

# **REQUEST FOR PROPOSAL**

**RFP #04122010TJ**

**EXIT PHYSICALS**

**FOR THE BOARD OF ADMINISTRATION FOR:**

**THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN**

## **1 INTRODUCTION**

The Board of Administration for the City of San Jose Police and Fire Department Retirement Plan is requesting proposals from qualified medical service providers to conduct physical examinations and selected tests for wellness screenings to retiring members of the Police and Fire Department Retirement Plan.

## **2 BACKGROUND**

In August of 1999 the Police and Fire Board of Administration (“Board”) approved providing exit physicals for newly retired members of the Police and Fire Retirement System. The purpose of the physical is to help retirees establish a baseline for their level of health at retirement and to provide them with wellness and disease prevention information based on the findings of the examination.

The objective of this Request for Proposal (RFP) is to ensure that the exam and screening procedures conducted during medical evaluation constitute best practices for establishing a health baseline and empowering retired members to be proactive in their quest for a healthy retirement.

The Police and Fire Department Retirement Plan (“Police and Fire” or “Plan”) is a defined benefit retirement plan serving the employees and retirees of the City of San Jose, California. The pension plan uses investment income and employer and employee contributions to provide eligible retirees with defined-benefit pensions based on their years of service and highest compensation. The plan also provides medical benefits, survivor benefits, and permanent disability benefits to qualified members and their beneficiaries.

Operating under the San Jose Municipal Code, the Police and Fire Plan is managed and administered by its Board of Administration (“Board”). The Board’s specific duties include consideration of requests for retirement, administration and investment of the retirement funds, determining eligibility for membership in the pension plans, and determining employees’ eligibility for retirement benefits.

Under the City of San Jose Municipal Code, the Director of the Department of Retirement Services is the Secretary of the Board of Administration and is responsible for supporting the Board. The Director is an employee of the City, who reports to the City Manager.

Detailed information regarding the Police and Fire Plan, including the Plan’s Comprehensive Annual Financial Report, may be found on the Department of Retirement Services website at: [www.sjretirement.com](http://www.sjretirement.com). The City’s Municipal Codes regarding the plans can be found at the following weblink: <http://sjretirement.com/Fed/Plan/Code.asp>

## **3 DESIRED QUALIFICATIONS**

The selected medical service provider should have a minimum of ten years of experience providing the specific requested services and comprehensive medical services. Additionally, the following competencies are required:

Mamography – must be certified by the American Board of Radiology (ABR accredited program)

Flexible Sigmoidoscopy – American Board of Medical Specialties (ABMS) certified physician in general surgery, gastroenterology, internal medicine or family practice.

Echocardiogram – Test results must be interpreted by a cardiologist.

**4 TIMELINE AND CONTACT INFORMATION**

|  |   |
|--|---|
| 5 <b>RFP Release Date</b>  | <b>APRIL 12, 2010</b>   |
| <b>C</b> ontact Name:  | Rhonda Snyder   |
| <b>W</b><br><b>T</b><br><b>C</b> ontact Address:   | Department of Retirement Services<br>1737 North First Street, Suite 580<br>San Jose, CA 95112<br><a href="mailto:rhonda.snyder@sanjoseca.gov">rhonda.snyder@sanjoseca.gov</a> |
| <b>O</b><br><b>B</b><br>Deadline to submit questions or object to RFP specifications (See Sections 8 and 9)                | <b>APRIL 20, 2010</b><br><b>10:00 AM Pacific Daylight Time</b>  |
| <b>I</b><br><b>N</b><br><b>T</b><br><b>H</b><br><b>P</b> roposal (Statement of Qualifications) due date, time and location | <b>APRIL 27, 2010</b><br><b>5:00 PM Pacific Daylight Time</b><br>City of San Jose<br>1737 North First Street, Suite 580<br>San Jose, CA 95112<br>Attention: Rhonda Snyder     |

This RFP may be downloaded from the BidSync bid notification system. Proposers must register with BidSync at [www.BidSync.com](http://www.BidSync.com). If you have a problem registering online, contact BidSync directly toll-free at (800) 990-9339 or by email at [www.BidSync.com](http://www.BidSync.com).

