



REQUEST FOR PROPOSAL RFP 09-10-OED-BOS

BUSINESS OWNER SPACE WEBSITE

Date: March 1, 2010

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1 INTRODUCTION

The City of San Jose (City) is soliciting proposals from qualified firms ("Proposers") to provide Website Consulting Design, Development, and Implementation Service in support of BusinessOwnerSpace.com (BOS). The current BOS website is comprised of information from a network of partner organizations and is administered by the City of San Jose. The website serves small businesses in the greater Silicon Valley region. With enhancements, updates, and new tools added to the website, the BOS website will be a more accessible, comprehensive, and useful one-stop resource for launching and growing a business in the greater Silicon Valley metropolitan area.

2 PROJECT GOALS AND OBJECTIVES

2.1 The objective of this Request for Proposal (RFP) is to update and improve the technical architecture of BusinessOwnerSpace. Statement of Work and a detailed description of desired enhancements are described in Attachment A.

2.2 This request includes all software licenses for unlimited users, upgrades, patches, fixes, etc; operation and maintenance of the solution, and all equipment, customer support and staff training.

2.3 The successful proposer(s) will be able to provide consulting, design, and training services to maintain and update BusinessOwnerSpace.com. The selected proposer will be expected to provide a single-point of contact to coordinate overall completion of the project. The proposer will also be expected to train work2future staff on how to post graphics, text content changes, and documents in a variety of formats (MSWord, MSEXcel, Adobe PDF, for example). The selected proposer will also be expected to train staff to change basic layout, delete out of date events, and update the event calendar.

2.4 The City intends to announce recommendation for award in April 2010 with the awarded Proposer to provide solution components and pursuant to an installation schedule with the first delivery within four (4) weeks of purchase order issuance, or by April 1, 2010.

2.4.1 A major update and addition to BusinessOwnerSpace.com is a Green Resource Page. This new series of pages is described in the Statement of Work in Attachment A. The Green Resource page which includes an online survey called the Green Assessment Tool is a priority and must be completed by July 31, 2010. Proposer(s) shall submit documentation and a timeline of how this particular item will be completed in a timely manner.

3 MINIMUM QUALIFICATIONS

3.1 CONTENT MANAGEMENT SYSTEM SOFTWARE

The existing website was built by means of a custom Content Management System (CMS) system using a PHP and programmed with Visual Studio/VS.php. The source control is handled using Subversion source control system. The successful proposers will have skills in the following:

Scripting

- Server Side – PHP 5.2+

- Client Side – JavaScript (With AJAX implementations)
- Database
- MySQL 5+
- Templates/HTML
- Smarty Template Engine
- Other Tools/Libraries
- FCK WYSIWYG Editor
 - Prototype and script.aculo.us javascript libraries
 - MMI DNA Core PHP framework

3.1.1 The successful bidder will need to be well-versed in the development tools utilized to build the existing CMS system, enabling the bidder to easily modify the code to add the new sections of the website that are described in this RFP. The website including any additions will need to be based in a CMS system, of the current or in a new system, which ever is better suited to complete the website updates and enhancements described in Attachment A. The City plans to retain existing content of the website. If the website needs to be migrated to a new CMS system, expertise in this area is critical for all applicants.

3.2 WEBSITE RESOLUTION

The new website resolution should be increase to 1024 x 768 pixels in order add new links to the pages and properly maximize the display of the website.

3.3 CROSS-BROWSER COMPATIBILITY

Ensure the same site quality across major browsers, e.g., Internet Explorer, Safari, Google Chrome, etc.

3.4 NON-PROPRIETARY SOFTWARE

3.4.1 It should be noted that portions of the CMS system were developed utilizing existing code libraries and systems, third party applications, etc. As such, the City of San Jose - BusinessOwnerSpace.com must be granted a worldwide, non-exclusive perpetual license for all updates and enhancements of the website. Additionally, the CMS system, any associated database development, and all website design under this contract are property of the City of San Jose.

3.5 ADA COMPLIANCE

3.5.1 Proposer must be able to meet all ADA website accessibility requirements. Accessibility of State and Local Government Websites may be found at the following link:

<http://www.ada.gov/websites2.htm>

4 COMPLETE RFP

This document describes the goals and objectives of this procurement, the RFP process, and RFP provisions. In addition, the following attachments, exhibits and/or appendices are included:

Attachment Number	Title
A	Statement of Work
B	Cost Proposal Form
C	Proposal Certification Form
D	Proposer Questionnaire
E	Previous Customer Reference Form
F	Local/Small Business Enterprise Preference Request
G	Service Order Terms and Conditions
H	Insurance Requirements

5 PROCUREMENT TIMELINE

Date	Event
March 1	RFP Released
March 8	Deadline for Objections and Questions
March 10	Pre-Proposal Conference
March 15	City's Response to Written Questions
March 26	Responses Due (by 3pm PST)

6 CONTACT INFORMATION

	work2future 1290 Parkmoor Ave San Jose, CA 95126 Attn: Amy Chan Phone: (408) 794-1173 Fax: (408) 293-9052 E-mail: amy.chan@sanjoseca.gov
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7 HOW TO OBTAIN THIS RFP

7.1 This RFP may be downloaded from the BidSync e-Procurement system located at www.bidsync.com. Suppliers can also find a link at the City of San Jose Bid Line Web site at www.sanjoseca.gov/purchasing/default.asp. At either Web site, follow the links to register for the on-line service. You may register for free either on-line or by calling BidSync Vendor Support at **1-800-990-9339** and telling the support representative that you are registering for City of San José procurements.

7.2 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 BidCync, the City will not be responsible for the completeness, accuracy, or timeliness of the final RFP document.

8 PRE PROPOSAL CONFERENCE

8.1 DATE AND TIME

A Non-Mandatory Pre-Proposal Conference will be held at work2future on March 10, 2010 at 10AM – 12PM (Pacific Time). This meeting requirement may be met by attending in-person, or by conference call participation. The purpose of this meeting is for City Staff to present an overview of the RFP, and answer any questions. City Staff reserves the right not to answer any

questions that are non-applicable or inappropriate. At its discretion, Staff may defer certain questions and respond to all proposers in writing after the Pre-Proposal Conference.

