

## **COVER SHEET**

### **Memorandum of Understanding (MOU)**

#### **CEQA Project Team- City, Applicant & Consultants**

The City of San Marcos Development Services (DS) has embarked on an approach to the preparation of environmental documents under the California Environmental Quality Act (CEQA) that allows the Applicant to work directly with pre-qualified consultants identified on the City's "CEQA On-Call Consultant List A: Qualified Consultant List for Private Applicants" (<http://www.san-marcos.net/departments/development-services/planning/ceqa-resources-for-applicants-consultants>) to prepare environmental documents and associated technical studies for specified projects. The City, as the Lead Agency under CEQA, and a City peer review consultant, paid for by the Applicant, will review and approve the document(s) for public consumption and recommended decision to the City's hearing and/ or decision-making body.

As part of this process, Applicants and their selected pre-qualified consultants (Applicant's Consultant) are required to enter into a Memorandum of Understanding (MOU) with the City and the City's CEQA peer review consultant.

This four-party MOU establishes the process and general terms under which CEQA documents will be prepared in order to facilitate the following outcomes;

- Adequate CEQA Document- complete, informative, and accurate evaluative document
- Transparent public process
- Timely completion of CEQA document (timely coordination and decision-making throughout)
- Strong communication at all project stages (clear process, schedule, roles & information sharing)
- Positive and successful working experience for the full project team

#### **Standard Project Coordination Process**

Please see the City's website for a flow chart and narrative describing the City's CEQA process:

<http://www.san-marcos.net/departments/development-services/planning/ceqa-resources-for-applicants-consultants>

## **Memorandum of Understanding (MOU)**

### **CEQA Project Team- City, Applicant & Consultants**

Whereas the City of San Marcos Development Services Department is committed to preparing technically sound, informative, evaluative and transparent planning and environmental documents on behalf of the public, the environment and the City; and

Whereas, the City of San Marcos Development Services Department strives to work in partnership with the development community to thoughtfully and transparently develop appropriate locations within the City, in a manner that is sensitive to both the City's broad obligations to the public, as well as to the economic and financial considerations of the Applicant; and

Whereas, the City of San Marcos Development Services Department wishes to engage the expertise of private sector consultants to help ensure the rigor and quality of environmental documents, and efficient preparation of such documents;

The undersigned parties agree to meet the commitments outlined within this Memorandum of Understanding (MOU). This MOU establishes general understandings about the process under which CEQA documents will be prepared. It outlines the roles and responsibilities of each party, including;

**APPLICANT**- Private Project Applicant representing the Project and responsible for all Project costs, and authorized to contract directly with the **APPLICANT'S CONSULTANT** via the terms of this MOU.

**APPLICANT'S CONSULTANT**- Applicant's selected primary consultant, and any relevant sub-consultants, selected off of the City's list of qualified CEQA consultants. Applicant negotiates and works directly with the Applicant's Consultant. The City does not have a contractual relationship with the Applicant's Consultant.

**CITY**- City of San Marcos staff. This generally refers to City representatives in the Development Services Department, representing the City position during document preparation and public review as it relates to the Project as the CEQA Lead Agency (i.e., Project Manager).

**CITY'S PEER REVIEW CONSULTANT**- Pre-qualified primary consultant, and any relevant sub-consultants, selected by the City to peer review documents prepared by the Applicant's Consultant. This party must be separate from the Applicant's Consultant.

**PROJECT TEAM**- The collective group consisting of the **CITY** (Project Manager), **CITY'S PEER REVIEW CONSULTANT**, **APPLICANT** and **APPLICANT'S CONSULTANT**.

This MOU relates solely to the Project located at \_\_\_\_\_ (and known as \_\_\_\_\_) (Project).

This MOU does not apply to any other project(s) that may be pending submittal or under review by the City.

