



City of San Jose
Office of Economic Development

REQUEST FOR PROPOSAL

RFP #06-07-JL

Consultant Services for Recovery of Use Tax

RFP Release Date:	July 2, 2007
Deadline for Submittals:	July 27, 2007, 5:00 p.m. PST* * Faxed or e-mailed proposals will NOT be accepted. Proposals received after the deadline will be returned.
Proposal Packet Submittal Location:	City of San Jose ATTN: John Lang Office of Economic Development 200 E. Santa Clara Street, 17 th Floor San Jose, CA 95113
Technical Assistance Contact:	John Lang Office of Economic Development Email: John.Lang@sanjoseca.gov Phone: (408) 535-8178 Fax: (408) 292-6719 Please submit any technical assistance questions on or before July 20, to insure sufficient time to include in your proposal. All questions will be posted in the form of an addendum on the website.

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

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Request for Proposals for Consultant Services for Recovery of Use Tax

The City is seeking proposals from qualified firms to provide technical assistance, Use Tax reviews and corollary consulting services to the City. These services will be focused on, but not limited to, technical assistance related to Use Tax collection opportunities via Direct Pay Permits or construction contracts. The services provided by the consultant will be an integral part to the City's new Business Cooperation Program.

SECTION I: BACKGROUND

Use tax, is applied to tangible personal property, purchased, stored or consumed in California. The State of California allows for the tax liability to be assigned in two basic ways, either to the seller or to the buyer. The common practice is for the out of state seller to take the tax liability of reporting to the State of California. Out of state sellers frequently remit collected use tax to the State without identifying the point of sale. Thus the tax revenue ends up in statewide and or countywide pools. Currently the City of San Jose receives approximately 43% of the countywide pool and 3% from statewide pools.

The less common practice is for use tax collection to be processed through the buyer. Depending on the nature of the purchase there are two ways a buyer assumes the tax liability and collects use tax to remit back to the local jurisdiction. The first is under special circumstances when a company can demonstrate purchases of tangible personal property in excess of \$500,000 in a calendar year, they can request a Direct Pay Permit from the State of California, which transfers the tax liability from the seller to the buyer. The buyer is responsible for self accruing and reporting the tax back to the local jurisdiction (Regulation 7051.2). The second way is unique to construction contracts. Construction contracts in excess of \$5 million dollars allow the buyer to itemize and accrue eligible purchases through their job site sellers permit. By itemizing the eligible out of state purchases, construction contractors are able to allocate use tax back to the jurisdiction where the property will reside.

On May 21, 2007, the Office of Economic Development received approval from the City Council Committee, Community and Economic Development (CED), to move forward with a Business Cooperation Program (BCP) (http://www.sanjoseca.gov/clerk/CommitteeAgenda/CED/052107/CED052107_f.pdf). The proposed BCP would aid in recapturing the full 1% of Use Tax revenue on selected projects via Direct Pay Permits and or construction contracts. In order to assist participating companies with the collection and reporting processes related to allocation of use tax, the City is interested in contracting with a qualified firm to provide technical services to the City and local companies.

It should be noted that the City currently has an existing agreement in place with a firm to provide services related to sales tax audits. This request for proposal is specifically seeking technical assistance with Use Tax opportunities through the Business Cooperation Program not sales tax audits.

SECTION II: OBJECTIVES AND SCOPE OF WORK

On an annual basis, the City of San Jose, located in Santa Clara County, California, collects approximately \$140 million in Sales and Use Tax. The City is issuing this Request for Proposal in order to retain an

independent consulting firm for revenue enhancement services related Use Tax, specifically Direct Pay Permits and Construction Contracts.

II.A.: SERVICES REQUESTED THROUGH THIS RFP

At a minimum, all proposals must address the following:

A. Direct Pay Permits

- Identify processes and steps that will be undertaken to identify, in tandem with the City businesses conducting Use tax activities within the City of San Jose who do not have a Direct Pay Permit.
- Develop an outreach plan in collaboration with the City to work with identified businesses to obtain a Direct Pay Permit.
- Outline a technical assistance plan to assist participating businesses and the City with recording and tracking eligible receipts for the Direct Pay Permit.
- Provide an estimate of the number of reviews (verifications) and total hours to be performed for a 12 (twelve) month period for providing technical assistance to firms.

B. Use Tax under Construction Contracts (sub-sellers permit)

- Identify processes and steps that will be undertaken to identify, in tandem with the City, construction projects (and subsequently construction firms) within the City of San Jose that would meet the State's criteria to allocate use tax under a sellers sub-permit for construction contractors.
- Develop an outreach plan in conjunction with the City to work with identified construction firm to obtain a sub-sellers permit.
- Outline a technical assistance plan to assist participating businesses and the City with the recording and tracking eligible receipts under sub-sellers permits related to construction contracts.
- Provide an estimate of the number of reviews (verifications) and total hours to be performed for a 12 (twelve) month period for providing technical assistance to firms.