8.2 INSTRUCTIONS FOR ATTENDING IN-PERSON:

Location: work2future
1290 Parkmoor Ave.
San Jose, CA 95126

Free parking is available.

8.3 INSTRUCTIONS FOR ATTENDING VIA CONFERENCE CALL:

Toll-Free access number: 877-455-8695

Participant Pin Number: 560649#

9 PROCEDURE FOR SUBMITTING QUESTIONS AND INQUIRIES

Questions pertaining to this RFP should be submitted via e-mail to Amy Chan. Please submit all questions by the deadline indicated in the procurement timeline, Section 5. The City will provide a written response to all pertinent questions in the form of an Addendum.

10 OBJECTIONS

Any objections as to the structure, content or distribution of this RFP must be submitted in writing to the purchasing contact identified in Section 6 prior to the submission deadline for questions and answers. 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.

11 SUBMISSION OF PROPOSALS

11.1 Submit one (1) original and two (2) copies of the technical proposal clearly marked as such. The outside of the box or package and the cover or title page of each proposal shall be marked as follows: RFP 09-10-OED-BOS Proposal. In addition, include an electronic copy of your proposal on a CD or DVD, in PDF format.

11.2 Submit one (1) copy of your cost proposal (Attachment B) in a separate sealed envelope clearly marked on the outside: RFP 09-10-OED-BOS Proposal. Include an electronic copy on the CD or DVD required in Section 11.1.

11.3 Refer to the procurement timeline in Section 5 for due dates and delivery locations.

11.4 All Proposals shall be submitted as hard copy bound documents. The Original hard copy version of the proposal will be considered the official proposal submission.

11.5 Hard copy RFP documents are to be printed on paper that contains a minimum of 30% Post Consumer Waste (PCW), Chlorine Free. 100% PCW, Chlorine Free is preferred.

11.6 All pages shall be sequentially numbered and a table of contents shall be provided.

11.7 The font size on each page shall be 11 point Times New Roman or Arial font.

11.8 The pages shall be double sided with a maximum of one and one half line spacing.

12 LATE PROPOSALS

Late proposals shall be rejected and returned to the proposer. This deadline is absolute, and proposals received after the due date and time shall not be considered. Proposers must select a method of delivery that ensures proposals will be delivered to the correct location by March 26, 2010 at 3pm (PST).

13 RESPONSE DOCUMENTS / SUBMISSION REQUIREMENTS

In order to expedite the evaluation process, each Proposal shall be organized in accordance with this section. Proposals that do not follow the specified format outlined below, or fail to provide the required documentation, may receive lower scores, or if found to be non-responsive, be disqualified. In the event of any conflict between any of the Proposal documents, resolution thereof shall be in the City's sole discretion. Proposals shall include the following information in the format indicated

13.1 COVER LETTER

Include a transmittal letter identifying the Contractor's firm and the proposal package being submitted. Include other important general information that is deemed significant enough to be highlighted. The letter shall provide the name, title, address, telephone number, and fax number of the individual authorized to contractually bind the firm and be signed by the authorized individual.

13.2 EXECUTIVE SUMMARY

Include a summary containing highlights of the proposal approach, describing how the project team would be organized, and how the Contractor will ensure responsiveness to City staff and project requirements.

13.3 TECHNICAL RESPONSE

13.3.1 Specify the Key Personnel Assignments/Responsibilities for each deliverable of the project

13.3.2 One Page Resume for each Key Personnel that will be working on the project

13.3.3 Specifically address how the proposer will support the goals and objectives of the City's Environmentally Preferable Procurement Policy (EP3) (Section 28). Areas that may be addressed include, but are not limited to:

13.3.3.1 Vehicles and vehicle operations – Alternative Fuel, Hybrid, etc.

13.3.3.2 Use of recycled and/or recyclable products in daily operations.

13.3.3.3 Use of energy efficient (Energy Star compliant) equipment.

13.3.3.4 A copy of Company Policy documents that demonstrate support for the City's EP3 program.

13.3.4 Specifically address how the proposer will meet ADA Compliance.

13.4 TIMELINE FOR DELIVERABLES

						PHASE 4					
						PHASE 3					
						PHASE 2					
						PHASE 1					
FEBMARAPRMAYJUNEJULY AUGSEPT OCTNOVDEC											
	Deliverable				Begin		Complete Draft		Review and Edit By		Launch
PHASE 1											
1	Green Resource Page				May 1		July 31		Aug 15		Sept 1
1a	Green Self-Assessment Tool				May 1		July 31		Aug 15		Sept 1
2	New Web Pages				May 1		July 31		Aug 15		Sept 1
3	Navigation and Printability				May 1		July 31		Aug 15		Sept 1
PHASE 2											
4	Embedded Pages				June 1		July 31		Aug 15		Sept 1
5	Discussion Forum				June 1		July 31		Aug 15		Sept 1
6	Search Feature				June 1		July 31		Aug 15		Sept 1
7	Newsletter				June 1		July 31		Aug 15		Sept 1
8	Partner Page				June 1		July 31		Aug 15		Sept 1
9	Online Library				June 1		July 31		Aug 15		Sept 1
PHASE 3											
10	Translation				July 1		Aug 31		Sept 15		Oct 1
PHASE 4											
11	Bi-annual Survey				Aug 1		Sept 15		Oct 1		Oct 31
12	Search Engine Optimization				Aug 1		Sept 15		Oct 1		Oct 31
13	Reporting				Aug 1		Sept 15		Oct 1		Oct 31

13.5 COST PROPOSAL

13.5.1 The budget range for this RFP is between \$100,000 and \$175,000. All proposals will be evaluated upon the best value of the total project proposed.

13.5.2 The proposed budget shall be detailed in the Cost Proposal Pricing Form (Attachment B). Payment for each deliverable shall be due and payable upon receipt by City of an acceptable detailed invoice from the awarded proposer.

13.5.3 Submit in accordance with Section 11.2.

13.6 ATTACHMENTS

13.6.1 Required Attachment Submittals – The following documents **must** be completed and submitted with your technical proposal:

13.6.1.1 Attachment B, Cost Proposal Pricing Form

13.6.1.2 Attachment C, Proposer Certification

13.6.1.3 Attachment D, Proposer Questionnaire (If Applicable)

13.6.1.4 Attachment E, Previous Customer Reference Worksheet

Three references are required. Include a list of at least three clients that would substantiate the Contractor's experience. Contacts should be individuals who can verify performance on projects of a similar scope and budget as this project.

