City of San Jose
Office of Economic Development

REQUEST FOR PROPOSALS

Consultant Services to Design RFP to Develop Airport West Property

Deadline for Submittals:	Friday, March 2, 2007, close of business *** Hard copies, faxed or e-mailed proposals will be accepted. Proposals received after the deadline will be returned.**
Proposal Packet Submittal Location:	City of San Jose ATTN: Collin O'Mara Office of Economic Development 200 E. Santa Clara Street, 17th Floor San Jose, CA 95113 Email: Collin.OMara@sanjoseca.gov Fax: (408) 292-6719
Technical Assistance Contact:	Collin O'Mara Office of Economic Development Email: Collin.OMara@sanjoseca.gov Phone: (408) 535-8169 Fax: (408) 292-6719

*All dates subject to change; any changes will be posted on www.sjeconomy.com

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Request for Proposals for Consultant Services to Design RFP to Develop Airport West Property

The City of San Jose is seeking a consultant to assist in creating a Request for Proposals (RFP) to develop a 23.23 acre site for an interim use (30 years) or long-term use (99 years), assist in reviewing submitted proposals to the RFP, and assist in the negotiations with the successful bidder.

Section I: Background

On May 18, 2004, the City Council authorized the acquisition of 74.87 acres of property located at 1125 Coleman Avenue ('Airport West') adjacent to the Norman Y. Mineta San Jose International Airport. To secure the Airport West property, the City issued bonds to acquire 51.64 acres for airport purposes ("Phase I Property"). To acquire the remaining 23.23 acres ("Phase II Property"), the City secured a Section 108 Housing and Urban Development (HUD) loan.

The City acquired the Airport West property (74.87 acres) with the long-term vision of developing 2.75 million square feet of office, research and development (R&D), or hotel space. However, the current market may not support this highest and best use. As such, the City will be looking to secure interim or long-term uses for the "Phase II Property" (23.23 acres), which will generate revenues through rents and sales tax, which are sufficient to pay debt service on the property. Following any interim period, the City would require that the interim use structures be demolished to allow the City to develop the land for office/R&D/hotel usage.

Section II: Request for Proposals General Information

Seven hard copies, a faxed copy, or an emailed copy (.pdf of signed copies) of the proposal is due by close of business on Friday, March 2, 2007 at 200 E. Santa Clara Street, San Jose, CA 95113, Attention: Collin O'Mara (email: Collin.OMara@sanjoseca.gov; phone: (408) 535-8169; Fax: (408) 292-6719). Any proposal received after deadline will be rejected and will be returned to the submitting party.

All materials submitted in accordance with this RFP become property of the City and will not be returned.

The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City or its representatives. Should discrepancies or omissions be found in this RFP or should there be a need to clarify the RFP, you may request clarification via e-mail to: Collin.OMara@sanjoseca.gov.

Any City response to a request for clarification will be made in the form of an addendum to this RFP and will be sent to all parties to whom this RFP has been issued prior to the proposal due date and will be posted on our website at http://www.sjeconomy.com/ under the heading of "What's New." All addenda shall become part of this RFP.

In order to avoid any conflict of interest or the perception of a conflict of interest, proposer(s) selected to provide professional services under this RFP will be subject to the following requirements:

1. The proposer(s) selected for this RFP shall be precluded from submitting proposals or bids or assisting in the preparation of proposals or bids for the interim or long-term use RFP.
2. The proposer(s) may not have any interest in the selection of any potential proposer for the interim or long-term use RFP. In order to determine whether such interest may exist, all proposers must complete the attached Conflict of Interest Questionnaire (Attachment G).

