



# **REQUEST FOR QUALIFICATIONS**

**(Qualifications Based RFQ)**

RFQ Number # 2019-01

**RFQ NAME:**

**EVALUATOR (ATTORNEY) AND INVESTIGATOR – SAN JOSE BOARD OF FAIR CAMPAIGN AND POLITICAL PRACTICES**

**Brief Description of Requirement:**

The City of San Jose is seeking to contract with a law firm or attorney licensed by the State of California with a background in and experience with ethics, election or political law to serve as an independent and neutral Evaluator for the City of San Jose Board of Fair Campaign and Political Practices (Board). In addition, the Evaluator would either employ or contract with an investigator experienced in conducting law enforcement, ethics or employment-related investigations to serve as an independent and neutral Investigator for the Board.

**Timeline:**

The contract shall have up to a four (4) year term and shall end on June 30 of an odd numbered year.

<b>RFQ release date:</b>	February 15, 2019
<b>Contact name:</b> <b>Address:</b>	Toni J. Taber, CMC City of San José, Office of the City Clerk 200 East Santa Clara Street, 14 <sup>th</sup> Floor San José, CA 95113
<b>Phone:</b>	Attn: RFQ Review (408) 535-1260
<b>Fax:</b>	(408) 292-6207
<b>E-mail address:</b>	<a href="mailto:toni.taber@sanjoseca.gov">toni.taber@sanjoseca.gov</a>
<b>Deadline for questions and objections:</b>	March 1, 2019
<b>RFQ due date:</b>	March 15, 2019
<b>Time:</b>	5:00 p.m.
<b>Location:</b>	City Clerk's Office, City of San José

## **BACKGROUND**

The San Jose Board of Fair Campaign and Political Practices is established by ordinance of the City Council to monitor compliance with all campaign and ethics ordinances contained in Title 12 of the San Jose Municipal Code. Title 12 includes the following ordinances:

- Chapter 12.02 General Provisions and Definitions
- Chapter 12.04 San Jose Board of Fair Campaign and Political Practices
- Chapter 12.05 Elections
- Chapter 12.06 Municipal Campaign and Officeholder Contributions
- Chapter 12.08 Prohibition of Gifts
- Chapter 12.10 Revolving Door Restrictions
- Chapter 12.12 San Jose Municipal Lobbying
- Chapter 12.14 Concurrent Employment of City Council Members or City or Agency Employees
- Chapter 12.15 Prospective Employment
- Chapter 12.16 Disclosure of Fundraising Solicitations
- Chapter 12.18 Removal from Office
- Chapter 12.19 Income and Time Disclosure
- Chapter 12.20 Nepotism and Consensual Personal Relationships
- Chapter 12.21 Open Government
- Chapter 12.22 Appearance of Impartiality

The Board has jurisdiction to review compliance with the provisions of Title 12 consistent with its duties and responsibilities contained in Section 12.04.070 of the San Jose Municipal Code unless otherwise specified in Title 12.

The Board has five members who are appointed by no less than two-thirds vote of the City Council. Generally, members of the Board serve up to two four-year terms for a maximum of eight years.

The City Attorney's Office provides legal advice to the Board related to non-complaint matters or general interpretations of the Municipal Code or relevant state or federal law, but does not participate in investigations of complaints filed with the Board. The Chair of the Board or the Evaluator may consult with the City Attorney at any time about procedure or an interpretation of the Municipal Code, in general, and not as it applies to facts that are the subject of a pending complaint.

## **SCOPE OF SERVICES AND DESIRED QUALIFICATIONS**

The City's goal and objective is to obtain complete, thorough and expeditious investigations and evaluations of complaints which are filed with the Board. The investigations and evaluations of complaints must be conducted within the highest legal and ethical standards. The evaluations and investigations must include in-depth and sound analysis of the facts, evidence and legal issues relating to complaints alleging violations of the "Ethics Provisions" contained in Title 12 of the San Jose Municipal Code.

### **Evaluator**

The Evaluator will review and investigate complaints and prepare a written Report and Recommendations to the San Jose Board of Fair Campaign and Political Practices for each complaint. The evaluation and investigation process, including the report and recommendations of the Evaluator, will be required to be done on an expedited basis. The Evaluator must be neutral and impartial and must not have or appear to have any bias or favoritism toward any person or entity involved in any way with any complaint or investigation. The Evaluator, in order to avoid any potential or actual conflicts of interest, should be located outside of the County of Santa Clara and must forgo any involvement in political campaigns in the County of Santa Clara.

