

AGREEMENT FOR PROFESSIONAL SERVICES

On-Call Environmental Planning and Permitting Services

This Agreement is made on May 16, 2023, by and between EMC Planning Group, a California Corporation (“Consultant”), and the City of Santa Maria, a California Municipal Corporation and charter city (“City”), in Santa Maria, California, based on the following recitals:

WHEREAS, City has determined it is in the public interest to proceed with the work hereinafter described as "Project"; and

WHEREAS, City has determined the Project involves the performance of engineering services of a temporary nature; and

WHEREAS, City does not have available employees to perform the services for the Project; and

WHEREAS, City has requested the Consultant to provide manpower to complete the Project; and

NOW, THEREFORE, IT IS AGREED:

1. **Recitals true.** The above recitals are true.

2. **General.**

2.01. Term and Termination. The term of this contract is two (2) year, beginning on the date first written above. This contract may be extended by mutual consent of the parties. This contract may be terminated for breach of its terms or conditions, or because of discovery of any act which violates local, state, or federal law. Termination is effective 14 days after deposit of notice as specified in this Agreement.

2.02. Services to be Performed. Consultant shall determine the method, details, and means of providing On-Call Environmental Planning and Permitting Services. More specifically, Consultant agrees to perform the specific services listed in Exhibit “A.”

2.03. City’s Duties. City’s duties under this Agreement are to cooperate with Consultant in the performance of the contract and timely pay invoices.

2.04. Payment. Payment terms under this Agreement are listed in Exhibit “B.”

2.05. Insurance. Consultant shall provide insurance as listed in Exhibit “C.”

2.06. Exhibits. Exhibits “A,” “B,” and “C” are attached and incorporated.

3. Consultant's Obligations.

3.01. Minimum Amount of Service. Consultant shall devote sufficient time to perform services under this agreement efficiently and effectively. Consultant may represent, perform services for, and be employed by additional individuals or entities, in Consultant's sole discretion, as long as the performance of these extra-contractual services does not interfere with or present a conflict with City's business.

3.02. Tools and Equipment. Except as otherwise stated in this Agreement, Consultant will supply all tools and equipment necessary to perform this Agreement.

3.03. Status. Consultant (including its employees) is an independent consultant.

No employer/employee relationship exists between Consultant and the City. Consultant's assigned personnel shall not be entitled to any benefits payable to employees of the City. The City is not required to make any deductions or withholdings from the compensation payable to Consultant under this agreement. Consultant (as a business entity, including its employees) is a "design professional" as defined by California Civil Code section 2782.8(c)(3).

3.04. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend (with independent counsel approved by the City) and hold harmless the City, and its directors, officers, and employees from and against all liabilities (including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs and costs of alternative dispute resolution) regardless of nature or type that arise out of, pertain to, or relate to the negligence, reckless, or willful misconduct of the Consultant including its agents, subconsultants and employees. The provisions of this paragraph survive completion of the services or the termination of this contract. The provisions of this Section are not limited by the provisions of the Section relating to insurance.

3.05. Use of Subconsultants. CONSULTANT may subcontract with third party providers that were listed in CONSULTANT's Response to Request for Proposals and whose rate sheets have been included in this Agreement. Subconsultants shall be billed at the rates listed in Exhibit B. CONSULTANT is fully responsible for the actions and omissions of any subconsultant. CONSULTANT must ensure subconsultant adherence to the same quality standards and assurances required of CONSULTANT. CONSULTANT shall ensure that this Agreement is incorporated by reference into any Agreement with a subconsultant and that subconsultant complies with the insurance requirements of **EXHIBIT C.**

4. Miscellaneous

4.01. Notices. All communication relating to the day-to-day activities of this Agreement shall be exchanged between a designated representative of the CITY and a representative of CONSULTANT, listed below. All notices shall be addressed as follows unless a written change is filed with the City:

To City:
Thomas M. Korman, P.E., P.L.S.
Principal Civil Engineer
110 East Cook Street
Santa Maria, CA 93454

To Consultant:
EMC Planning Group
Attn: Teri Wissler Adam
Senior Principal
601 Abrego Street
Monterey, CA 93940

If the designated Representative or address of either party changes during the term of this agreement, a written notice shall be given to the other party prior to the effective date of change. Any written notices required under this agreement shall be effective five (5) days after deposit into United States mail, postage prepaid, addressed to the designated Representative, or upon confirmation of receipt of delivery if another notification process is used.