II.A.: Objectives and Scope of Services

Based upon discussions with brokers and prospective tenants, the City has developed a vision for interim uses of the "Phase II Property" located at 1125 Coleman Avenue (23.23 acres). These interim uses may include big box retail, wholesale distribution, and auto related industries. The City anticipates interim uses will require 30-35 years to amortize investments. Consultant shall provide advisory services to redirect or refine the City's vision of interim uses and advise the City on the feasibility of achieving the long-term vision of office/R&D/hotel usage in the near term. Consultant shall assist the City in crafting an RFP to solicit developer proposals for interim and/or long-term uses on the "Phase II Property" (23.23 acres). The City does not want to preclude the build-out of the long-term vision by placing interim uses on site, if the current market can support the ultimate build out, and the City will accept proposals for long-term uses.

Consultant shall help the City design a well-organized RFP meeting City requirements to solicit proposals for developing "Phase II Property" (23.23 acres), taking into consideration the existing conditions and unique nature/location or the site. The RFP will include sufficient requirements for the proposals to ensure quality submittals.

During the RFP development process, the consultant will provide the following services:

- Consultant will work with City team to ensure that all required elements are included within RFP document
- Consultant may need to analyze program and development costs (including costs of preparing site for development) and future economic impact (costs, revenues, etc) for inclusion in RFP
- Consultant will help determine the appropriate level of detail needed within the RFP to ensure that respondents have adequate information to submit complete proposals

Following receipt of responses to the RFP, consultant shall:

- Assist the City in analyzing responses to the RFP
- Provide support services to assist the City through the negotiations of a contract which meets City needs with the successful bidder

II.B.: Deliverables

Consistent with the above components, the expected deliverables for the project are:

- RFP to develop the Airport West 'Phase II' property (23.23 acres) for interim use for up to 30 years or long-term uses for 99 years

II.C.: Budget and Timetable

Budget: The City anticipates that each proposer's budget shall not exceed $95,000. Proposers should ensure that adequate funds remain after the preparation of the RFP to assist the City with evaluating responses and negotiating with successful bidder.

Timetable: The City seeks to publish the RFP for interim uses of the Property as soon as feasibly possible.

II.D.: Selection Criteria

The Proposer should demonstrate that it has the appropriate analytical and professional background and access to resources to fulfill the stated scope of services. Particular attention will be paid to proposers with broad public and private sector land use and real estate experience, including but not limited to experience with similar projects, and experience in pro forma analysis and land use development.

Proposers should describe their work plan for developing the deliverables. This should include a sequence of steps to complete the RFP, a timetable, proposed budget, a staffing plan, résumés, references, and any other relevant information germane to the City's assessment of whether the Proposer has a work plan that is well organized and achievable within the desired scope, time and budget guidelines. The proposed budget should be divided into three parts: RFP preparation, analysis of responses, and negotiations.

<u>All proposals must include a Proposal Cover Page, Proposal Certification From, a Cost Proposal Form, and a Previous Customer Reference Worksheet. Please see Attachments A, B, and C for these forms.</u>

Proposers will be reviewed and evaluated based on the following criteria:

- Up to 50 points will be allotted for demonstration of organizational/staff professional background and experience, and access to resources to fulfill the stated scope of services.
- Up to 35 points will be allotted for a work plan that achieves the City's objectives.
- Up to 5 points will be allotted based upon cost and cost realism
- Up to 10 points will be allotted to firms which meet the requirements of the City's Local and Small Business Preference Ordinance (Requirements: Section II.E; Form: Attachment D).

II.E.: Local and Small Business Preference Ordinance

In June of 2004, the San Jose City Council passed a local and small business preference ordinance. For procurements such as this RFP, where cost is not necessarily the determinative factor, a local business is to receive a 5 point bonus and a small business will receive an additional 5 point bonus, for a maximum of 10 bonus points.

For the purpose of responsiveness to the requirements regarding the local and small business preference ordinance, a *local business* is defined as one that has a "legitimate business presence" in Santa Clara County. To have a legitimate business presence, a firm must have a current San Jose business tax certificate and either its principal business office or a satellite office must have at least one full-time employee in Santa Clara County. A *small business* is defined as one that employs a total 35 or fewer employees. To receive the small business preference, the small business must also qualify as a local business. Please see Attachment D, Local and Small Business Preference Policy and Certification Form.