### **Investigator**

The Investigator must have experience in investigative practices and procedures including skills in obtaining information and facts through interview and observation. In addition, it would be valuable for the Investigator to have familiarity with conflict of interest, campaign finance and lobbying laws. The Investigator must be willing to forgo involvement in political campaigns in the County of Santa Clara. The Investigator will review and investigate complaints and prepare a written report to the Board and the Board's Evaluator when asked to assist with investigations of complaints which are conducted by the Board's Evaluator. The investigation process, including the report of the Investigator, will be required to be done on an expedited basis. Additionally, at the request of the Board, the Investigator will monitor compliance with the requirements of Title 12 of the Municipal Code and conduct audits. The Investigator must be neutral and impartial and must not have or appear to have any bias or favoritism toward any person or entity involved in any way with any complaint or investigation.

The Board will select the Evaluator/Investigator who will be hired by Agreement (Agreement Exemplar Attachment B). The Board will present the Agreement with

the selected candidate to the City Council for approval on a public agenda. The Agreement with the Evaluator/Investigator will have up to a four-year term and will be subject to termination at the pleasure of the Board. The Agreement will be terminated if any circumstances arise which, in the judgment of the Board, would compromise the appearance of neutrality.

Investigations by the Evaluator/Investigator and Board hearings are governed by Regulations and Procedures adopted by Resolution No. 78390 of the City Council of the City of San Jose, a copy of which is attached to this RFQ as Attachment C.

## **HOW TO OBTAIN THIS RFQ**

This RFQ may be downloaded from the BidSync solicitation posting 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 RFQ is obtained through any means other than BidSync, the CITY will not be responsible for the completeness, accuracy, or timeliness of the final RFQ 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 RFQ document.

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

The City will not be responsible for, nor be bound by, any oral instructions or explanations issued by its representatives. Questions or requests for additional information or clarifications regarding this RFQ must be submitted by email to **Toni.Taber@sanjoseca.gov**. The City's response will be in the form of an addendum to this RFQ and will be posted to **BidSync**. All addenda shall become part of this RFQ.

## **PROPOSAL SUBMITTAL REQUIREMENTS**

### **A. Statement of Qualification Requirements**

The Statement of Qualifications submitted in response to this RFQ must be no more than **10 pages** (excluding attachments and appendices) using a typeface font of no less than **12 points with one-inch margins**. The Statement must address each of the questions and requests for information below. The attachment of a firm or individual's resume in lieu of responding to one or more of the information requests set forth below will be deemed **non-responsive**. Each proposer should submit one (1) original and seven (7) copies of the Statement of Qualifications.

Each Statement of Qualifications will be reviewed to determine if all required documentation and information was included with the submittal and if the Proposer has met the qualifications.

If a Proposer fails to provide the required documentation and information, the Statement of Qualifications will be deemed non-responsive.

Proposers are requested to provide:

- A complete statement detailing the Proposer's educational, employment, licensure (either as an attorney licensed by the State of California or as a private investigator licensed by the California Department of Consumer Affairs, Bureau of Security and Investigative Services or both) and professional background.
- Information regarding the Proposer's familiarity and experience with City, State and federal campaign, election, conflicts of interest and ethics laws.
- Information regarding the Proposer's experience in conducting investigations and experience and skills in gathering and evaluating facts and legal principles. Proposers should submit at least one sample of a written investigation, report, decision and/or brief which demonstrates the experience and skills required for the position of Evaluator/Investigator.
- The Proposer's overall approach for delivering services to the Board as requested in this RFQ, including the Proposer's plan for fulfilling the role of Investigator. Information on the ability of the Proposer to meet the timelines and deadlines in the Board's Regulations and Procedures should also be submitted, and the Proposer should be prepared to discuss the ability to meet expedited deadlines if an interview is scheduled with the Board.
- Identification of any potential conflicts of interest that the Proposer might have in providing services to the Board and the City.
- Any current or past working or contractual relationships of the Proposer with current or former elected officials of the City of San Jose.

B. Reference Statement

Proposers are required to provide a list of at least two (2) professional references including any firms, organizations or entities which have used or are familiar with Proposer's services in the past five years.

C. Description of Fees/Rates

Proposers are required to provide a schedule of fees or rates on an hourly basis to provide the services requested in this RFQ. Additionally, Proposers should also include information as to whether or not a retainer is required during the term of the Agreement and should specify the dollar amount of any such retainer.

**CONDITIONS OF RESPONDING TO RFQ**

A. Verification of Statements

The submission of statements and information within a proposal will constitute the Proposer's approval and consent for the Board or the City to check, verify and certify all such information and statements. Additional information may be required by the Board.