4.02. Compliance With Laws, etc. Consultant shall comply with all laws, including but not limited to the rules and policies of the City, in performing this agreement.

4.03. Integration. This agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties.

4.04. Interpretation. This agreement shall be interpreted in accordance with the laws of the State of California.

4.05. Jurisdiction. Jurisdiction and venue of all disputes over the terms of this agreement shall be in the County of Santa Barbara, State of California.

4.06. Warranty of authority. Each person signing this agreement on behalf of a party warrants that he or she has authority to do so.

4.07. No Waiver. Failure to enforce with respect to a default shall not be construed as a waiver.

4.08. Severability. The provisions of this agreement are severable. If any part of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

4.09. Submittals. In addition to any other submittals required by this agreement, Consultant shall submit copies of its current business license and current certificate of workers' compensation coverage to the City before beginning work on this project.

4.10. Prevailing Wage. Prevailing Wage. If applicable, Consultant and all Subconsultants are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code. The Director's determination is on file and open to inspection at www.dir.ca.gov and is referred to and made a part hereof; the wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

IN WITNESS WHEREOF, this agreement is executed by the parties on the date first written above.

EMC Planning Group, A California Corporation

CITY OF SANTA MARIA, a political subdivision of the State of California

By: **TERI WISSLER ADAM**
Senior Principal

By: **JASON STILWELL**
City Manager

ATTEST:

Rhonda M. White, CMC
Chief Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

Risk Manager

EXHIBIT "A"

SERVICES TO BE PERFORMED

Basic services shall be to perform various engineering/surveying tasks typical of a municipal agency. Tasks may include, but are not limited to the following:

CEQA/NEPA Compliance

Consultants may be asked to prepare objective, technically compliant, legally defensible, and clearly written environmental documents to enable approval and implementation of both public and private projects. The following is a list of typical CEQA documents: Environmental Impact Reports (EIRs), Initial Studies/Mitigated Negative Declarations (IS/MNDs), Mitigation Monitoring and Reporting Program (MMRPs), and CEQA findings, and NEPA documents, such as Environmental Impact Statements (EISs), Environmental Assessments (EAs), Record of Decision (ROD) and Finding of No Significant Impact (FONSI) decision documents, and Preliminary EA Reports.

In summary, task may include, but not limited to any of the following:

- Categorical Exclusions
- Public involvement and outreach
- Assistance with Staff reports
- Attending Planning Commission and City Council meetings
- Conducting Collaborative planning meetings
- Creating Land use and recreation plans
- Preparing Implementation plans
- Third-party technical reviews
- Siting and feasibility studies
- MMRP mitigation monitoring

Archaeology Resources

Archaeology services task may include literature searches, reconnaissance studies, intensive surveys, preservation and treatment plans, memoranda of agreement, archaeological site testing/evaluations, full-scale excavation for data recovery, construction monitoring, impact mitigation management, and site preservation.

In summary, task may include, but not limited to any of the following:

- Archaeological surveys, excavation, testing and data recovery.
- Native American consultation
- Native American Graves Protection and Repatriation Act compliance
- Assembly Bill (AB) 52 and Senate Bill 18 consultation

Architectural History

Selected firms will be expected to have access to resources to provide architectural history services including archival research; resource surveys of historic buildings; developing historical overviews, preservation plans, and interpretive plans; National Register of Historic Places (NRHP) and California Register of Historical Resources (CRHR) documentation and nominations; and preparation of Historic American Buildings Survey (HABS) documentation.

In summary, task may include, but not limited to any of the following:

- Historic resource surveys and evaluations
- National Historic Preservation Act (NHPA) Sections 106 and 110 compliances
- Historic preservation ordinances
- State Historic Preservation Officer and local government coordination

Biological Resources

Biological services may require the expertise from scientists, planners, restoration ecologists, and arborists. Services may include conducting siting, alternatives, and constraints analyses; recording and documenting pre-project existing biological conditions; and developing and implementing specialized studies, mitigation and monitoring plans, and environmental compliance programs for a wide range of project types.