13.6.1.5 Attachment G, Service Order Terms & Conditions. Note any exceptions to the Terms and Conditions. If there are no exceptions, please return the first page of the Agreement marked "No Exceptions". Please note that excessive changes may result in lower proposal scores, or disqualification of proposal.

13.6.2 Additional Attachment Submittals

The following documents are required, but will not result in immediate disqualification of your proposal if they are incomplete, or inadvertently omitted from your proposal. However, failure to submit these forms with your proposal, or incomplete submittals, may result in a lower overall score.

13.6.2.1 Attachment F, Local and Small Business Preference. This form must be provided if the proposer is requesting consideration. If this form is not included with your proposal, consideration for local and small business preference shall not be granted. This form may not be submitted at a later date.

13.6.2.2 Attachment I, Environmentally Preferred Procurement Program (EP3) Info Sheet. This form must be provided if the proposer is requesting consideration. If this form is not included with your proposal, consideration for preference shall not be granted. This form may not be submitted at a later date.

13.6.3 Post Award Submittal Requirements

Awardee is required to submit the following documents within ten (10) days from the final day of the protest period date after the Recommendation of Award. Failure to provide the documents within this time frame may result in withdrawal of the award, and award to the next highest ranked proposer.

13.6.3.1 Attachment H, Insurance Requirements – Certificate of Insurance

14 REVIEW PROCESS AND EVALUATION CRITERIA

14.1 PROPOSAL RESPONSIVENESS.

14.1.1 Required Documentation: Proposals will be reviewed to determine if all required documentation was included with the proposal submittal as described in Section 13.

14.1.2 Proposals that fail to contain the required documents with their technical and cost proposals will be considered incomplete and may be disqualified from further consideration.

14.2 PROPOSAL REVIEW AND EVALUATION.

14.2.1 Technical proposals will be evaluated against the general criteria and weighted scores will be applied as described in Section 14.6.

14.2.2 The City may seek written clarification from any or all proposers in order to better understand and evaluate the proposed solution. This process may not be used as an opportunity to submit missing documentation or to make substantive revisions to the original proposal.

14.3 COST PROPOSAL REVIEW AND EVALUATION.

Pricing will be evaluated and weighted in accordance with the table in Section 14.6. Pricing shall be a firm fixed price for the first year for the period of time stated in the Pricing Form. During this period the price may not change.

14.4 PRESENTATIONS/ORAL INTERVIEWS.

Finalists (proposals determined to have scored in the competitive range) may be invited to present oral presentations for the purpose of introducing key members of the project team, and allowing the City to fully understand the Proposer's ability to meet the evaluation criteria. Oral presentations will not be scored separately. The City will modify the overall proposal score based on the oral presentation score.

14.5 BEST AND FINAL OFFER (BAFO).

14.5.1 A Best and Final Offer (BAFO) may be held with finalists that have scored in the competitive range if additional information or clarification is necessary in order to make a final decision. The BAFO may allow proposers to revise their original technical and/or cost proposals based on information received from the City. The City will send out the request for a BAFO with instructions addressing the areas to be covered and the date and time in which the BAFO is to be submitted. After receipt of the BAFO, scores may be adjusted based on the new information received in the BAFO.

14.5.2 The City will request only one BAFO, unless the Chief Purchasing Officer determines in writing in the procurement file that another BAFO is warranted.

14.5.3 Proposers are cautioned that the BAFO is optional and at the sole discretion of the City. Therefore, Proposers should not assume that there would be an additional opportunity to amend their technical or price proposals after the original submission of technical and price proposals. Proposers may not request an opportunity to submit a BAFO.

14.6 PROPOSAL EVALUATION WEIGHTING CRITERIA

Criteria	Weight
Technical Capabilities and Experience	45%
Cost	30%
Responsiveness and Reliability	10%
Environmental Stewardship	5%
Local Business Preference	5%
Small Business Preference	5%
TOTAL	100%

14.6.1 Technical Capabilities and Experience – Proposals will be evaluated based on the technical and management qualifications of the organization and the identified staff in completing the scope of work. Projects of similar scope and budget should be highlighted. Proposals should describe the technical scope, emphasizing those assignments of relevance to that of this RFP, and the organization's and identified staff's ability to deliver the required product within specified timeframes and budget.

14.6.2 Cost –Proposals should detail the number of staff hours and related costs associated with completing the work scope and deliverables. Costs associated with the administration of the contract itself, if any, should be detailed as well. Assignment of Staff hours should be provided specifically for each of the identified proposing team members.

14.6.3 Responsiveness and Reliability – Proposals should detail examples of other successful projects that have been completed where individual staff, as well as a team was able to respond quickly to questions and/or errors found on the website, including examples of ongoing support. Bidder(s) are encouraged to describe through their Response Documents the length of time it would take to respond to specific inquiries, including any problem-solving strategies to better support the website.

14.6.4 Please see Environmental Preferable Procurement Policy on page 19.

14.6.5 Please see the Local and Small Business Preference on page 17.

14.6.6 Please see the Small Business Preference on page 16.

15 BASIS OF AWARD

15.1 Award will be based on the overall highest ranked proposer score in accordance with Section 14.6.

15.2 Should the City, in its sole discretion, determine that a secondary award is required, award will be to the second highest ranked proposer.

15.3 Should either of the selected proposers fail to provide post award documents as required, the City, in its sole discretion, may withdraw the award recommendation, and select the next highest ranked proposer for award.

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

16 PROTESTS

16.1 If an unsuccessful Proposer wants to dispute the award recommendation, the Protest must be submitted in writing to the Purchasing Officer no later than ten (10) 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 Section 15.1. Failure to submit a timely written Protest to the Purchasing Officer will bar consideration of the Protest.

16.2 The address for submitting protests is:

City of San Jose
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113
Attention: Purchasing Officer

17 GENERAL INFORMATION

17.1 The City reserves the right to accept or reject any item or group(s) of items of a response. The City also reserves the right to waive any informality or irregularity in any proposal. Additionally, the City may, for any reason, decide not to award an agreement as a result of this RFP or cancel the RFP. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by submission of the proposal.