**A. PROJECT MANAGEMENT (SCHEDULE, COST, PROJECT ROLES)**

1. Direct Contract between APPLICANT and APPLICANT'S CONSULTANT (Primary CEQA Consultant)-  
Subject to the terms and conditions of this MOU, the CITY agrees to allow the APPLICANT to select and retain the undersigned pre-qualified APPLICANT'S CONSULTANT, and their pre-qualified sub-consultants, for preparation of the Project TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENTS required under CEQA. For this purpose, the APPLICANT will enter into a single direct agreement with the APPLICANT'S CONSULTANT governing the full scope of their arrangement. The scope of that contract must be developed in conjunction with the CITY and the CITY's PEER REVIEW CONSULTANT. The APPLICANT's agreement with the APPLICANT'S CONSULTANT will comply with all relevant terms and conditions set forth in this MOU.
2. Schedule-
  - a. The APPLICANT is empowered to develop and manage the CEQA schedule for components of the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT prepared by the APPLICANT'S CONSULTANT. The schedule will incorporate CITY input regarding actions incumbent upon the CITY. The CITY will be responsible for determining the schedule for CITY review cycles (per standard City process unless otherwise agreed upon), publication of the draft ENVIRONMENTAL DOCUMENT for public review, presentation of the Project and TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT for recommendation or decision to the appropriate hearing and/ or decision-making body, and finalization of the document. The CITY will also be responsible for scheduling and publicly noticing public outreach meetings and hearings related to the Project, and for distributing the draft and final TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT. *[The CITY has established standard times for CITY and CITY's PEER REVIEW CONSULTANT review of technical studies and other phases of the CEQA process that will be incorporated into the CEQA document schedule. Note that the CITY and CITY's PEER REVIEW CONSULTANT review periods run concurrently, as the CITY's PEER REVIEW CONSULTANT effectively acts as an extension of staff for CEQA document review.]*
  - b. All undersigned parties will adhere to the mutually agreed upon schedule barring unforeseen and unavoidable delays. All parties will make every effort possible to avoid such delays. All parties will advise the others as early as possible regarding such delays.
  - c. APPLICANT and APPLICANT's CONSULTANT will prepare documents according to the agreed upon schedule and will address CITY and CITY PEER REVIEW CONSULTANT comments on TECHNICAL STUDIES/ ENVIRONMENTAL DOCUMENTS the first time that such comments are made (utilizing the Issue Resolution process identified below as needed). The CITY is not responsible for delays to the project scheduled based on APPLICANT (or APPLICANT'S CONSULTANT'S) delay in preparing draft documents, delay in thoroughly addressing CITY comments or lack of technical rationale for objection.
  - d. The CITY will provide comments and clear guidance on TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT within the timeframes identified within the agreed upon Project schedule, with the understanding that documents submitted by the APPLICANT

and/ or APPLICANT'S CONSULTANT are at the level of completeness agreed upon. The CITY and CITY'S PEER REVIEW CONSULTANT will strive to expedite processes as reasonable and feasible.

3. Project Management-

- a. The APPLICANT or APPLICANT'S CONSULTANT will develop and manage a matrix of issues and decisions made and supporting information (including date of decision and format- i.e., meeting, email, etc.) related to the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT. The CITY and potentially the CITY'S PEER REVIEW CONSULTANT will be provided with this matrix for review and concurrence at each Project meeting or upon request to ensure that all parties concur with the documented decisions.
- b. Unless waived by the CITY, the APPLICANT or APPLICANT'S CONSULTANT will submit all versions of the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT in track changes strikeout/underline format during review cycles. The documents will specifically identify who requested the revisions (APPLICANT or CITY) and who made said revisions.