All addenda and notices related to this procurement will be posted by the City on BidSync. In the event that this RFP is obtained through any means other than BidSync, the City will not be responsible for the completeness, accuracy, or timeliness of the final RFP document.

Prospective subcontractors should note that once registered with BidSync, they will be able to view all organizations (with name and contact information) downloading the RFP document.

**6 TERM OF AGREEMENT**

The anticipated term of this agreement is July 1, 2010 through June 30, 2013.

## **7 PROCEDURE FOR SUBMITTING QUESTIONS AND INQUIRIES**

All questions/inquiries must be made through the contact listed on the cover sheet of this document, via e-mail or BidSync. The City will provide a written response to all questions in the form of an Addendum.

## **8 OBJECTIONS**

**8.1** Any objections as to the structure, content or distribution of this RFP must be submitted in writing to the Contact listed on the cover sheet of this document. 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.

**8.2** All objections, questions and inquiries must be received by the deadline stated on the cover sheet.

## **9 PROPOSAL SUBMITTAL REQUIREMENTS**

### **9.1 GENERAL REQUIREMENTS**

**9.1.1** 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. Quotations may be submitted via fax or e-mail, and must be addressed to the attention of the contact listed on the cover sheet of this document, clearly labeled RFP-POLICE AND FIRE EXIT PHYSICALS.

**9.1.2** Each proposal will be reviewed to determine if all required documentation and information was included with the submittal of the proposer. If a proposer fails to provide the required documentation, the proposal will be evaluated accordingly, and may receive lower scores or deemed non-responsive and not evaluated depending on the severity of the omission.

**9.1.3** Submit five (5) hard copies and one electronic copy (CD) in PDF (portable document format) by the proposal due date and time listed in Section 4. Late submissions will not be considered.

### **9.2 SUBMISSION DOCUMENTS**

**9.2.1 Attachment A – Proposal Certification** - complete and sign this document as instructed on the form.

#### **9.2.2 Attachment B – Proposer Questionnaire**

Complete this form responding to all questions accurately and completely.

#### **9.2.3 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.

#### **9.2.4 Attachment D – City’s Terms and Conditions; Exhibit E, Insurance Provisions**

The selected consultant will be required to enter into an agreement with the City containing the terms and conditions and insurance provisions set forth in Attachment D. 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”.

#### **9.2.5 Attachment E - Previous Customer Reference Worksheet.**

Submit four references where you have done work similar to the requirements of this RFP. Copy the form as appropriate.

#### **9.2.6 Fee Structure**

Please describe your firm’s fee structure with respect to the project, addressing each of the categories specified below:

- Major tasks/functions.
- Fee for performance of the following medical tests:
  - Echocardiogram
  - Flexible Sigmoidoscopy
  - PAP Smear (women only)
  - Digital Mamography (women only)
  - Chest X-ray (PA & Lateral)
  - Treadmill
  - CPX (including history, physical, follow-up letter to applicant’s physician or follow-up visit to the examining physician).
- Whether the firm would be willing to agree to a fixed fee for specific functions.
- The standard hourly rate of each consultant class or other function who would be assigned to the project or, alternatively, the formula by which fees are set per transaction.
- Your estimate, for planning purposes only, as to the total cost of your services including all reimbursable expenses. A dollar range is acceptable.
- Are all program communications (print materials and on-line text/exhibits) included in your fees?
- Are there additional fees for educational materials, self care books, etc.?

## **10 SELECTION PROCESS AND EVALUATION CRITERIA**

### **10.1 Selection Process**

**10.1.1** 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.

**10.1.2** Responses will be evaluated as outlined in this section.

**10.1.3** Final award shall be contingent upon selected firm (Contractor) accepting Terms and Conditions in substantial conformity to the terms listed in Attachment D of this RFP.