17.2 The City is not required to accept the lowest price proposal. Responses will be evaluated to determine the most advantageous proposal on a variety of factors including but not limited to price, implementation costs, design quality, features, and performance.

17.3 Final award shall be contingent upon reaching an agreement on software licensing terms, if applicable.

17.4 Do not include sales tax in your price quotation. The City will work with the selected supplier to add sales tax as appropriate, and will incorporate it into the Purchase Order.

17.5 Statistical information contained in this RFP is for informational purposes only. The City shall not be responsible for the complete accuracy of said data.

17.6 The City reserves the right to verify any information provided during the RFP process and may contact references listed or any other persons known to have contracted with the Proposer.

17.7 The City may require financial statements for the last two fiscal years as certified by an independent Certified Public Accountant. Do not submit these documents unless they are requested.

18 GROUND FOR DISQUALIFICATION

18.1 All Proposers are expected to have read and understood Council Policy 0-35 titled 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.

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

18.2.1 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.

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

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

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

18.3 In addition to violations of the Process Integrity Guidelines, the following conduct may also result in disqualification:

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

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

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

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

19 ADDENDA AND INTERPRETATION

19.1 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, requests for clarification may be sent via e-mail or fax to the attention of the contact named in Section 6.

19.2 Proposer requests for clarification shall be deliverable as stated in Section 5. Any City response to a request for clarification will be made in the form of an addendum to this RFP. All addenda shall become part of this RFP.

19.3 Receipt of all addenda should be acknowledged using Attachment C, Proposal Certification, Paragraph 5.

20 PROPOSAL SUBMISSION

20.1 This RFP does not commit the City to pay any costs incurred in the submission of a proposal or in making any necessary studies or designs for the preparation thereof, nor the purchase or contract for the services.

20.2 After acceptance of the successful proposal by the City, the successful Proposer(s) shall be obligated to enter into an agreement consistent with the proposal submitted.

20.3 Should the successful Proposer fail to execute the agreement, the City shall have the right to seek legal remedies against the Proposer, including forfeiture of the Proposal Bond, if any, and an action for damages and shall have the right to award to the next responsive Proposer.

21 EXAMINATION OF PROPOSED MATERIAL

The submission of a proposal shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and that they have read and understood the RFP. No request for modification of the statement shall be considered after its submission on grounds that Proposer was not fully informed as to any fact or condition.

22 CODE ADHERENCE, PERMITS AND FEES

Contractor shall agree to abide by all laws, rules and regulation of the United States, State of California, Santa Clara County, and the City of San Jose, securing all necessary licenses and permits in the connection with resulting contract at no additional cost to the City. Successful contractor must have or obtain a current City of San Jose business license.

23 TERMS AND CONDITIONS OF AGREEMENT

23.1 Upon conclusion of the RFP process, the City will enter into negotiations with one or more Proposer(s). Proposer(s) shall enter into a contract with the City in substantial conformity with the selected proposal and the form of the City's Standard Terms and Conditions. Attachment G, Exemplar Agreement, outlines the City and its standard terms and conditions as part of the agreement between the City and the successful Proposer. The City reserves the right to negotiate project deliverables and associated costs.

23.2 All agreements will require the Proposer to adhere to the terms of their proposal and to act in accordance with all applicable laws and regulations.

23.3 An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City.

23.4 INSURANCE REQUIREMENTS

23.4.1 The selected Proposer(s), at Proposer's sole cost and expense and for the full term of the Agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Attachment H.

23.4.2 All policies, endorsements, certificates and/or binders shall be subject to approval by the 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. The selected Proposer agrees to provide the City with a copy of said policies, certificates and/or endorsements.

23.4.3 Certificate of Insurance, as required, shall be provided to City within 10 days of the notice of award. Failure to provide the required Certificate of Insurance may result in withdrawal of the award, and the award will go to the next highest ranked proposer.

24 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 percentage points if the business is local and an additional 5 percentage 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 F, 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 X), 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.

25 PUBLIC NATURE OF PROPOSAL MATERIAL

25.1 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.

25.2 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 26.5.

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

25.4 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.

25.5 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.

26 NON-DISCRIMINATION/NON-PREFERENTIAL TREATMENT

The successful Proposer agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of San Jose contracts.

27 CITY BUSINESS TAX

The Proposer(s) shall be required to comply with the San Jose Municipal Code Chapter 4.76 with respect to payment of the City Business Tax prior to any commencement of work. Contact Finance/Revenue Management at (408) 535-7055 to determine the applicable tax costs.

28 ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

28.1 The City has adopted an "Environmentally Preferable Procurement" (EPP) policy. The goal is to encourage the procurement of products and services that help to minimize the environmental impact resulting from the use and disposal of these products. These products include, but are not limited to, those that contain recycled content, conserve energy or water, minimize waste or reduce the amount of toxic material used and disposed. Computers and other electronics are a growing focus of environmentally preferable purchasing activities due to their high prominence in the waste stream, their numerous hazardous chemical constituents, and their significant energy use. Moreover, when these products are improperly disposed of they can release hazardous substances that pollute the environment.

28.2 In support of this policy, the selected supplier will be required to work with the City to apply this policy where it is feasible to do so. In addition, proposers should address any environmental considerations with their proposal response.

28.3 The entire EPP policy may be found in the City's internet site at the following link:

http://www.sanjoseca.gov/esd/natural-energy-resources/PDFs/EP3_2007.pdf

APPENDIX A STATEMENT OF WORK

1. GENERAL REQUIREMENTS

A. SPECIFICATIONS

1. Develop and launch an updated website by improving the current website interface, architecture, and design. Enhance communication and marketing of resources available through the BusinessOwnerSpace (BOS) network.
2. Provide ongoing maintenance services to support website including timely content posting as directed by staff, and technical support as necessary.
3. Externally host website/application and require minimal customization.
4. Be responsible for website backups that preserve information.
5. Specific objectives of the website interface include, but are not limited to:
 - a. Site will be user-friendly, interactive, and intuitive.
 - b. Display allows visitors to see at-a-glance all the resources available to all types and sizes of businesses.
 - c. Provide stakeholders and the media with easy access to information about BOS, its goals, and upcoming events.
 - d. Incorporates an existing page of BOS partners that includes a profile summary page description for each and allows access to individual sign-in information and access to edit profile information.
 - e. Incorporates visual consistency and BOS branding throughout the site.
 - f. Provides opportunity for feedback on this information through an interactive form and a bi-annual feedback survey
 - g. Links to outside websites for more information.
 - h. Provides visitors the ability to subscribe to receive e-mail updates and/or online newsletter.
 - i. Minimal page navigation to access information.
6. Train selected City staff as administrators who will be able to upload content and documents, and edit the site as needed.
7. Website should incorporate strong search engine optimization to achieve top-level results through major engines.
8. Site will be user-friendly, interactive, and intuitive. Websites and applications accessible to the public must meet the City's minimum ADA design guidelines as defined in Section 3.5. Websites and applications accessible to the public must comply with the City's Privacy and Disclosure Policy, E-Government Policy as defined in Section 25.