4. Budget & Costs-

- a. The APPLICANT will be responsible for one hundred percent (100%) of all costs associated with the APPLICANT'S CONSULTANT'S work, including but not limited to, any sub-consultant costs, TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT preparation and document printing and circulation costs, and all costs associated with hosting and participation in meetings, including public outreach meetings (not including use of City facilities). The APPLICANT will also be responsible for one hundred-percent (100%) of all costs incurred by the CITY related to its independent peer review of the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENTS by the CITY's PEER REVIEW CONSULTANT.
- b. The CITY and the CITY'S PEER REVIEW CONSULTANT will strive to minimize costs associated with peer review while ensuring the development of technically sound, informative, evaluative and transparent TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENTS with a focus on this end, not on perfection. The CITY's PEER REVIEW CONSULTANT is expected to adhere to the agreed upon scope unless there is substantial and agreed upon rationale for expanding such scope based on inadequacies or substantive issues with the draft TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENTS.

**B. COMMUNICATION & ISSUE RESOLUTION**

1. Communication Plan- Upon signature of the MOU, the Project Team consisting of the CITY/APPLICANT/APPLICANT'S CONSULTANT will establish a mutually agreed upon Communication Plan for the Project. Both the APPLICANT and APPLICANT'S CONSULTANT must be copied on all CEQA-related Project emails to/ from the CITY and/ or CITY'S PEER REVIEW CONSULTANT to ensure that all parties share the same understanding of CITY comments, and that any issues are identified and addressed as early as possible.
2. Communication & Coordination- The CITY and CITY'S PEER REVIEW CONSULTANT will provide meaningful and timely coordination, input and decision-making when working with the

APPLICANT and APPLICANT'S CONSULTANT. This includes facilitating regular Project meetings or status communications (APPLICANT'S CONSULTANT may be responsible for generating status update or agendas). All parties will provide phone call and email responses as soon as possible but no later than two (2) working days (48 hours). CITY will provide decisions on policy or technical matters within no longer than ten (10) working days unless dependent on outside party information or otherwise agreed upon by the Project Team (see 'Issue Resolution' below).

3. Issue Resolution- Should the APPLICANT or APPLICANT's CONSULTANT strongly object to CITY (or CITY PEER REVIEW CONSULTANT) comments, this will be promptly communicated to the CITY project manager with written rationale supporting the need for further discussion. A meeting will then be held with the CITY Project Manager, CITY Principal Planner, CITY PEER REVIEW CONSULTANT, APPLICANT, and APPLICANT'S CONSULTANT to consider the information presented and come to resolution. If these issues cannot be resolved at that level, they will be elevated to the Planning Manager and, if needed, subsequently (or potentially concurrently) to the Director of Development Services, to come to final resolution. *The total process from the time of formal written feedback (technical rationale for change to comments) from the APPLICANT'S CONSULTANT to CITY decision will not take more than ten (10) business days-unless information or participation is needed from an outside party not subject to the timelines of the CITY or APPLICANT.* The CITY is not responsible for any time that this may add to the schedule. As the Lead Agency, the CITY reserves the right to make the final determination as to what must be included in the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT to constitute a defensible, transparent and complete document.

#### **C. DOCUMENT ACCURACY & QUALITY**

1. Complete & Accurate Document- It is the APPLICANT'S CONSULTANT'S responsibility to provide a complete and accurate TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT. The APPLICANT'S CONSULTANT will verify and ensure that all TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENTS prepared under its contract utilize accurate and verifiable field techniques and professional work performance standards, and are in conformance with all applicable CEQA requirements, and all applicable City, State, and Federal rules, regulations and laws.
2. Independent Professional Judgment- The APPLICANT'S CONSULTANT will verify and ensure that all TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENTS prepared under its contract, including the draft ENVIRONMENTAL DOCUMENT, final ENVIRONMENTAL DOCUMENT, TECHNICAL STUDIES, and response to comments (as applicable), represent its complete and independent professional judgment independent of the APPLICANT'S position, and provide an analysis of the specific environmental issues, setting, potential impacts, and mitigation measures associated with the Project. The APPLICANT'S CONSULTANT will verify and ensure that all TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENTS prepared under its contract include all changes provided by the CITY, and comply with all direction given by the CITY, irrespective of direction, changes or comments provided by the APPLICANT that have not been agreed upon or accepted by the CITY. Notwithstanding the above responsibility, all CEQA documents will ultimately reflect the independent judgment of the CITY.