SECTION III: TERMS AND CONDITIONS

Please review the Exemplar Agreement for Consultant Services (Attachment E). Exceptions or additions to the Exemplar Agreement will be considered during Evaluations. The City reserves the right to consider any proposed exceptions during its evaluation. Significant exceptions or additions to the Exemplar Agreement may adversely impact the Proposer's evaluation score as well as the ability to expeditiously negotiate a contract with the successful firm(s).

Any exceptions or additions to the terms and conditions provided in Attachment E, Exemplar Agreement, shall be included with your proposal. Please use the following notation to propose specific changes to the City and its related entities terms and conditions:

Red and underlined for inserted text.
~~Red and strikethrough for deleted text.~~

If your company does not take any exceptions to the terms and conditions of the Exemplar Agreement, then return the Agreement with your proposal response with the notation "**No Exceptions**" written across the top of the Agreement.

III.A.: INSURANCE REQUIREMENTS

If awarded the contract, the successful Proposer shall warrant and certify that it will comply with the City of San Jose's insurance requirements set forth in Attachment F.

III.B.: PUBLIC RECORDS: NATURE OF PROPOSAL MATERIAL

Responses to this RFP become the exclusive property of the City. At such time as staff recommends a Proposer all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, and thus disclosable as required under the Public Records Act, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary". Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of San Jose may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the City will provide the Proposer who submitted the information with reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction.

III.C.: NON-DISCRIMINATION/NON-PREFERENTIAL TREATMENT

The successful Proposer shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San Jose contracts.

III.D.: ACCEPTANCE OR REJECTION OF PROPOSAL

The City reserves the right to accept or reject any item or group(s) of items of a response. The City also reserves the right to waive any informality or irregularity in any proposal. Additionally, the City may, for any reason, decide not to award an agreement as a result of this RFP or cancel the RFP. The City shall not be obligated to respond to any proposal submitted, and shall not be legally bound in any manner by submission of the proposal. Staff will make a recommendation to the City Manager, as applicable, regarding the selection of a Proposer(s) based upon the evaluation of the proposals. The City reserves the right to negotiate project deliverables and associated costs.

III.E.: DISQUALIFICATION

Factors such as, but not limited to, any of the following may be considered just cause to disqualify a proposal without further consideration:

- Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.
- Any attempt to improperly influence any member of the selection staff;
- Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City;
- Evidence of incorrect information submitted as part of the proposal;
- Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal; and
- Proposer's default under any agreement, which results in termination of the Agreement.

III.F.: NON-CONFORMING PROPOSAL

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the City.

III.G.: PROHIBITION OF GIFTS

City of San Jose officials are subject to several legal and policy limitations regarding receipt of gifts from persons, firms, or corporations either engaged in business with the City, or proposing to do business with the City. To avoid even the appearance of impropriety, Proposers should not offer any gifts or souvenirs, even of minimal value, to City officers or employees. The Proposer shall be subject to the City's prohibition. Said prohibition is found in Chapter 12.08 of the SJMC (Attachment G). Proposer agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of the Agreement by the successful Proposer. In addition to other remedies the City may have by law or equity, City may terminate Agreement for such breach.

III.H.: ADDITIONAL TERMS AND CONDITIONS

This RFP does not commit the City to pay any costs incurred in the submission of the proposal or in making any necessary studies or analysis in preparation of submission of the proposal.

The City reserves the right without limitation to:

- Execute an agreement with one or more Proposers based solely on the proposal and any approved additions;
- Enter into an agreement with another Proposer in the event that the originally selected Proposer defaults or fails to execute an agreement with the City;
- Enter into negotiations with one or more Proposers;
- The City reserves the right to verify any information provided during the RFP process. The City may contact references listed or any other persons known to have contracted with the Proposer.
- An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and of the Proposer.