In summary, task may include, but not limited to any of the following:

- Biological assessments and evaluations
- Wetland delineations
- Mitigation plans and implementation
- Mitigation monitoring
- Endangered species surveys
- Federal Endangered Species Act (FESA) Section 7 consultations and Section 10(a) permits
- Avian and bat services, including morbidity/mortality studies, breeding bird/nesting surveys
- Restoration ecology

Regulatory Permitting

Consultants' tasks may include coordinating with federal and state regulatory agencies to ensure compliance and consistency with federal and state environmental requirements. Potential consultants are expected to have a working relationship with local U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), California Department of Fish and Wildlife (CDFW), and Regional Water Quality Control Board (RWQCB) staffers and experience with FESA Section 7 formal and informal consultations, and FESA Section 10 Habitat Conservation Plan (HCP) preparation.

In addition, it is highly desirable that the potential consultants have access to biologists holding federal species permits and are regularly approved to survey for and relocate federally listed species, such as California red-legged frog, steelhead trout, and California

tiger salamander under Biological Opinions prepared by USFWS. Task may include conducting the necessary biological and wetland analyses and prepare CWA Section 404 Nationwide Permit, CWA Section 401 Water Quality Certification, and California Fish and Game Code Section 1602 Streambed Alteration Agreement permit application packages.

In summary, task may include, but not limited to any of the following:

- FESA Section 7 and Section 10 Consultations
- Biological Assessments in Support of Biological Opinions
- NEPA Document Endangered Species Impact Analysis
- HCP Preparation and Compliance
- CWA Section 404 Nationwide Permit
- CWA Section 401 Water Quality Certification
- California Fish and Game Code Section 1602 Streambed Alteration Agreement

EXHIBIT "B"

PAYMENT

I. Progress Authorization

This contract is subject to the requirements of Page G-9 of the Purchasing Guidelines for the City of Santa Maria.

Individual task orders will be created under this Master Agreement for the completion of each task and billed according to the attached rate sheet.

During the duration of this Master Agreement the City will identify individual task, and upon agreed scope of work, schedule, and cost, a Notice to Proceed and Purchase Ordered will be issued for each task not to exceed \$75,000 per task as indicated in Section 1.1B.

The aggregate not-to-exceed fee for all tasks provided during the initial two-year term of the Agreement shall be \$500,000.00.

II. Invoice procedure.

- A. Payment shall be at the conclusion of the Project based on the billable charges.
- B. The Consultant shall present the bill for charges by the second day of the month.
- C. The Consultant's bill shall be substantiated by appropriate documentation, and include an itemized listing of personnel, subconsultants, and other direct costs incurred.

III. Maximum billable amounts

Under no circumstance shall the total of all payments to the Consultant exceed ninety percent (90%) of the maximum not-to-exceed cost, prior to acceptance by the City of all items to be completed as noted within Exhibit "A".

Rate Sheet



EMC PLANNING GROUP INC.
A LAND USE PLANNING & DESIGN FIRM

FEE SCHEDULE

(Effective January 1, 2023)

| Principals | Hourly Billing Rate | |
|--|----------------------------|------------------------|
| Senior Principal | \$275.00 | |
| Principal | \$250.00 | |
| Planners | | |
| Principal Planner | \$220.00 | |
| Senior Planner | \$195.00 | |
| Associate Planner | \$165.00 | |
| Assistant Planner | \$140.00 | |
| Biologists | | Monitoring Rate |
| Principal Biologist | \$210.00 | (\$150.00) |
| Senior Biologist | \$170.00 | (\$130.00) |
| Associate Biologist | \$145.00 | (\$120.00) |
| Assistant Biologist | \$125.00 | (\$100.00) |
| Archaeologist | | |
| Registered Professional Archaeologist | \$125.00 | |
| Support Staff | | |
| Desktop Publisher | \$150.00 | |
| Executive Assistant/Production Manager | \$125.00 | |
| Administrative Assistant | \$115.00 | |
| GIS/Graphics Technician | \$140.00 | |

This fee schedule is exclusive of direct reimbursable expenses, such as word processing, editing, printing, copying, travel, lodging, dining, communications, supplies, equipment rental, etc. All expenses are billed at cost plus ten percent (10%) for administration. All outside services are billed at cost plus ten percent (10%) for administration. This fee schedule is subject to revision at any time.