## B. Terms and Conditions

1. The Board will not pay any costs incurred in the submission of a response. Each Proposer should be aware that the California Public Records Act (Gov. Code §§ 6250 et seq.) considers most documents provided to the Board to be public records subject to public disclosure. The City is obligated to comply with the Act and cannot assure candidates that information provided to the Board is confidential.
2. The Board reserves the right to reject any item or groups of items submitted in response to this RFQ.
3. The Board reserves the right to waive any minor informality or irregularity in any response.
4. The Board reserves the right to negotiate any and all terms of an agreement with one or more Proposers, including scope of services and compensation, whether or not these terms are consistent with those prescribed in the RFQ.
5. The Board, may, for any reason, decide not to award an Agreement as the result of this RFQ or decide to accept the Proposal that will, in the Board's opinion, be most advantageous to the Board.
6. It is the City's policy that the selected individual or firm must not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San Jose contracts and agreements.

## **SELECTION PROCESS AND EVALUATION CRITERIA**

### A. Selection Process

Set forth below are the criteria that the Board will use to evaluate responses to this RFQ. The Board or a subcommittee of the Board will evaluate the Statements of Qualifications of the Proposers. The Board reserves the right to interview prospective individuals or firms before making its selection. The Board also reserves the right to rely on information from sources other than the information provided by the Proposers.

The Board's preference is to select one individual or firm to serve as its Evaluator. The City, however, may decide to engage a different individual or firm to provide these services from the pool of individuals or firms established through this RFQ process. In order to be included in the pool, an individual or firm must receive a minimum score of **70 points**.

Effective June 18, 2004, the City adopted Ordinance 27136, which established a Local and Small Business Preference Policy for the procurement of supplies, materials, equipment, general services and consulting services. In order for you or your firm to be eligible for local and/or small business preference, you must complete Attachment A, Request for Contracting Preference for Local and Small Business. If you fail to complete this form, you or your firm will be denied

consideration for local/small business preference. The requested information cannot be submitted after the deadline.

## B. Evaluation Criteria

The Board will evaluate responses to this RFQ based on the following factors:

### 1. Experience (65 points)

- a. Quality and depth of the Proposer's experience with City, State and federal campaign, election, conflicts of interest and ethics laws.
- b. The Proposer's experience in conducting investigations and skills in gathering and evaluating facts and legal principles. If available, this will include evaluation of samples of written investigations, reports, decisions and/or briefs submitted to demonstrate the experience and skills required for the position of Evaluator/Investigator.
- c. The Proposer's overall approach for delivering services to the Elections Board as requested in this RFQ. If available, this will include evaluation of information on the ability of the Proposer to meet the timelines and deadlines in the Board's Regulations and Procedures.

### 2. Fee Structure (20 points)

### 3. Local or Small Business Enterprise (10 points)

- a. Qualified Local Business Enterprise (5 points)
- b. Qualified Small Business Enterprise (5 points)

### 4. Responsiveness of Statement of Qualifications (5 points)

Overall organization and quality of Statement of Qualifications, including cohesiveness, conciseness, clarity of response and attention to detail.

## **PROPOSAL SUBMITTAL INFORMATION AND DEADLINE**

Responses to the RFQ and Statements of Qualifications from Proposers must be submitted to:

(PROVIDE AN EMAIL ADDRESS ON COVER OF RFQ) or

San Jose Board of Fair Campaign and Political Practices  
c/o Toni J. Taber, City Clerk

City of San Jose  
200 East Santa Clara Street, 14<sup>th</sup> Floor  
San Jose, CA 95113  
Attn: RFQ Review

One (1) signed original and seven (7) copies of the responses to the RFQ must be submitted in sealed envelopes to the above address and responses must be

received no later than **5:00 p.m., Friday, \_\_\_\_\_**. Responses to the RFQ may be emailed to the City Clerk addressed to: [toni.taber@sanjoseca.gov](mailto:toni.taber@sanjoseca.gov).

Responses received after the indicated time will not be considered for award of the proposed contract.

### C. Grounds for disqualification

All Proposers are expected to have read and understand the "Procurement and Contract Process Integrity and Conflict of Interest" provisions in Section 7 of the Consolidated Open Government and Ethics Provisions adopted on August 26, 2014. A complete copy of Resolution 77135 can be found at:

<http://www.sanjoseca.gov/DocumentCenter/View/35087>

Any proposer who violates these provisions of Resolution 77135 will be subject to disqualification. Generally, the grounds for disqualification include:

1. Contact regarding this procurement with any City official or employee or evaluation team member other than the Procurement Contact from the time of issuance of this solicitation until the end of the protest period.
2. Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.
3. Influencing any City staff member or evaluation team member throughout the solicitation process, including the development of specifications.
4. Evidence of submitting incorrect information in the response to a solicitation or misrepresenting or failing to disclose material facts during the evaluation process.