**10.1.4** The City reserves the right to accept an offer in full, or in part, or to reject all offers.

## 11 EVALUATION CRITERIA

Responses to this RFP will be evaluated based on the following factors.

| CRITERIA                              | WEIGHT |
|---------------------------------------|--------|
| Experience of Healthcare Provider     | 50%    |
| Qualifications of Healthcare Provider | 30%    |
| Fee Structure                         | 10%    |
| Local Business Enterprise             | 5%     |
| Small Business Enterprise             | 5%     |

## 12 GROUNDS FOR DISQUALIFICATION

**12.1** All Proposers are expected to have read and understood Council Policy 0-35 on Procurement and Contract Process Integrity and Conflict of Interest adopted on February 6, 2007. A complete copy of the policy can be found at:

[http://www.sanjoseca.gov/purchasing/pdf/Policy0\\_35.pdf](http://www.sanjoseca.gov/purchasing/pdf/Policy0_35.pdf).

**12.2** Any proposer who violates the Policy will be subject to disqualification. Generally, the grounds for disqualification include:

**12.2.1** Contact regarding this procurement with any City official or employee or Evaluation team other than the Procurement Contact from the time of issuance of this solicitation until the end of the protest period.

**12.2.2** Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.

**12.2.3** Influencing any City staff member or evaluation team member throughout the solicitation process, including the development of specifications.

**12.2.4** Evidence of submitting incorrect information in the response to a solicitation or misrepresent or fail to disclose material facts during the evaluation process.

**12.3** In addition to violations of Council Policy 0-35, the following conduct may also result in disqualification:

**12.3.1** Offering gifts or souvenirs, even of minimal value, to City officers or employees.

**12.3.2** Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City.

**12.3.3** Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal.

12.3.4 Proposer's default under any City agreement, resulting in termination of such agreement.

### **13 CONFLICT OF INTEREST**

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

13.2 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.

13.3 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.

13.4 In order to determine whether such interest may exist, all proposers must complete the attached Conflict of Interest Form (Attachment F).

### **14 GENERAL INFORMATION**

14.1 The successful proposer will be required to demonstrate evidence of insurance in accordance with the insurance provisions listed in Attachment D (Exhibit E).

14.2 All costs associated with responding to this request are to be borne by the proposer.

14.3 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.

### **15 PUBLIC NATURE OF PROPOSAL MATERIAL**

15.1 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.

15.2 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 be considered a public record in its entirety subject to the procedures in Section 15.5.

15.3 Do not mark your entire proposal as "confidential".

**15.4** 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.

**15.5** 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.

## **16 PROTESTS**

**16.1** If an unsuccessful Proposer wants to dispute the award recommendation, the Protest must be submitted in writing to the Director of Retirement Services no later than ten calendar days after announcement of the successful Proposer. Protests must detail the grounds and 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 9. Failure to submit a timely written Protest to the contact listed below will bar consideration of the Protest.

**16.2** The name and address for submitting protests is:

Mr. Russell Crosby, Director  
Department of Retirement Services  
City of San Jose  
1737 North First Street, Suite 580  
San Jose, CA 95112

## ATTACHMENT A

### Certification

|                                |  |
|--------------------------------|--|
| 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 Proposals 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 submitted 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 submitted by a corporation, it shall be signed in the corporate name by an authorized officer or officers.

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

If the proposal is submitted by a joint venture, the full names and addresses of all members of the joint venture shall be stated and it 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 (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):                 |  |