B. DELIVERABLES

1. **Green Resource Page including Green Self-Assessment Tool** - Develop a new Green Resource website section that will include: i) "Greening Tips", ii) a "Green Self-Assessment Tool", iii) on-line links and descriptions of key organizations that provide "green" resources, and iv) a page dedicated to current policies, news, and finance resources related to "green" initiatives. The new Green Self Assessment Tool for small businesses will allow businesses to measure the current green practices of their business. Upon completing the assessment survey, a results page will appear in Adobe PDF format. These results will also be displayed in graph form on the current webpage and a list of links will guide businesses to more resources on the BOS network to further enhance the green aspects of their enterprise. A draft of the self-assessment tool has been developed using MS Excel, but needs further design and evaluation. "Green Resources" will be added to the top navigation bar and all web pages described above will be listed in drop-down format.
2. **New Web Pages** - Design a series of new web pages and add these new web pages under corresponding drop down links under the top navigation bar and to the left-hand navigation bar. These new pages will include information about the following: procurement opportunities, access to capital, and upcoming events, such as job fairs. The information on these pages will be constantly changing, and work2future staff will need online access to update and upload flyers/documents to these pages.
3. **Navigation and Printability** - Enhance and potentially re-design the current website to improve navigation and visibility of the website. Implement the following changes to improve overall design and navigation of the website: 1) add a "Homepage " button to the menu bar, 2) remove the secondary scroll bar, 3) improve and make the current "Calendar of Events" page printable, 4) create a "printer-friendly" option for each webpage, 5) create a "bread crumb" navigation at the top of the website so users can retrace their steps through the website, and 6) improve or remove the rotating banner images at the top of each page.
4. **Embedded Pages** - Develop two new complex web pages to be listed under "Growing Your Business": 1) Procurement Opportunities including a link to [BidSync](#) and 2) [Geomapper](#). Each new web page will be designed to feature a description about each external website as well as an embedded image and links to information. BidSync is an online procurement portal hosted on an external website. Staff will retrieve a HTML Code provided by BidSync to embed procurement bid postings on the BOS website. Geomapper is our new online graphic information system. Similarly, staff will retrieve a HTML Code provided by Geomapper to embed a link to the Geomapper website. The objective is to embed these features and images of these two external website directly into the BOS website to encourage greater usage of the BOS website as a one-stop resource. Users may then select to view the external website in an additional window but the BOS website will remain open in a separate window.
5. **Discussion Forum** - Re-design the current discussion forum that is linked on the left-hand toolbar. Entries shall require administrative staff approval before being posted to the website. Administrative staff shall have access to current discussion threads and archived discussions on the website. Additionally, public contributions to the discussion shall require individuals to fill in contact information before posting to the discussion forum.

6. **Search Feature** - Assess feasibility and develop, if appropriate, "Just Ask BOS" search feature to provide online capacity to provide quick answers to specific questions posted by entrepreneurs and small businesses through the website. This enhancement will require an update of a current web-database and merging the following functions into a seamless application: "Search," "Contact Us," Frequently Asked Questions (FAQs) and the "Discussion Forum." The new "Just Ask BOS" text box should be clearly accessible from all pages of the website and potentially positioned in the top right-hand corner of the website.
7. **Newsletter** - Create a new newsletter template directly built into the BOS website. This feature will allow work2future staff to directly type in text and upload graphics into a template accessible through a password protected administrator portal of the website. The newsletter shall be automatically published to the website once staff is finished with content input. Staff shall have access to the template design on the website and should be able to make updates to the newsletter at any time. The new "Newsletter" feature shall be linked in the same place as the existing link, on the left-hand toolbar.
8. **Partner Page** – Re-design the "Partner" page that is currently linked on the left-hand toolbar so that partner organization's names and logos are displayed in a concise, easy-to-read list. When a partner organization name is selected, brief information about the organization will be displayed below their organization name. This brief description will appear as an expansion of their organization name on the same page without needing to refresh or open up a new webpage. (e.g., JavaScript).
9. **Online Library** - Create an "Online Library" that will allow access to key information related to subject area material frequently requested by small business owners. Items stored in this library could take the form of online videos, MS PowerPoint presentations, and Adobe PDF or MS Word documents. When uploaded, the titles of these items will automatically be entered into the web database to ensure easy search functionality. The Online Library page shall be linked on the left-hand toolbar.
10. **Translation** - Translate website information, outreach materials, and other resource tools into Spanish and Vietnamese to serve this large and important segment of the San Jose/Silicon Valley small business community. Currently, the BOS website is translated into Spanish and Vietnamese and linked directly to the English website. Currently, the website is not fully translated from the English website to the adjacent websites, because information is entered and changed on a daily basis and there is no translation service built into the website. For example, text posted on the following pages is not fully translated: "Announcements," "News," "Event Calendar," etc. As a result, the new website needs to be fully translated where, if possible, a translation program will allow content that is changed by staff to be automatically translated and transposed to the Spanish and Vietnamese version of the website.
11. **Bi-annual (Every Two Years) Survey** - Incorporate a survey feature into the BOS website. The bi-annual survey will be created for small businesses to assess overall magnitude, vibrancy, and challenges facing small businesses in San Jose/Silicon Valley region. Since this survey is not an ongoing feature, when the survey is not in use, administrative staff shall be able to "turn-off" this function and hide this feature from the website. All responses to the survey shall be saved on the administration-protected website and reports shall be exportable in common format (e.g., MSExcel, MSWord, Adobe PDF).
12. **Search Engine Optimization** – Apply "white hat" Search Engine Optimization (SEO) techniques to increase awareness and traffic to the website. Analyze basic keywords that appear on the BOS website and determine and implement ways in which to increase traffic to the website.