3. Technical Basis for Evaluation- The CITY and the CITY'S PEER REVIEW CONSULTANT will be responsible for evaluating the extent and detail of topic area discussions (i.e., scope) in the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT. The CITY and CITY'S PEER REVIEW CONSULTANT will be responsible for reviewing the content of the draft TECHNICAL STUDY/ENVIRONMENTAL DOCUMENT and providing clear, meaningful and consistent comments on the scope and adequacy of the document in a timely manner.
  - a. The CITY and CITY'S PEER REVIEW CONSULTANT will strive to provide thorough review and comments upon initial review to avoid raising new substantive issues later in the project review cycle.
  - b. The CITY will always inform the APPLICANT as soon as possible regarding comments requiring additional information or substantive changes to the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT.
4. Peer Review Focus- The CITY's PEER REVIEW CONSULTANT will be responsible for reviewing the content of the draft TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT and providing clear, meaningful and consistent comments on the scope and adequacy of the document in a timely manner. The CITY'S PEER REVIEW CONSULTANT will focus on substance, not format or stylistic issues unless such matters contribute substantially to the transparency, accuracy or adequacy of the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT. If there are no substantive issues with the peer reviewed document, it does not reflect poorly on the CITY's PEER REVIEW CONSULTANT to indicate that is the case, as long as it is demonstrated that a thorough, thoughtful and comprehensive review of the document was conducted.
5. Peer Review Communication- The CITY'S PEER REVIEW CONSULTANT is expected to challenge (in writing when appropriate) and/ or correct any inaccuracies or inadequacies in the peer reviewed document, or CITY interpretations (directly with the CITY), without hesitation and in a diligent, professional and respectful manner, with the focus on production of highly defensible, rigorous and transparent documents.

**D. TRANSPARENCY & OBLIGATION TO THE PUBLIC**

1. Obligation to the City and the Public- The City's PEER REVIEW CONSULTANT'S primary obligation is to the CITY and to the public. The CITY'S PEER REVIEW CONSULTANT will adhere to the terms of the attached Ethical Statement agreed to at the time of original proposal to the CITY (Attachment A).
2. Limits of Confidentiality- The APPLICANT will not enter into any form of confidentiality agreement with the CONSULTANT or their subconsultants hired to assist with the preparation of the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT, which prohibits disclosure of information related to land use or environmental issues to the CITY or to the public. This provision may be waived or modified at the discretion of the CITY, if such an agreement would reveal a trade secret as defined by Government Code Section 6254.7.
3. Conflict of Interest- The APPLICANT'S CONSULTANT may not be a subsidiary or division of the APPLICANT or have an ownership interest in the proposed Project or any other property or development in which the APPLICANT has a financial interest. Additionally, the CONSULTANT

will not accept performance incentives associated with a certain density, intensity, or configuration of development. This prohibition does not preclude performance incentives related to project schedules. The CONSULTANT will not enter into any form of confidentiality agreement with the APPLICANT or any subconsultant(s), which prohibits disclosure of information related to substantive land use or environmental issues to the CITY. This provision may be waived or modified at the discretion of the CITY, if such an agreement would reveal a trade secret as defined by Government Code Section 6254.7.