## ATTACHMENT B – PROPOSER QUESTIONNAIRE

### 1) History/Ownership/Affiliations

- a) Provide your company's full legal name, address, telephone number and fax number.
- b) What is the Employer Identification Number (EIN) of your company?
- c) Provide contact information, including name, address, telephone number, fax number and e-mail address for the individual authorized to answer questions regarding your response to the request for proposal.
- d) If your proposal deviates from the City of San Jose's Exemplar Contract (see appendix for actual contract), please provide a full explanation.
- e) Confirm that you can meet the insurance requirements for the as defined in the City's Exemplar contract.
- f) If your bid does not fully comply with the specifications in this Request for Proposal (RFP), please detail the exceptions.
- g) What is the proposer's form of business (i.e., individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
- h) Detail the number of years that your company has been in business.
- i) Describe any changes in the organizational structure, including, but not limited to ownership changes, staff reductions, that have occurred in your organization over the last twelve (12) months or are anticipated to occur in the next 24 months.
- j) Please provide the following information about the physician(s) that may be assigned to this account:
  - Physician's name
  - Phone Number
  - E-mail Address
  - Medical School from which degree was received, year degree was received
  - Graduate Medical Education (ACGME, AOA, RCPSC or CFPC recognized boards only). Include certification and expiration date(s)
  - Professional Membership(s) and Affiliations

- Have there been any malpractice award(s) payments made on your behalf during the past 10 years? If yes, please explain.
- List any action taken by the California State Board of Professional Medical Conduct against your license within the past 10 years, except those that remain confidential pursuant to law.
- Have any actions been taken against you except those that remain confidential pursuant to law, as a result of professional misconduct proceedings by any other state or licensing entity within the past 10 years? If yes, list the state or licensing entity, date, action taken and summary of misconduct.
- Are there any restrictions and/or limitations, except those that remain confidential pursuant to law, as a result of actions taken by the California Board of Professional Medical conduct or any similar actions pursuant to any State, Province or Country to a specified area, type, scope or condition of practice? If yes, describe restriction and/or limitations.
- List professional or community service activities or awards received.

## **2) Cover Letter from Bidding Company (Optional)**

## **3) Questionnaire**

- a) What are the days and hours of operation? What guarantee can you place on the turnaround time to get an appointment?
- b) On average, how long does it take for your clients to receive an appointment for a routine physical examination?
- c) Are you willing to meet with the client's Medical Director and/or Retirement Services Department staff to discuss quality issues on a regular basis? If so, how often would you suggest meeting?
- d) Please describe the communication tools that you will use to communicate information to the retiree and the retiree's health care provider.
- e) Provide examples of education media that would be provided to retirees before, during and after the physical.
- f) Are reminders sent on a routine schedule to your patients to motivate appropriate health actions (e.g., obtain certain tests, schedule follow-up exams, etc.)?

#### **4) HIPAA Privacy Regulations**

- a) Do you require an authorization from individuals before using or disclosing health information?
- b) Is your organization compliant with the final Health Insurance Portability and Accountability Act (HIPAA) privacy regulations issued by the Department of Health and Human Services and any comparable state laws not preempted under HIPAA?
- c) Have you updated your HIPAA Privacy Regulations to be compliant with Health Information Technology for Economic and Clinical Health Act (HITECH)?

#### **5) Additional Information**

- a) Please discuss your company's strengths and weaknesses as they relate to your ability to provide the services requested in the RFP.
- b) Please discuss any additional information that you would like us to know about your firm that may impact our consideration of your firm as a potential consultant for the City.
- c) Please discuss your company's perspective on wellness management. How do you ensure that your views are disseminated and reflected in your organizational culture?

#### **6) Litigation or Administrative Proceedings**

- a) Please state whether or not there is any pending litigation involving the company or any employee of the company arising from medical services provided by the individual or the company. If the answer is yes, please describe the nature and the status of the litigation.
- b) Are there any pending criminal or administrative actions (including disciplinary matters) involving the firm or any employee in the firm which arise from services provided by the employee or the firm? If yes, please describe the nature of such actions and the status.
- c) For the types of actions described in questions 1 and 2, please state whether any such actions have been brought since January 2003. If yes, please explain.

#### **7) Personnel**

- a) What policies are in effect to control the workload as it relates to the number of patients serviced by each physician?
- b) What incentives are provided to attract and retain top quality employees in your company?
- c) Describe the turnover in personnel in each of the last five years.