C. Use Tax Sharing Agreements

- Demonstrate experience working with local government agencies developing Business Cooperation (Use Tax sharing) agreements with participating companies.
- Submittal of a sample use tax sharing agreement between a company and a local jurisdiction that was developed by proposer.

II.B.: DELIVERABLES

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

1. Contractor shall provide quarterly status presentations with written reports, which contain reconciliation worksheets, to assist the City with budget projections and receipt monitoring. Such reports should also contain a separate quarterly analysis of all fund adjustments and reporting aberrations impacting said projections. At a minimum, these reports will include:

- a. Status of work in progress.
- b. Quarterly and year-to-date accounting of actual Use Tax recovered through Contractor's activities and Direct Pay Permits.
- c. Listing and the status of problems encountered quarterly.
- d. Detail the number of Direct Pay use permits in the City of San Jose.

II.C.: SUBMITTAL REQUIREMENTS

GENERAL

Two hard copies of the proposal are due by close of business on July 27, 2007 at 200 E. Santa Clara Street, 17th Floor San Jose, CA 95113, Attention: John Lang. Any proposal received after this time will be rejected and will be returned to the submitting party. Please submit any technical assistance questions on or before July 20, to insure sufficient time to include in your proposal. All questions and answers will be posted in the form of an addendum on www.sjeconomy.com.

INTRODUCTION / BACKGROUND

Briefly summarize the proposers background, size, scope and nature of services. If this is a joint venture or involves the use of one or more subcontractors as proposed, explain in detail the responsibility of each entity. Include the primary point of contact and complete contact information for that individual.

PROJECT APPROACH

Proposers should describe their work plan for developing the deliverables. This should include a sequence of steps to complete a timetable, proposed budget, a staffing plan 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.

PROJECT EXPERIENCE

Describe no more than three similar projects in which you have related experience. Proposers are encouraged to submit at least one project that demonstrates experience working with a local jurisdiction that resulted in short and long term successes. List locations, descriptions, and services performed. Please include contact names, addresses, and telephone numbers (Attachment F).

RATE SCHEDULE/FEE PROPOSAL

The City anticipates that each Proposers budget shall be commensurate with the amount of net new use tax revenue received by the City. However, if the proposed pricing is on a flat fee, please indicate exactly how the fee is calculated and what specific services and/or expenses the proposed fee will include (Attachment B). Please note that the City of San Jose in the contracting process will be looking at capping consultant services costs at some amount, yet to be determined. The City will be evaluating start-up costs and on-going technical services in evaluating the appropriateness of a cap over time.

ATTACHMENTS

Attachment A – Proposal Cover and Certification

Attachment B- Cost Proposal Form

Attachment C – Request for Contracting Preference for Local and Small Businesses

Submit this form with your proposal only if you wish to be considered for this preference. It may not be submitted late.

Attachment E -- Insurance Provisions

Selected consultant will be required to enter into an agreement with the City containing the terms and conditions and insurance provisions set forth in Attachments D and E, respectfully. If you have any exceptions to the standard terms and conditions you must note them in your proposal. If there are no exceptions, submit the first page of each Attachment stating "No Exceptions".

Attachment F- Customer Reference Worksheet

Attachment G – Conflict of Interest Form

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:

John.Lang@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.

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 sales and use tax experience, including but not limited to experience with similar projects, and experience in other jurisdictions.

City staff will evaluate proposal submissions. The City reserves the right to interview prospective firms/individuals prior to making its selection. The City also reserves the right to rely on information from sources other than the information provided by the respondents.

Description	Points/Weight
Proposal Responsiveness: Required forms are attached and are completed	Pass/Fail
Demonstration of organizational/staff professional background and experience, and access to resources to fulfill the stated scope of services.	35
A work plan that achieves the City's objectives.	45
Lowest bidder and firms proposing budgets within \$1,000 of the lowest bidder	10
Local Business Enterprise (Attachment C)	5
Small Business Enterprise (Attachment C)	5

III. TERMS AND CONDITIONS

III.A.: PROCESS INTEGRITY GUIDELINES

- A. In accordance with Procurement and Contract Process Integrity and Conflict of Interest Council policy adapted on 02/07/2007, proposers may be disqualified from the procurement without further consideration for any of the following:
- B. Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.
- C. Failure to direct all questions/inquiries through the contact listed in this document.
- D. Offering gifts or souvenirs, even of minimal value, to City officers or employees.
- E. Any attempt to improperly influence any member of the selection staff.
- F. Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City.
- G. Evidence of submitting incorrect information in the response to a solicitation or misrepresentation or failure to disclose material facts during the evaluation process.