- 13. Reporting** - Enhance BOS online capacity to track, analyze and generate reports regarding small business utilization of BOS services and partner organizations. Comprehensive traffic analysis reports should include any filters or "bots" to ensure the most accurate reporting. All reports should only be available to staff administrators through password-protected access and not available on the public website.

APPENDIX B COST PROPOSAL

1. PROPOSAL PRICING

1.1 GENERAL (Applies to all pricing)

- 1.1.1** Except as specifically noted, all pricing is firm fixed and must account for all costs to provide and pay for:
 - a.** Subscription access cost for web-based solution (inclusive of all labor, license fees for unlimited users, software updates, upgrades, patches, fixes, operation and maintenance of website, all equipment, customer support and training, etc.).
- 1.1.2** Do not include sales tax in your proposal. Prior to award of contract, the City will confer with Proposer to review applicable sales and use taxes and make required adjustments.
- 1.1.3** In the event of a conflict between unit and extended prices, unit prices shall prevail. The City will recalculate extended prices and correct accordingly.
- 1.1.4** Cost proposals shall be scored based on the Web-based solution's total cost of ownership (line 6 in the "Summary Pricing" table below).

1.2 SUMMARY PRICING**1.2.1 Cost Proposal Pricing Form****Company Name:** _____

	Deliverable	Level of Staff	Number of Hours to Complete	Average Cost Per Hour to Complete	Price
1	Green Resource Page including Green Self-Assessment Tool				\$
2	New Web Pages				\$
3	Navigation and Printability				\$
4	Embedded Pages				\$
5	Discussion Forum				\$
6	Search Feature				\$
7	Newsletter				\$
8	Partner Page				
9	Online Library				\$
10	Translation				\$
11	Bi-annual Survey				\$
12	Search Engine Optimization				\$
13	Reporting				\$
				TOTAL COST	\$

1.3 Total Cost indicated in words:

_____ -Dollars and _____ Cents

1.3 INVOICING/PAYMENTS: Payment for each deliverable shall be due and payable upon receipt by City of an acceptable detailed invoice from the awarded proposer.

APPENDIX C PROPOSAL CERTIFICATION FORM

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

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

PROPOSER REPRESENTATIONS

1. Proposer did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms, or conditions of this proposal.
2. Proposer additionally certifies that neither Proposer nor its principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, any California State agency, or any local governmental agency.
3. Proposer acknowledges that all requests for deviations, exceptions, and approved equals are enclosed herein and that only those deviations, exceptions, and approved equals included in the RFP document or permitted by formal addenda are accepted by the City.
4. Proposer did not receive unauthorized information from any City staff member or City Consultant during the Proposal period except as provided for in the Request for Proposal package, formal addenda issued by the City, or the pre-bid conference.
5. Proposer certifies that this submission includes full consideration of the information and/or requirements identified in Addenda ____ through ____.
6. Proposer hereby certifies that the information contained in the proposal and all accompanying documents is true and correct.
7. Please check the appropriate box below:

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

☐ If the proposal is made by a partnership, the full names and addresses of all members and the address of the partnership, the full names and addresses of all members and the addresses

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

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

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

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

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

Authorized Representative Name (sign name):	
Authorized Representative Signature (print name):	
Authorized Representative Title (print title):+	
Complete additional signatures below as required per # 7 above	
Authorized Representative Name (sign name):	
Authorized Representative Signature (print name):	
Authorized Representative Title (print title):+	
Authorized Representative Name (sign name):	
Authorized Representative Signature (print name):	
Authorized Representative Title (print title):+	

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

APPENDIX D PROPOSER QUESTIONNAIRE

All information requested in the Questionnaire shall be furnished by the Proposer, and shall be submitted with the Proposal. Statements shall be complete and accurate and in the form requested. Omission, inaccuracy or misstatement may be cause for the rejection of a proposal.

☐ Please check the box if Proposer confirms that they meet the requirements stated above.

NOTE: If proposer is a joint venture, then the same joint venture (same companies/organizations that comprise the JV submitting this proposal, must have been in business providing the same professional services together for three years in order to meet this requirement.

If confirmation is not received by checking the appropriate box above, then your proposal shall be rejected.

If a corporation, answer the following:

A. When incorporated?

B. In what state?

C. Authorized to do business in California?

If so, what date?

If NOT a corporation, answer the following:

A. Name of Organization:

B. Date of Organization:

C. General, Limited Partnership, or Joint Venture:

(if applicable)

D. Registered in California?

If so, when?

Please answer Yes or No to the following questions:

1. Have you ever had a bond or surety denied, canceled, or forfeited?

YES

☐

NO

☐

If yes, state name of bonding company, date, amount of bond and reason for such cancellation or forfeiture in an attached statement.

2. Have you ever declared bankruptcy or been declared bankrupt?

YES

☐

NO

☐

If yes, state date, court jurisdiction, docket number, amount of liabilities and amount of assets.

3. Has your company ever had any agreements cancelled?

YES ☐ **NO** ☐ If yes, give details.

4. Has your company ever been sued by any organization for issues pertaining to fee payment, performance, or other related issues?

YES ☐ **NO** ☐ If yes, give details.

5. Are you currently engaged in merger or acquisition negotiations, or do you anticipate entering into merger or acquisition negotiations within the time period of this Request for Proposal?

YES ☐ **NO** ☐ If yes, give details. Attach copy of such agreement(s).

6. Are you now engaged in any litigation which does now or could in the future affect your ability to pay fees or perform under this Agreement?

YES ☐ **NO** ☐ If yes, give details.

The undersigned hereby declares under penalty of perjury that all statements, answers and representations made in this questionnaire are true and accurate, including all supplementary statements hereto attached. In the case of a corporate Proposer, the signature of one duly authorized representative is sufficient.