ATTACHMENT A
PROPOSAL COVER AND CERTIFICATION

TO: _____
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

FROM: _____

_____

_____

_____

RE: Consultant Services to Design RFP to Develop Airport West Property

Received by: _____

Time/ Date Received:

(STAMP)

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PROPOSAL CERTIFICATION

NO PROPOSAL SHALL BE ACCEPTED WHICH HAS NOT BEEN SIGNED IN INK IN THE APPROPRIATE SPACE BELOW

Proposing Firm Name:	
Address:	
Telephone:	
Facsimile:	
Contact person name and title:	

PROPOSER REPRESENTATIONS

1. Proposer did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms, or conditions of this proposal.

2. Proposer additionally certifies that neither proposer nor its principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, any California State agency, or any local governmental agency.

3. Proposer acknowledges that all requests for deviations, exceptions, and approved equals are enclosed herein and that only those deviations, exceptions, and approved equals included in the RFP document or permitted by formal addenda are accepted by the City.

4. Proposer did not receive unauthorized information from any City staff member or City Consultant during the Proposal period except as provided for in the Request for Proposal package, formal addenda issued by the City, or the pre-proposal conference.

5. Proposer hereby certifies that the information contained in the proposal and all accompanying documents is true and correct.

6. Please check the appropriate box below:

☐ If the proposal is submitted by an individual, it shall be signed by him or her, and if he or she is doing business under a fictitious name, the proposal shall so state.

☐ If the proposal is made by a partnership, the full names and addresses of all members and the address of the partnership, the full names and addresses of all members and the addresses of the partnership, the full names and addresses of all members and the address of the partnership shall be stated and the proposal shall be signed for all members by one or more members thereof.

☐ If the proposal is made by a corporation, it shall be signed in the corporate name by an authorized officer or officers.

☐ If the proposal is made by a limited liability company, it shall be signed in the corporate name by an authorized officer or officers.

☐ If the proposal is made by a joint venture, the full names and addresses of all members of the joint venture shall be stated and the bid shall be signed by each individual.

By signing below, the submission of a proposal shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and that they have read and understand the RFP.

Authorized Representative Name (sign name):	
Authorized Representative Signature (print name):	
Authorized Representative Title (print title):+	
Complete additional signatures below as required per # 6 above	
Authorized Representative Name (sign name):	
Authorized Representative Signature (print name):	
Authorized Representative Title (print title):+	
Authorized Representative Name (sign name):	
Authorized Representative Signature (print name):	
Authorized Representative Title (print title):+	

NO PROPOSAL SHALL BE ACCEPTED WHICH HAS NOT BEEN SIGNED IN INK IN THE APPROPRIATE SPACE

ATTACHMENT B
COST PROPOSAL

Description	Labor Category	Hourly Rate $/Hour	Estimated Total Hours	Estimated Total Dollars
RFP Preparation		$		$
		$		$
		$		$
		$		$
		$		$
		$		$
Estimated travel and expenses >>>>>>>>>>>>>>>>>>>>>>>				$
Total estimated cost for 'RFP Preparation' >>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>				**$**_____
Description	**Labor Category**	**Hourly Rate $/Hour**	**Estimated Total Hours**	**Estimated Total Dollars**
Analysis of responses		$		$
		$		$
		$		$
		$		$
		$		$
		$		$
Estimated travel and expenses >>>>>>>>>>>>>>>>>>>>>>>				$
Total estimated cost for 'Analysis of Responses' >>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>				**$**_____
Description	**Labor Category**	**Hourly Rate $/Hour**	**Estimated Total Hours**	**Estimated Total Dollars**
Negotiation Assistance		$		$
		$		$
		$		$
		$		$
		$		$
		$		$
Estimated travel and expenses >>>>>>>>>>>>>>>>>>>>>>>				$
Total estimated cost for 'Negotiation Assistance' >>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>				**$**_____

Instructions for completing Cost Proposal Form:

1) Refer to the Statement of Requirements for a description of the work and deliverables required.

