Element may also need revisions to address climate adaptation and resiliency strategies, and the risk of fire in State responsibility areas and very high fire hazard severity zones, in compliance with State law (including, but not limited to, Government Code § 65302(g), 65302.5). As further detailed in the “Scope of Work and Required Tasks” section of this document, the services detailed in the RFP shall include a concurrent review and minor update of the City’s Safety Element to meet State requirements. It shall be the responsibility of the selected Respondent to ensure that the adoption process and final work product meet the applicable requirements set forth by HCD and State law.

### **PROJECT OBJECTIVE**

The Housing Element and Safety Element update project shall be guided by the following objectives:

- Comply with all City and state legal and regulatory requirements
- Produce a comprehensive document that addresses current and projected housing conditions and needs in the City
- Ensure residents and stakeholders are engaged and participate in the update process to facilitate community buy-in
- Achieve milestones with sufficient time for City and state oversight and review
- Effectively coordinate with other consultants and City staff

## **HOUSING ELEMENT**

The Housing Element will be updated to include the policies, strategies, and actions the City will undertake to facilitate the construction of new housing and preservation of existing housing to meet the needs of the population during the planning period (2021-2029) in all economic segments of the community. The implementation of SB 375 (2007) requires that the next Housing Element be certified by the State no later than October 15, 2021.

The updated Housing Element must address the City's Regional Housing Needs Assessment (RHNA) allocation. Southern California Association of Governments (SCAG), in consultation with HCD, developed the Draft 2020 RHNA Allocation Plan, including the City's allocation, separated into four income categories.

In accordance with State law, the Housing Element must include:

- a complete analysis of the specific housing needs and an inventory of the resources and constraints relevant to addressing the housing needs;
- an inventory of land suitable for residential development to meet the City's housing needs;
- identification and analysis of potential and actual governmental constraints;
- identification of specific programs to implement the policies and goals; and,
- other analysis, policies, and goals required to comply with applicable State law.

## **SAFETY ELEMENT**

Per Government Code Sections 65302 et seq., local jurisdictions must update the Safety Element related to fire hazards and climate adaptation and resiliency strategies upon this revision of the Housing Element. The Safety Element must be reviewed and updated as necessary to address the risk of fire in State responsibility areas and very high fire hazard severity zones, taking into account specified considerations, including, among others, the most recent version of the Office of Planning and Research's "Fire Hazard Planning" document. The City of San Marino adopted a Local Hazard Mitigation Action Plan and is using the Housing Element update process to ensure that the Safety Element of the General Plan complies with State regulations.

## **DESCRIPTION OF TASKS**

In order to complete this project within the City's desired budget and time frame, consultants will work together with City staff on the required tasks. Tasks to be completed by the consultant are underlined. Items in *italics* will be team effort. All other tasks will be completed by the Planning Department Staff.

### **I. Phase One – Project overview and data collection**

#### *Tasks*

1. Consultant will schedule a kick-off meeting with City staff to discuss project

expectations regarding coordination, reporting, deliverables and all relevant project information. Consultant will prepare a meeting summary with project goals, objectives and action items.

2. Review and evaluate the current Housing and Safety Element to determine the revisions that must be made to comply with current State law and HCD requirements and ensure certification of the completed Housing Element amendment. Identify all obsolete information, tables, exhibits and illustrations. Prepare an analysis of the City's progress towards meeting the identified goals, policies, and programs since the adoption of the current Housing Element in the previous cycle (2014-2021).
3. Work with the Department of Housing and Community Development (HCD) to identify current Housing Element requirements and expectations for the updated San Marino elements.
4. Complete a housing assessment and needs analysis pursuant to State housing law. The Consultant will obtain and analyze demographic, economic, infrastructure, and housing data needed to complete this task.
5. Prepare an "adequate sites analysis" showing the relationship between the City's Regional Housing Need Assessment (RHNA) allocation, the City's dwelling unit capacity, availability of potential housing sites based on zoning, infrastructure, and General Plan policies, requirements, and limitations. If needed, consultant will also work with staff to identify potential zoning strategies to address need for additional housing unit capacity.
6. Create list of interested parties in the San Marino community and San Gabriel Valley.

## **II. Phase Two – Policy development**

### *Tasks*

1. Conduct a study session with City Council liaisons in order to discuss ideas for obtaining community input and ideas for potential policy options.
2. Meet with stakeholders (e.g. commission members, homeowner groups, community and business organizations, residential realtors, etc.) to discuss fundamental housing issues in the City.
3. Hold a community meeting to present and fine-tune goals and policies of the Housing Element.