Signature

(Please Print or Type Name)

Title

Signature

(Please Print or Type Name)

Title

APPENDIX E PREVIOUS CUSTOMER REFERENCE FORM

Your Company Name: _____

Name of Customer:

Customer Contact:

Customer Address:

Customer Phone Number:
Email address:

What was the period of performance?
From: _____ To: _____

Dollar value of Contract? \$

Provide a detailed description of the work performed for this customer (add additional pages if necessary):

APPENDIX F
City of San Jose
Request for Contracting Preference for Local/Small Businesses

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.

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

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

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

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

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

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

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

***LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE**

In order to qualify as an LBE you must provide the following information:

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

****SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE**

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

Please state the number of employees that your Business has:

Based upon the forgoing information I am requesting that the Business named above be given the following preferences (*please check*): Local Business Enterprise Small Business Enterprise

I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed at: _____, California

Date: _____

Signature: _____

Print name: _____

APPENDIX G SERVICE ORDER TERMS & CONDITIONS

1. DEFINITIONS: CITY shall mean the City of San Jose or any department thereof. SERVICE ORDER means that certain contract for services which includes these Terms and Conditions as well as the information contained on the completed form appearing on the reverse of these Terms and Conditions. References in quotes refer to the designation on the reverse. CONTRACTOR shall mean the business as designated under "VENDOR".

2. SCOPE OF SERVICES: CONTRACTOR shall perform these services specified in detail in 'DESCRIPTION OF SERVICES'. CONTRACTOR will supply all tools and instrumentalities required to perform this SERVICE ORDER.

3. DATA AND FACILITIES: CONTRACTOR acknowledges that it has in its possession all applicable specifications and drawings and all other documents to which reference is made herein and/or which are matches hereto, and that such data are adequate to enable CONTRACTOR fairly to determine its ability to perform the work called for herein at the price and in accordance with the schedule set forth. CONTRACTOR represents that it now has or can readily procure without assistance of CITY all personnel, facilities, machinery and equipment necessary for the performance of this SERVICE ORDER.

4. CONTRACT: This SERVICE ORDER constitutes CITY's offer to CONTRACTOR and shall become a binding contract upon the terms and conditions set forth herein upon acceptance by CONTRACTOR either by acknowledgement or commencement of performance. Any terms or conditions by CONTRACTOR in accepting CITY's offer, which are inconsistent with or in addition to the terms and conditions herein set forth, shall be void and of no effect unless and to the extent expressly accepted by CITY in writing.

5. SCHEDULE OF PERFORMANCE: CONTRACTOR's services shall be completed according to the schedule set forth in "DESCRIPTION OF SERVICES". Time is of the essence in this SERVICE ORDER.

6. TERM: The term of this SERVICE ORDER shall be as set forth in 'DESCRIPTION OF SERVICES'.

7. COMPENSATION: The compensation to be paid and the method of payment for CONTRACTOR for services provided shall be as set forth in the 'DESCRIPTION OF SERVICES'. Unless otherwise provided for under 'DESCRIPTION OF SERVICES,' CONTRACTOR shall be responsible for all costs and expenses incident to the performance of this SERVICE ORDER, including all costs of equipment provided by CONTRACTOR, all fees, fines licenses, bonds or taxes required of or imposed against CONTRACTOR and all other of CONTRACTOR'S costs of doing business.

8. INDEPENDENT CONTRACTOR: It is understood and agreed that CONTRACTOR shall act as and be an independent contractor and not an employee, agent, joint venturer, or partner of CITY. As an independent contractor, CONTRACTOR shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONTRACTOR hereby expressly waives any claim it may have to any such rights. Both parties acknowledge that CONTRACTOR is not an employee for state or federal tax purposes. CONTRACTOR shall retain the right to perform services for others during the term of this SERVICE ORDER.

9. INSURANCE REQUIREMENTS: CONTRACTOR agrees to have and maintain the policies set forth in 'INSURANCE', which is attached hereto and incorporated herein. All policies,

endorsements, certificates and/or binders shall be subject to approval by the 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. CONTRACTOR agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this SERVICE ORDER.

10. CONTRACTOR'S DEFAULT: CITY's Director of Finance or the director's authorized designee may, by written notice to CONTRACTOR, cancel this SERVICE ORDER, in whole or from time to time in part: (i) if the CONTRACTOR fails to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the Services performed do not conform to contractual requirements or if CONTRACTOR fails to perform any of the other provisions of this SERVICE ORDER, or fails to make progress so as to endanger performance of this SERVICE ORDER, in accordance with its terms; or (iii) if the CONTRACTOR becomes insolvent or commits an act of bankruptcy. If this SERVICE ORDER is canceled, CITY, in addition to all other rights afforded by law for CONTRACTOR's breach of contract, shall have the right to charge CONTRACTOR the amount by which the costs of obtaining the services canceled from another source exceed the prices specified herein, and CITY may set off any such charge against any amounts which may become payable to CONTRACTOR under this SERVICE ORDER or otherwise. Notwithstanding CITY's right to cancel this SERVICE ORDER for delay, CONTRACTOR shall not be liable to CITY for any damages therefore if: (i) CONTRACTOR's delay is due to causes beyond its control, and without its fault or negligence, provided CONTRACTOR promptly notifies CITY of the conditions causing the delay or, (ii) CONTRACTOR's delay is caused by the default of a subcontractor or supplier, but only if such default arises out of causes beyond the control of both CONTRACTOR and subcontractor or supplier and without the fault or negligence of either of them, and the articles or services to be furnished by them were not obtainable from other sources in sufficient time to permit CONTRACTOR to meet the required schedule.

11. NON-FUNDING: Each payment obligation of CITY is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by CONTRACTOR, the product or service directly or indirectly involved in the performance of that function may be terminated by CITY at the end of the period for which funds are available. CITY shall notify CONTRACTOR at the earliest possible time of any products or services which will or may be affected by a shortage of funds. No penalty shall accrue for CITY in the event this provision is exercised, and CITY shall not be liable for any future payments due or for any damages as a result of termination under this Section. This provision shall not be construed so as to permit CITY to terminate this SERVICE ORDER or any products or services in order to acquire similar equipment or service from another party, CONTRACTOR agrees to render any assistance which CITY may seek in effecting a transfer of any right of CITY in this SERVICE ORDER, or any part hereof, that is required of CITY pursuant to the securing of financing hereunder.