**ATTACHMENT C – LOCAL AND SMALL BUSINESS PREFERENCE**

| <b>City of San Jose</b><br><b>Request for Contracting Preference for Local and Small Businesses</b>   |  |  |  |
|---|--|--|--|
| <p>Chapter 4.12 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.</p> <p>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 (<i>regardless of where they are located</i>) of your firm is 35 or fewer.</p> <p>There are two ways in which the preference can be applied. In procurements where price is the determinative factor (<i>i.e. there are not a variety of other factors being considered in the selection process</i>) 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.</p> <p>In procurements where price is not the determinative factor such, as an RFP, typically a variety of factors are evaluated to determine which proposal best meets the City's needs. In procurements such as these, a qualified LBE will be given 5% and a qualified SBE will be given an additional 5% of the total <b>points</b> in the <b>scoring</b>.</p> |  |  |  |
| <p>The following determinations have been made with respect to this procurement: (for official use only)</p>  |  |  |  |
| Type of Procurement   | <input type="checkbox"/> Bid                                   | <input type="checkbox"/> Request for Quote                     | <input checked="" 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<br>SBE preference = 2.5% of Cost | LBE preference = 5% of Points<br>SBE preference = 5% of Points |  |
| <p>In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.</p>  |  |  |  |
| Business Name   |  |  |  |
| Business Address  |  |  |  |
| Telephone No.   |  |  |  |
| 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)                 |
| <p><b>*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE</b><br/>                     In order to qualify as an LBE you must provide the following information:</p>  |  |  |  |
| 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:  |  |  |  |
| <p><b>**SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE</b><br/>                     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.</p>  |  |  |  |
| Please state the number of employees that your Business has:  |  |  |  |
| <p>Based upon the forgoing information I am requesting that the Business named above be given the following preferences (<i>please check</i>): <input type="checkbox"/> Local Business Enterprise      <input type="checkbox"/> Small Business Enterprise</p>   |  |  |  |
| <p>I declare under penalty of perjury that the information supplied by me in this form is true and correct.</p>   |  |  |  |
| Executed at:  |  |  |  |
| Date:   |  |  |  |
| Signature   |  |  |  |
| Print name  |  |  |  |

**ATTACHMENT D**

**CITY OF SAN JOSE  
CONSULTANT AGREEMENT  
STANDARD TERMS AND CONDITIONS**

*(Referenced exhibits not attached will be added to final agreement)*

**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 (\$0.00). 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 Human Resources 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.

## **EXHIBIT E**

### **INSURANCE**

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. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001;
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all professional services; and
5. Crime Insurance/Employee Dishonesty.

There shall be no endorsement reducing the scope of coverage required above.

#### **B. Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location 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 Code and Employers Liability limits of \$1,000,000 per accident; coverage shall be endorsed to state carrier waives its right of subrogation against the City of San Jose, its officers, employees, agents and contractors; and

4. Professional Liability Errors and Omissions \$5,000,000 Aggregate Limit; and
5. Crime/Employee Dishonesty Coverage.

A Combination Crime policy with minimum limits not less than \$100,000 for

- Form A: Employee Dishonesty
- Form B: Forgery or Alteration
- Form C: Theft, Disappearance, Destruction Inside/Outside Premises
- Form D: Robbery and Safe Burglary Inside/Outside Premises

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 VENDOR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that VENDOR'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**

VENDOR 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:

City of San Jose – Human Resources  
Risk Management  
200 East Santa Clara St., 2<sup>nd</sup> Floor Wing  
San José, CA 95113

with a copy to:

Russell U. Crosby, Director  
City of San Jose  
Department of Retirement Services  
1737 North First Street, Suite 580  
San José, CA 95112

### G. **Subcontractors**

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

**ATTACHMENT E  
PREVIOUS CUSTOMER REFERENCE WORKSHEET**

Provide four (4) references for the project you are quoting used in a manner and environment similar in scope 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 (use additional sheets if necessary): |  |
|   |  |