2) You must submit a Price for each requirement that you are quoting.

3) Under "Labor Category" list skill levels that you will utilize for each task (example: "Sr. Auditor, Auditor, etc)

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ATTACHMENT C
PREVIOUS CUSTOMER REFERENCE WORKSHEET

Please copy this form as appropriate.

Name of Customer: _____ _____

Customer Contact: _____ _____

2. Customer Address: _____ _____

Phone No.: _____

3. Provide a brief description of the work that you are performing for this customer:

_____
_____
_____
_____
_____
_____
_____
_____

4.What is the term of the agreement for which this work is being performed?
Start Date mm/dd/yy
End Date mm/dd/yy

5. If contract is complete, please indicate why:

_____
_____
_____

6. Annual dollar value of Contract: $ _____

6. Type of Contract: firmed fixed price, time and material, not to exceed, cost plus fixed fee, other (if "other" please indicate) : _____

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ATTACHMENT D
Request for Contracting Preference for Local and Small Businesses

Chapter 4.06 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.

In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (*regardless of where they are located*) of your firm is 35 or fewer.

There are two ways in which the preference can be applied. In procurements where price is the determinative factor (*i.e. there are not a variety of other factors being considered in the selection process*) the preference is in the form of a credit applied to the **dollar value** of the bid or quote. For example, a non-local vendor submits a quote of $200 per item and a LBE submits a quote of $204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately $5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as $199.

In procurements such as RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an **additional** 5% to 10% **points** in the **scoring** of their proposal.

The following determinations have been made with respect to this procurement: (for official use only)

Type of Procurement	☐ Bid	☐ Request for Quote	☒ Request for Proposal
Type of Preference	☐ Price is Determinative	☒ Price is Not Determinative	
Amount of Preference	LBE preference = 2.5% of **Cost** SBE preference = 2.5% of **Cost**	LBE preference = 5% of **Points** SBE preference = 5% of **Points**	

In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.

Business Name			
Business Address			
Telephone No.			
Type of Business	☐ Corporation	☐ LLC	☐ LLP
	☐ General Partnership	☐ Sole proprietorship	☐ Other (explain)

***LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE**
In order to qualify as an LBE you must provide the following information:

Current San Jose Business Tax Certificate Number	
Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County:	

****SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE**
In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your **entire** business --NOT just local employees, or employees working in the office address given above.

Please state the number of employees that your Business has: _____

Based upon the forgoing information I am requesting that the Business named above be given the following preferences (*please check*): ☐ Local Business Enterprise ☐ Small Business Enterprise
I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed at: _____ , California
Date: _____
Signature _____
Print name

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ATTACHMENT E
EXEMPLAR AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
_____

NOTE: If a proposer takes exception to any of the terms specified below, the proposer must include written exceptions with the submittal of the proposal. If no exceptions are submitted with the proposal, the proposer will be deemed to have agreed to the terms specified below.

THIS AGREEMENT is made and entered into this _____ day of _____ 2006, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and _____ (hereinafter "CONSULTANT").

R E C I T A L S

The purpose for which this AGREEMENT is made, and all pertinent recitals, are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.
CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.
The term of this AGREEMENT shall be from _____ to _____, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.
The services of CONSULTANT are to be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.
The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed _____ Dollars ($_____). The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.
Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 6. INDEPENDENT CONTRACTOR.
It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.
The parties agree that the expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONSULTANT's obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.
CONSULTANT shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONSULTANT's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.
CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.
CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.

B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.

C. CITY's _____ is empowered to terminate this AGREEMENT on behalf of CITY.

D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this AGREEMENT, and upon receipt thereof,

CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.
CITY and CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.
CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 14. CONFIDENTIAL INFORMATION.
All data, documents, discussions or other information developed or received by or for CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 15. OWNERSHIP OF MATERIALS.
All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAIVER.
CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 17. CONSULTANT'S BOOKS AND RECORDS.