4. CITY Participation- The CITY will have the right to reasonable notice of and to attend, or participate in, any and all meetings or conference calls as described below in this MOU, and has the right to request such meetings and be informed of the subject matter.
5. Transparency- The CITY will have the right to request copies of any and all correspondence, meeting schedules, minutes, and draft documents generated by the CONSULTANT, any sub-consultant(s) and the APPLICANT, in connection with the preparation of the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT. Upon request by the CITY, the CONSULTANT will make available to the CITY any and all field notes, resource documents, and supplemental technical studies used in the preparation of the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT.
  - a. The APPLICANT'S CONSULTANT will ensure that any sub-consultant(s) hired under contract with or in support of the scope of work applicable to the APPLICANT'S CONSULTANT, in conjunction with the preparation of the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT, will comply with all relevant terms and conditions set forth in this MOU.
  - b. The APPLICANT'S CONSULTANT will have an ongoing obligation and commitment to the CITY to disclose all information revealed or determined in the course of implementing its scope of work with the APPLICANT and that is relevant to the elements of the PROJECT TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT. The CONSULTANT will not omit or withhold any relevant information from the CITY at the request of the APPLICANT or for any other reason. The APPLICANT'S CONSULTANT will require any CONSULTANT-hired sub-consultant(s) to certify these same obligations and commitments to the CITY as a condition of their contract.

#### **E. CITY AS THE LEAD AGENCY**

1. In accordance with the Public Resources Code Section 21082.1, it is the responsibility of the CITY to provide its independent review and analysis of all documentation for the PROJECT prepared and submitted by the CONSULTANT, and subconsultant(s), and the APPLICANT. This independent review is undertaken for the benefit of the general public and is not intended to relieve the consultant of any of its responsibilities. As the Lead Agency, the CITY has the right to make all final determinations regarding the contents of the CEQA document.

#### **EXPIRATION**

This MOU will expire upon any of the following:

- A. The Project and the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT becomes final by decision of the authorized CITY decision-maker, all appeal timelines have expired, and all legal challenges associated with the Project and the TECHNICAL STUDY/ ENVIRONMENTAL DOCUMENT have been finally adjudicated; or

- B. The Project is withdrawn or denied and all appeal timelines have expired; or
- C. Written notice from the CITY, APPLICANT, or APPLICANT'S CONSULTANT to the other parties to this agreement terminating the MOU. Notwithstanding expiration of the MOU, all information obtained prior to said expiration will be disclosed to the CITY pursuant to the terms of the MOU. Expiration of the MOU does not relieve the parties of their responsibilities under the MOU for activities that took place prior to the expiration date.

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City Project Manager & Date

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City's Peer Review Consultant & Date

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Applicant & Date

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Applicant's Consultant & Date

## ATTACHMENT A

### Ethical Statement

This statement is an acknowledgement that the signing consultant, on behalf of the company or agency for whom s/he is employed or with whom s/he is contracted, understands and will fully comply with the ethical obligations of his/her position when hired by the City or by a private party to prepare technical and/ or legal documents for which the City of San Marcos (City) will ultimately be the Lead Agency under the California Environmental Quality Act (CEQA), or the decision-making authority under any other code, regulation or agreement.

This statement reinforces for the consultant and the applicant that it is the consultant's role to balance the responsibility to the potential direct client, whether the private applicant or the City, with the responsibility to the public, to the profession and to the environment, when preparing technical documents.

The consultant and all members of the company and/or affiliated team that s/he represents, will adhere to the following ethical obligations at all times in the preparation of technical and/or legal documents for which the City will ultimately be the Lead Agency or decision-making authority:

- **Compliance with all Applicable Laws, Policies and Best Practices-** The consultant will endeavor to fully comply with all applicable local, state and federal laws at all times and to replicate best practices in all work performed. The consultant will not knowingly disregard, circumvent, misinterpret, or partially comply with, any laws, policies or known best practices.
- **Accuracy-** The consultant will endeavor to gather and synthesize as much appropriate data as possible to support accurate and adequate analyses and technical studies. The consultant will only include information known to be accurate in technical studies. Should the study or analysis require assumptions or extrapolations, the consultant will identify those as such and explain the methodology that was applied to reach the analysis conclusions.
- **Transparency-** The consultant will actively endeavor to provide thorough and transparent information to the public and all other stakeholders at all times. The consultant will not knowingly withhold, skew or misconstrue information that should be made available to the public consistent with the terms provided in the California Public Records Act, the intent of the CEQA and the highest ethical standards.