In addition to violations of Resolution 77135, the following conduct may also result in disqualification:

5. Offering gifts or souvenirs, even of minimal value, to City officers or employees.
6. Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City.
7. Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal.
8. Proposer's default under any City agreement, resulting in termination of such Agreement.



## **MISCELLANEOUS MATTERS**

### **A. Public Nature of Proposal Material**

All correspondence with the City including responses to this RFQ 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.

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 subject to the procedures specified below.

Do not mark your entire proposal as "confidential."

After the announcement of the selected firm(s), all proposals received in response to this RFQ 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.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City 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.

### **B. Costs**

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

### **C. Effect of RFQ**

The City reserves the right to terminate this process at any time, to accept or reject any or all SOQs, to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any defects in the SOQ. The City is not obligated to proceed with hiring any counsel as a result of this RFQ.

This RFQ process shall in no way be deemed to create a binding contract or agreement of any kind between the City and the selected proposer. The City's standard form of consultant agreement will form the basis of the contract between the parties on a transaction basis.

## **OBJECTIONS**

Any objections as to the structure, content or distribution of this RFQ 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 RFQ section number and title, as well as a description and rationale for the objection.

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

## **LOCAL AND SMALL BUSINESS PREFERENCE**

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 shall be 5 points if the business is local and an additional 5 points if the business is small. In order for the Proposer to be eligible for local and/or small business preference, the Proposer must complete Attachment C, Request for Contracting Preference for Local and Small Businesses. If the Proposer fails to complete this form and submit it with the proposal, the Proposer will be denied consideration for local/small business preference. This information cannot be submitted later.

The preference shall only be considered for the prime Proposer(s). However, in the event that the proposing firm is a Joint Venture (JV) or Partnership as indicated on the Proposal Certification Form (Attachment A), then the Local Preference shall apply if any one of the firms in the JV or Partnership meets the definition for a local business. In order for a JV or Partnership to be considered for the Small Business Preference, then the aggregate of all of the employees that make up the JV or partnership must meet the definition for a small business.

## **PROTESTS**

If an unsuccessful Proposer wants to dispute the award recommendation, the Protest must be submitted in writing to the San José City Clerk, Toni J. Taber, CMC 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. Failure to submit a timely written Protest to the contact listed below will bar consideration of the Protest.

The address for submitting protests is:

Attention: San José City Clerk, Toni J. Taber, CMC  
200 East Santa Clara Street, 14th Floor  
San Jose, CA 95113

## ATTACHMENT A – LOCAL AND SMALL BUSINESS PREFERENCE

<b>City of San Jose</b>			
<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>			
The following determinations have been made with respect to this procurement: (for official use only)			
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 SBE preference = 2.5% of Cost	LBE preference = 5% of Points SBE preference = 5% of Points	
In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.			
Business Name			
Business Address			
Telephone No.			
Type of Business	<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)
<b>*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE</b>			
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:			
<b>**SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE</b>			
In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your entire business --NOT just local employees, or employees working in the office address given above.			
Please state the number of employees that your Business has:	[ ]		
Based upon the forgoing information I am requesting that the Business named above be given the following preferences ( <i>please check</i> ):			
	<input type="checkbox"/> Local Business Enterprise	<input type="checkbox"/> 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 B  
EXEMPLAR  
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 (\$\_\_\_\_\_.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

VENDOR, at VENDOR'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 VENDOR, its agents, representatives, employees or subcontractors.

#### A. Minimum Scope of Insurance

1. The coverage described in 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.
4. Professional Liability Errors & Omissions.

#### B. Minimum Limits of Insurance

VENDOR 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 & 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 VENDOR 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 Jose, 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, VENDOR; products and completed operations of VENDOR; premises owned, leased or used by VENDOR; and automobiles owned, leased, hired or borrowed by VENDOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
- b. VENDOR'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 VENDOR'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  
Risk Management Division  
200 E. Santa Clara Street, 14<sup>th</sup> Floor  
San Jose, CA 95113

PHONE: (408) 535-7063  
FAX: (408) 286-6492

G. **Subcontractors**

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

**ATTACHMENT C: SAN JOSE CITY COUNCIL RESOLUTION 78390**