A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this AGREEMENT.

B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request

by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

SECTION 18. CONFLICT OF INTEREST.

CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. [if required] CONSULTANT shall file an Assuming Office Disclosure Statement of Economic Interests (Form 700) as specified in EXHIBIT F, entitled "DISCLOSURE STATEMENT", which is attached hereto and incorporated herein. Such statement shall be filed within thirty (30) days of the date of this AGREEMENT and annually thereafter by the first of April. Upon termination of this AGREEMENT, CONSULTANT shall file a Leaving Office Disclosure Statement of Economic Interest (Form 700).

SECTION 19. GIFTS.

A. CONSULTANT is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.

B. CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.

C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by CONSULTANT. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

SECTION 20. DISQUALIFICATION OF FORMER EMPLOYEES.

CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 21. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F **(or G, if applicable)**, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 22. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

To CONSULTANT:

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 23. VENUE.
In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 24. PRIOR AGREEMENTS AND AMENDMENTS.
This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

ATTACHMENT F
INSURANCE REQUIREMENTS

CONSULTANT, at CONSULTANT'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, including products and completed operations; and

2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

4. Professional Liability Errors and Omissions.

B. **Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of $1,000,000 per accident; and

4. Professional Liability Errors and Omissions $1,000,000 Aggregate Limit.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or CONSULTANT shall procure a bond

guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

   a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

   b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.

   c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

   d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

   Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

Risk Management
Finance
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

G. **Subcontractors**

CONSULTANT shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

ATTACHMENT G
CONFLICT OF INTEREST FORM

NAME: **DATE:** **ASSIGNMENT:** _____

□ Permanent City Employee If not, please list status: _____

This form must be completed **by each person** that participates in the above-referenced assignment, so that the City may assess whether the proposed staff exhibit a conflict of interest.

Questions	Yes (Provide Details)	No
1. Personal Relationships (a) Do you currently have or have had any official, professional, financial, or personal relationships with any person or firm associated with this assignment? (b) If yes, describe the type and extent of the relationship. (c) In your opinion, might this affect your judgment or your ability to execute this assignment in a fair and impartial manner?		
2. Stock and Investments (a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment? (b) Does your spouse, domestic partner, or a dependent own any stock in company likely to be affected by or involved in the Proposed Assignment? (c) Do you hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?		

Questions	Yes (Provide Details)	No
(d) Does your spouse, domestic partner, or a dependent hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment? If the answer is yes to any of the above questions, please provide the name of the company and the amount of the stock or investment.		
3. Employment & Consulting (a) Is your spouse, domestic partner, or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? (b) Has your spouse, domestic partner, or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? (c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? If the answer is yes to any of the above questions, please provide name of employer, nature of services provided, and date of employment/retainment .		
4. Payments or Gifts (a) Within the past 12 months, have you received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment? (b) Within the past 12 months, has your spouse, domestic partner, or a dependent received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment? If the answer is yes, please provide the amount the payment or value of the gift, the name and position of the payor/donor and the date of receipt.		

Questions	Yes (Provide Details)	No
5. Real Estate (a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment? (b) Does your spouse, domestic partner, or a dependent own real property that is likely to be affected by or involved in the Proposed Assignment? If the answer is yes, please provide the location of the property.		
6. Positions (a) Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment? (b) Does your spouse, domestic partner, or a dependent hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment? If the answer is yes, please provide the name of the entity, and the title of the position held.		
7. Are you aware of any facts or circumstance that might give someone the impression that your participation in this process would create a conflict of interest?		

The undersigned has read and understood City Council Policy "Integrity and Conflict of Interest in Procurement." If during the course of the assignment any personal, external, or organizational impairments occur that may affect the undersigned's ability to perform the work and report findings impartially, the undersigned will notify the Chief Purchasing Officer of the City of San José immediately at 408-535-7000.

_____ _____

Date Signature