A retainer of up to fifty percent (50%) of the approved contract amount may be required for new clients or projects. Invoices are due and payable within 30 days. Past due balances are subject to a service charge of one and one-half percent (1.5%) per month. Service charges are in addition to approved contract amount.

Expert witness services are provided at a fifty percent (50%) mark-up.

EMC PLANNING GROUP INC.
601 ABREGO STREET, MONTEREY, CA 93940
(831) 649-1799 / contactus@emcplanning.com
www.emcplanning.com



RATES

Labor - Architectural Historian \$120/hour

Other Direct Costs (Per Diem) - to be reimbursed at the GSA rates in effect at the time

2021 STANDARD FEE SCHEDULE

PROFESSIONAL SERVICES

| | | |
|---|----|--------|
| Principal Professional II | \$ | 210/hr |
| Principal Professional | \$ | 180/hr |
| Senior Professional II | \$ | 160/hr |
| Senior Professional | \$ | 150/hr |
| Project Professional II | \$ | 130/hr |
| Project Professional | \$ | 120/hr |
| Staff Professional II | \$ | 110/hr |
| Staff Professional | \$ | 95/hr |
| Senior Technician (Non-Prevailing Wage) | \$ | 90/hr |
| Senior Technician (Prevailing Wage) | \$ | 95/hr |
| Technician (Non-Prevailing Wage) | \$ | 80/hr |
| Technician (Prevailing Wage) | \$ | 85/hr |
| Senior GIS/CAD Specialist | \$ | 110/hr |
| GIS/CAD Specialist | \$ | 95/hr |
| Drafting | \$ | 75/hr |
| Word Processing/Technical Editor | \$ | 80/hr |

*Overtime rates for Technicians and Office Staff is 1.3 x rates shown.

Fees for expert witness preparation, testimony, court appearances, or depositions will be billed at the rate of \$425 per hour.

OTHER DIRECT CHARGES

| | |
|---|---------------|
| Subcontracted Services | Cost Plus 15% |
| Outside Reproduction | Cost Plus 15% |
| Travel, Subsistence, and Expenses | Cost Plus 15% |
| Vehicle | \$ 80/day |
| Photoionization Detector | \$ 120/day |
| Nuclear Density Gauge | \$ 85/day |
| Automobile Mileage | \$ 0.85/mile |

EXHIBIT "C"

INSURANCE

INSURANCE REQUIREMENTS

Provider shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Provider, his/her agents, representatives, or employees. If the Provider maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Provider.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), including products and completed operations, property damage, bodily injury and personal & advertising injury.
2. Insurance Services Office Business Auto Coverage Form Number CA 00 01 covering any auto (Code 1), or if Provider has no owned autos, covering hired (Code 8) and non-owned autos (Code 9).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions liability insurance appropriate to the Provider's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.
5. Cyber Liability Insurance, Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

B. Minimum Limits of Insurance

Provider shall maintain limits no less than:

1. General Liability - \$2,000,000 per occurrence for bodily injury, personal injury and property damage. 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 project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability - \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: Statutory limits.
4. Employer's Liability - \$1,000,000 per accident for bodily injury or disease.
5. Errors and Omissions Liability - \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
6. Cyber Liability- \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

C. Self-insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Provider to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

D. Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Provider including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Provider's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38 **and** CG 20 37 forms if later revisions are used).
2. For any claims related to this project, the Provider's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Provider's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled or reduced, except with notice **stating the title of this contract** to the City. **All notices provided pursuant to this Agreement shall be given to the City representative listed for notice in this agreement and shall specify the title of this Agreement.** Notice may be given by overnight mail, facsimile with confirmation of receipt, or certified mail with return-receipt requested.
4. Provider hereby grants to City a waiver of any right to subrogation which any insurer of said Provider may acquire against the City by virtue of the payment of any loss under such insurance. Provider agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
5. If any of the required policies provide claims-made coverage:

a. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Provider must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

F. Verification of Coverage

Provider shall furnish the City with original certificates and amendatory endorsements of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Provider's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

G. Special Risks or Circumstances

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.