III.B.: CONFLICT OF INTEREST

- A. In order to avoid a conflict of interest or the perception of a conflict of interest, proposer(s) selected to provide services under this RFP will be subject to the following requirements:
- B. The proposer(s) selected under this RFP will be precluded from submitting proposals or bids as a prime contractor or subcontractor for any future procurement with the City if the specifications for such procurements were developed or influenced by the work performed under the agreement(s) resulting from this RFP.
- C. Proposer(s) may not have any interest in any potential proposer for future City procurements that may result from the work performed under the agreement resulting from this RFP.
- D. In order to determine whether such interest may exist, all proposers must complete the attached Conflict of Interest Form (Attachment G).

III.C.: GENERAL INFORMATION

- A. Responses will be evaluated as outlined in Section II.D.
- B. Final award shall be contingent upon selected firm (Contractor) negotiating Terms and Conditions in substantial conformity to the terms listed in Attachment D of this RFP.
- C. City reserves the right to accept an offer in full, or in part, or to reject all offers.
- D. You must respond to this RFP by the due date and time as stated on the cover sheet of this document in order for your quotation to be considered.
- E. The successful proposer will be required to demonstrate evidence of insurance in accordance with the insurance provisions listed in Attachment E.
- F. All questions/inquiries must be made through the contact listed on the cover sheet of this document, via e-mail. Contact with representative(s) other than name listed in this RFP is grounds for disqualification. The City will provide a written response to all questions in the form of an Addendum.
- G. All costs associated with responding to this request are to be borne by the respondent.
- H. It is the City's policy that the selected firm 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 José contracts.

III.D.: PUBLIC NATURE OF PROPOSAL MATERIAL

- A. All correspondence with the City including responses to this RFP will become the exclusive property of the City and will become public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) All documents that you send to the City will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.
- B. Therefore, any proposal which contains language purporting to render all or significant portions of their proposal “Confidential”, “Trade Secret” or “Proprietary”, or fails to provide the exemption information required as described below will automatically be considered a public record in its entirety and shall be disclosed to the requesting party without further consideration or notice.
- C. Do not mark your entire proposal as “confidential”.
- D. The City will not disclose any part of any proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to this RFP will be subject to public disclosure. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as “Trade Secret” and refer to the appropriate section of the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption.
- E. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of San José 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 Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

III.E.: OBJECTIONS AND PROTESTS

A. OBJECTIONS

- i. Any objections as to the structure, content or distribution of this RFP must be submitted in writing to the purchasing contact listed below. Objections must be as specific as possible, and identify the RFP section number and title, as well as a description and rationale for the objection.

B. PROTESTS

- i. If an unsuccessful Proposer wants to dispute the award recommendation, the Protest must be submitted in writing to the Chief Purchasing Officer no later than ten calendar days after announcement of the successful Proposer, detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes of proposal requirements and specifications, which must be addressed in accordance with the above Section. Failure to submit a timely written Protest to the contact listed below will bar consideration of the Protest.

The address for submitting objections or protest is:
Paul Krutko, Chief Development Officer
200 East Santa Clara Street, 17th Floor
San Jose, CA 95113

ATTACHMENT A
PROPOSAL COVER AND CERTIFICATION



TO: John Lang
City of San Jose
200 E. Santa Clara Street, 17th Floor
San Jose, CA 95113

FROM: _____

RE: Consultant Services for Recovery of Use Tax , RFP #06-07-JL

<p>Received by: _____</p> <p>Time/ Date Received:</p> <p>(STAMP)</p>
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Proposal Certification

PROPOSALS, WHICH ARE NOT SIGNED IN INK IN THE APPROPRIATE SPACE BELOW, SHALL BE DEEMED NON-RESPONSIVE.

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

PROPOSER REPRESENTATIONS

Proposer understands, agrees, and certifies:

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. That Proposer did not receive unauthorized information from any City staff member or Consultant during the Proposal period except as provided for in the Request for Proposal package, and formal addenda issued by the City.
5. Proposer hereby certifies that the information recorded on this form and provided as attachments to the same is correct to the best of his or her knowledge.
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 bid 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 bid 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 corporation, 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 with all accompanying documents 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 (print name):	
Authorized Representative Signature (sign name):	
Authorized Representative Title (print title):+	
Complete additional signatures below as required per # 6 above	
Authorized Representative Name (print name):	
Authorized Representative Signature (sign name):	
Authorized Representative Title (print title):	
Authorized Representative Name (print name):	
Authorized Representative Signature (sign name):	
Authorized Representative Title (print title):	

PROPOSALS, WHICH ARE NOT SIGNED IN INK IN THE APPROPRIATE SPACE ABOVE, SHALL BE DEEMED NON-RESPONSIVE.