12. COMPLIANCE WITH LAW: CONTRACTOR shall in the performance of this SERVICE ORDER comply with all applicable Federal, State and local laws and regulations.

13. GOVERNING LAW: CITY and CONTRACTOR agree that the law governing this Agreement shall be that of the State of California.

14. 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 where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

15. ASSIGNMENT OF CONTRACT: CONTRACTOR shall not assign any of the work to be performed under this SERVICE ORDER nor shall CONTRACTOR subcontract for work without CITY's prior written consent.

16. WAIVER: Failure by CITY to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this SERVICE ORDER, or to exercise any right hereunder, shall not be construed as a waiver of relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but obligation of CONTRACTOR with respect to such future performance shall continue in full force and effect.

17. CONFIDENTIAL INFORMATION: All data, documents, discussions or other information developed or received by or for CONTRACTOR in performance of this SERVICE ORDER are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

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

19. CHANGES: Buyer shall have the right by written notice to change the extent of the work covered by this service order, the time or place of delivery, the method of shipment or packaging, or to suspend work. The only valid change is a change order signed by the Director of Finance or director's authorized designee. Upon receipt of any such notice, CONTRACTOR shall promptly make the changes in accordance with the terms of the notice. If any such changes cause an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment shall be negotiated promptly and the service order modified in writing accordingly. CONTRACTOR shall promptly deliver to Buyer, and in any event within thirty (30) days after receipt of such notice a statement showing the effect of any such changes in the delivery dates and prices, such statement to be supplemented within thirty (30) days from the date thereof by detailed specification of the amount of the price adjustment and supporting cost figures. Failure of CONTRACTOR to submit the statements within the above time limits shall constitute its consent to perform the change without increase in price, without claim for material rendered obsolete and without change in delivery schedule.

20. TERMINATION: The performance of work under this service order may be terminated in whole or from time to time in part by Buyer. CITY's Director of Finance is empowered to terminate this SERVICE ORDER on behalf of CITY.

21. CONTRACTOR'S BOOKS AND RECORDS: CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, canceled 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 CONTRACTOR pursuant to this SERVICE ORDER. CONTRACTOR shall maintain all documents and records which demonstrate performance under this SERVICE ORDER for a minimum period of three (3) years, or for any period longer required by law, from the date of termination or completion of this SERVICE ORDER. Any records or documents required to be maintained pursuant to this SERVICE ORDER shall be made available for inspection or audit, at any time during regular business hours, upon written request by 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 CONTRACTOR'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 are maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

22. NON-DISCRIMINATION:

a. Prohibition on Discrimination and Preferential Treatment.

CONTRACTOR shall fully comply with Chapter 4.08 of the San Jose Municipal Code and agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of CITY contracts.

b. Compliance Reports.

If directed by the Director of Office of Equality Assurance of the CITY, CONTRACTOR shall file, and cause any subcontractor to file, compliance reports with the Director of Office of Equality Assurance. Compliance reports shall be in the form and field at such times as may be designated by the Director of Office Equality Assurance. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Director of Office of Equality Assurance to determine whether CONTRACTOR or its subcontractor is complying with the nondiscrimination and non-preference provisions of this Agreement and Chapter 4.08 of the Municipal Code.

c. Failure to Comply with Nondiscrimination Provisions.

If the Director of Office of Equality Assurance determines that the CONTRACTOR has not complied with the nondiscrimination or non-preference provisions of this Agreement, the CITY may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject CONTRACTOR and/or subcontractor to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor.

d. Subcontracts.

CONTRACTOR shall include provisions a through c above, inclusive, in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

e. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this Agreement may be waived by the Director of Office of Equality Assurance, if the Director of Office of Equality Assurance determines that the CONTRACTOR has its own nondiscrimination requirements or is bound in the performance of this Agreement by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the CONTRACTOR or other governmental agency are substantially the same as those imposed by the CITY.

23. GIFTS: CONTRACTOR represents that it is familiar with the City's prohibition against the acceptance for any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code. CONTRACTOR agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this SERVICE ORDER by CONTRACTOR. In addition to any other remedies CITY may have in law or equity, CITY may terminate this SERVICE ORDER for such breach.

24. CONFLICT OF INTEREST: CONTRACTOR shall avoid all conflict of interest or appearance of conflict of interest in performance of this SERVICE ORDER.

25. DISQUALIFICATION OF FORMER EMPLOYEES: CONTRACTOR 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"). CONTRACTOR shall not utilize either directly or indirectly any officer, employee, or agent who would be in violation of the Revolving Door Ordinance.

26. WARRANTY AGAINST INFRINGEMENT: If any article or service provided to CITY hereunder is covered, or is purported to be covered, by any patent or copyright, CONTRACTOR agrees to defend, indemnify and hold harmless the CITY, its officers, agents and employees, from and against any and all suits, claims, judgments and costs instituted or recovered against it by any person or persons whomsoever, on account of the purchase, use of resale of such article by CITY in violation or claimed violation of any rights under patent or copyright.

27. INDEMNITY: CONTRACTOR agrees to defend, indemnify and hold harmless the CITY, its officers, agents, and employees, from any and all claims and liability, including expenses, for injuries or death to persons or damage to or destruction of property caused by or resulting from the acts or omissions of CONTRACTOR, its agents, suppliers or employees, in the performance of this service order.

APPENDIX H

Insurance Requirements

CONTRACTOR, at CONTRACTOR'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 CONTRACTOR, 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; and
2. *Applicable only if vehicles used in the course of training and/or instructors driving to and from City of San Jose during instructions-*

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. *Applicable only if Professional training is being provided such as, but not limited to: Medical, Cosmetology (Beauty Shop or Barber Shop), Massage Therapy, Scientific, Legal, Real Estate, Accounting or other licensed training as necessary –* Professional Liability Errors and Omissions.

B. Minimum Limits of Insurance

CONTRACTOR 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 per occurrence/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 CONTRACTOR 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, CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
- b. CONTRACTOR'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 CONTRACTOR's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies by CONTRACTOR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
- d. Coverage shall state that CONTRACTOR'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.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors

2. Workers' Compensation

Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors

3.. 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, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

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

F. Verification of Coverage

CONTRACTOR 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. 2nd Floor Wing
San Jose, CA 95113-1905

G. Subcontractors

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