## **III. Phase Three – Prepare draft documents**

### *Tasks*

1. Discuss policy options with staff.
2. Prepare talking points for discussion by decision makers.
3. Provide list of any corrections that must be made to text and/or exhibits in the Safety Element to bring it into compliance.
4. *Consultant will work with City staff to review comments/suggestions on previous versions. Staff will incorporate revisions and prepare final drafts of the Housing and Safety Element Amendments using Microsoft Word, in the established City format, for public review and comment and will submit draft to HCD as required for review. This will include conducting the proper public outreach and notifying*

- interested parties and agencies.*
5. *Prepare required environmental review documents.*

#### **IV. Phase Four - Review and Adoption process**

##### *Tasks*

1. Consult with HCD regarding Housing Element certification.
2. Staff will prepare and carry out the appropriate public noticing and required consultations and notifications for General Plan Amendments per local and State regulations.
3. Prepare staff reports for Planning Commission and City Council.
4. Make presentations at Planning Commission and City Council meetings.

#### **V. Phase Five – Document completion**

##### *Tasks*

1. *Following public review and comment period, the team will prepare Final Draft Housing and Safety Element Amendments in response to comments from State HCD, responsible agencies, City staff, the Planning Commission, City Council, and the public.*
2. Distribute copies to distribution list.
3. Notify appropriate agencies of Housing and Safety Element update.
4. Prepare necessary fliers, brochures, press releases as required by HCD to advertise City's housing programs.
5. Consult with staff as needed during document completion phase.

### **PROPOSAL REQUIREMENTS**

The proposal should include the total project cost to the City with a breakdown of costs by task. The anticipated budget for this project is approximately \$50,000. A tentative timeline of events should be included in the proposal. The project will be managed by the Planning and Building Director. Staff from additional departments will also provide input throughout the process. The City anticipates that work will commence in October 2020. Please submit three (3) copies of the proposal.

### **SUBMITTAL DEADLINE**

All proposals must be received by Thursday, September 17, 2020. Proposals will not be accepted after this time. The proposal should be submitted to:

Aldo Cervantes  
Planning and Building Director  
City of San Marino  
2200 Huntington Drive  
San Marino, CA 91108

If you have any questions regarding this RFP, please contact Aldo Cervantes at (626) 300-0710.

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.

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 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

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.

- (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) 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)

# 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**

5.3. 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.

5.4. 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.

5.5. 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**

6.6. 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.

6.7. 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.

6.8. 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.

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

## **7.0 Party Representatives**

7.10. 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.

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

## 8.0 Notices

8.12. 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: \_\_\_\_\_

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

## 9.0 Independent Consultant

9.14. 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.

9.15. 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 9.15 shall survive termination of this Agreement.

9.16. 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 9.16 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**

12.17. 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.

12.18. 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: **CONSULT WITH THE CITY'S RISK MANAGER FOR THE AMOUNT APPROPRIATE FOR THIS AGREEMENT** 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: **\$CONSULT WITH THE CITY'S RISK MANAGER FOR THE AMOUNT APPROPRIATE FOR THIS AGREEMENT** per accident for bodily injury and property damage; and (4) Professional Liability: **\$CONSULT WITH THE CITY'S RISK MANAGER FOR THE AMOUNT APPROPRIATE FOR THIS AGREEMENT** per claim/aggregate.

12.19. 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.

12.20. 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.

12.21. 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.

12.22. 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**

13.23. 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.

13.24. Consultant must obtain executed indemnity agreements with provisions identical to those in Section 13.23 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**

15.25. 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.

15.26. 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.

15.27. 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.

15.28. 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**

24.29. 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.

24.30. 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.

24.31. 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: \_\_\_\_\_  
Stephanie Cao  
City Attorney

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

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



## Exhibit A

### Scope of Services

DELETE THIS HIGHLIGHTED TEXT AFTER COMPLETING THE FOLLOWING STEPS

1. EITHER: (1) WRITE OR COPY AND PASTE THE SCOPE OF SERVICES ONTO THIS PAGE; OR (2) OR WRITE ON THIS PAGE, "Scope of Services found on the following page," AND INSERT THE SCOPE OF SERVICES BEHIND THIS PAGE.
2. IF YOU ARE ATTACHING A SEPARATE DOCUMENT TO DESCRIBE THE SCOPE OF SERVICES, IT MAY SOMETIMES ALSO INCLUDE THE FEE SCHEDULE. IF THIS IS THE CASE: (1) REPLACE THE REFERENCE TO EXHIBIT B IN SECTION 3 OF THE AGREEMENT WITH A REFERENCE TO EXHIBIT A; AND (2) OMIT THE FOLLOWING PAGE LABELED "EXHIBIT B."

## **Exhibit B**

### **Fee Schedule**

**DELETE THIS HIGHLIGHTED TEXT AFTER COMPLETING THE FOLLOWING STEPS**

- 1. EITHER: (1) COPY AND PASTE THE FEE SCHEDULE ONTO THIS PAGE; OR (2) OR WRITE ON THIS PAGE, "Fee schedule found on the following page," AND INSERT THE FEE SCHEDULE BEHIND THIS PAGE.**
- 2. IF THE SCOPE OF SERVICES INCLUDES CONSULTANT'S FEE SCHEDULE, REPLACE THE REFERENCE TO EXHIBIT B IN SECTION 3 OF THE AGREEMENT WITH A REFERENCE TO EXHIBIT A.**