**ATTACHMENT B
CONSULTANT COST PROPOSAL**

Please provide total costs (in US Dollars) attributable to the completion of all items listed in the Scope of Services requirements. Costs should be outlined by requirement component and summed for presentation of a total quote for consultation services performed.

If the proposed pricing is on a flat fee or percentage basis, please indicate exactly how the fee is calculated and what specific services and/or expenses the proposed fee will include. If the proposed pricing is not on a flat fee or a percentage basis, please use the format provided below.

Please Note: Estimate hours for completion of the RFP Recovery of Use Tax. Itemize any out-of-pocket expenses that will be billed to the City of San Jose.

Quoted Hourly Rate

	<u>For This Proposal</u>	<u>Standard</u>	<u>Estimated Hours</u>	<u>Total</u>
Partner	\$ _____	_____	_____	\$ _____
Manager	\$ _____	_____	_____	\$ _____
Supervisory Staff	\$ _____	_____	_____	\$ _____
Staff	\$ _____	_____	_____	\$ _____
Other (specify)	\$ _____	_____	_____	\$ _____

Notes: _____

OR

Flat Fee	<u>Total</u>
Flat Fee \$ _____	\$ _____

Notes: _____

OR

% Net New

_____% of the new tax income realized by the City as a direct result of the consultant services provided

Notes: _____

OR

Other

Other method of compensation. Please be specific: _____

1. The Contract, if awarded, will run for period of one year from the date of execution. Subject to appropriations by City Council, the City shall have the option to extend the Contract in one-year increments at the above costs up to a maximum of three (3) additional years, for a maximum total term of the Contract not to exceed four (4) years.
2. As part of the RFP process, Proposers who submit a Proposal in response to this RFP may be required to make oral presentations at no additional cost to the City

Cost/pricing Data and Proposal Content

This is to certify that, to the best of my knowledge and belief, the cost/pricing data submitted, either actually or by specific identification in writing to the City of San Jose in support of this proposal, is accurate, complete, and current as of the date below. This certification includes the cost/pricing data supporting any agreements/contracts that may be agreed upon between the proposer and the City of San Jose that are part of the result of submitting this proposal.

Signature of Authorized Representative

Date

Title of Authorized Representative

**ATTACHMENT C
REQUEST FOR CONTRACTING PREFERENCE FOR LOCAL AND SMALL BUSINESS**

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.

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

Type of Procurement:	<input type="checkbox"/> Bid	<input checked="" type="checkbox"/> Request for Qualifications	<input type="checkbox"/> Request for Proposal
Type of Preference:	<input type="checkbox"/> Price is Determinative		<input checked="" type="checkbox"/> Price is Not Determinative
Amount of Preference:	LBE preference = 2.5% of Cost	LBE preference = 5% of Points	
	SBE preference = 2.5% of Cost	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 Number:			
Type of Business:	<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP
	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> 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 on 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: _____

ATTACHMENT D
SAMPLE 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").

RECITALS

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,

OED USE TAX RFP

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

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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 E
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

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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.

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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 F
CUSTOMER REFERENCE WORKSHEET

Provide reference information for the services you are quoting and used in a manner and environment similar in size and scope to the requirements of this project. Copy this form as appropriate.

Name of Customer	
Customer Address	
Customer Contact Name(s)	
Customer Contact Phone Number(s)	
Brief description of work performed for this client	

**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
<p>1. Personal Relationships</p> <p>(a) Do you currently have or have had any official, professional, financial, or personal relationships with any person or firm associated with this assignment?</p> <p>(b) If yes, describe the type and extent of the relationship.</p> <p>(c) In your opinion, might this affect your judgment or your ability to execute this assignment in a fair and impartial manner?</p>		
<p>2. Stock and Investments</p> <p>(a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment?</p> <p>(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?</p> <p>(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?</p>		

Questions	Yes (Provide Details)	No
<p>(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?</p> <p>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.</p>		
<p>3. Employment & Consulting</p> <p>(a) Is your spouse, domestic partner, or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(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?</p> <p>(c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>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 .</p>		
<p>4. Payments or Gifts</p> <p>(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?</p> <p>(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?</p> <p>If the answer is yes, please provide the amount the payment or value of the gift, the name and position of the payer/donor and the date of receipt.</p>		

Questions	Yes (Provide Details)	No
<p>5. Real Estate</p> <p>(a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(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?</p> <p>If the answer is yes, please provide the location of the property.</p>		
<p>6. Positions</p> <p>(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?</p> <p>(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?</p> <p>If the answer is yes, please provide the name of the entity, and the title of the position held.</p>		
<p>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?</p>		

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

Print Name