

**THE HOUSING DEPARTMENT  
OF THE  
CITY OF SAN JOSE**



**Opportunity for  
Acquisition/Rehabilitation/Resale of Single-Family Homes**

**under the**

**Housing and Economic Recovery Act of 2008  
Neighborhood Stabilization Program**

**REQUEST FOR PROPOSALS**

**June 12, 2009**

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## **EXECUTIVE SUMMARY**

**Description:** The City of San Jose Housing Department (“Housing Department”) will offer a minimum of \$1.2 million from the U. S. Department of Housing and Urban Development (“HUD”) under the Neighborhood Stabilization Program for an entity to appraise, acquire, rehabilitate, and resell foreclosed single-family residences to income-qualified households. Qualifying properties must be located within four specific areas of San Jose with high concentrations of foreclosures, sub-prime mortgages, and mortgage defaults. In the aggregate, properties must be acquired for 15% below market value established by the appraisal according to HUD NSP regulations. Program income may be re-invested in additional foreclosed upon single-family homes until July 2013.

**Location:** The four specific areas of the City are zip codes 95111, 95116, 95122, and 95127 as shown on Attachments G.1 through G.4.

**Objectives:** The City of San Jose intends to (1) mitigate blight caused by vacant residences in neighborhoods having high concentrations of foreclosures, sub-prime mortgages, and mortgage defaults and (2) provide funds for an entity to appraise, purchase, and rehabilitate vacant, foreclosed homes, with subsequent resale to low- or moderate-income households with City downpayment assistance.

**Developer Selection Process:**

- Applicants submit Request for Proposals (RFP)
- City staff evaluates proposals
- City staff selects entity to be recommended to City Council
- City Council approves the selected entity and policy framework for a contract
- City staff and selected entity negotiate and execute a contract

### **MANDATORY**

**Pre-Submittal Meeting:** **June 26, 2009 at 10:00 a.m.** in Room 1047, 10<sup>th</sup> Floor, City Hall, 200 East Santa Clara Street, San José, California 95113

**Proposals Due:** **July 24, 2009 at 4:00 PM (PDT)** at the Housing Department located at City Hall, 200 East Santa Clara Street, 12<sup>th</sup> Floor, San José, California 95113

**Primary Contact:** Ron Eddow, Senior Development Officer  
City of San José Housing Department  
200 East Santa Clara Street, 12<sup>th</sup> Floor, San Jose, CA 95113  
Telephone: 408-975-4472  
e-mail: ron.eddow@sanjoseca.gov

## **PART I. BACKGROUND**

On September 26, 2008, the U.S. Housing and Urban Development (HUD) allocated a total of \$3.92 billion to areas in all states that contain a high concentration of home foreclosures. HUD's new Neighborhood Stabilization Program (NSP) provides targeted emergency assistance to state and local governments to acquire and redevelop foreclosed properties that could become sources of abandonment and blight within their communities.

The funding is provided through HUD's *Community Development Block Grant (CDBG) Program* under the *Housing and Economic Recovery Act of 2008*. These targeted funds will be used to purchase foreclosed homes at a discount, and to rehabilitate or redevelop them to respond to rising foreclosures and falling home values.

Local governments may use their neighborhood stabilization grants to: (1) acquire land and property; (2) demolish or rehabilitate abandoned properties; and (3) offer down-payment and closing-cost assistance to low- to moderate-income homebuyers that have household incomes that do not exceed 120 percent of area median income.

### **HUD Determined Target Areas and Rules to Assist Communities**

HUD determined the financial allocations following direction from Congress that grants be targeted to areas containing high concentrations of foreclosures, subprime mortgages, and mortgage defaults. HUD has also issued specific rules to assist communities in administering this new program, and to ensure that these grant funds are obligated for specific activities within 18 months of completion of a grant agreement at the end of March 2009. The NSP Program also seeks to prevent future foreclosures by requiring eight hours of HUD approved housing counseling for families receiving homebuyer assistance.

### **City of San Jose City Council Authorizes Director of Housing to Accept NSP Grant**

On November 18, 2008, the City of San Jose City Council authorized the Director of Housing to accept a Federal NSP grant in the amount of \$5,628,283 to mitigate blight caused by foreclosed properties and allocated the funding to specific activities. The funding allocations, which was revised by the City Council on May 12, 2009, targets a minimum of \$1.2 million for the purchase and rehabilitate foreclosed single-family residences in specific areas, with the remaining funds targeted to a multifamily program. The rehabilitated homes would then be resold to low- or moderate-income households with City downpayment assistance. *The single-family acquisition/rehabilitation/resale program is the subject of this Request for Proposals (RFP).*

## **PART II. PROGRAM OBJECTIVES, DESCRIPTION, AND REQUIREMENTS**

### **A. PROGRAM OBJECTIVES**

The objectives of the NSP Single-Family Acquisition/Rehabilitation/Resale Program are as follows:

- To mitigate blight caused by vacant residences in neighborhoods having a high concentration of foreclosures.
- To target four San Jose zip codes that ranked between 7 and 10 on HUD's Foreclosure and Abandonment Risk Scores.
- To assist San José's low- and moderate-income households by increasing, preserving, and improving housing that is affordable and livable.
- To enhance the fabric of the neighborhood by incorporating quality design, materials, and construction in each rehabilitated property.
- To incorporate practical green-building features into the design of each rehabilitated property.
- To comply with the HUD NSP regulations.

### **B. PROGRAM DESCRIPTION**

The Housing Department seeks an entity to acquire, rehabilitate, and resell foreclosed single-family residences to income-qualified households in four specific areas of the City with high concentrations of foreclosures, sub-prime mortgages, and mortgage defaults. An offer on a specific property must be based on an appraisal that is no more than 60 days old. In the aggregate, properties must be acquired for at least 15% below market value established by the appraisal and be vacant. At least \$1.2 million would be available immediately. Additional funds of up to \$2,599,000 million may be available in the future, and the entity selected through this RFP process would be awarded all funds ultimately assigned to the NSP Single-Family Program.

Prior to purchase of properties, an entity would develop a scope of work, budget, and schedule to rehabilitate properties that include health and safety repairs, exterior improvements, and green building features according to specifications provided by the City. An entity must obtain all required development and building permits, and follow Federal and City contracting rules. They would then market, resell, and deliver rehabilitated units to a low- or moderate-income eligible homebuyer with mortgage assistance from the City.

The Housing Department must initially commit the NSP funds to specific properties or activities by September 2010.

Any entity that submits a proposal may assemble a joint venture team with expertise to (1) acquire, (2) rehabilitate, and (3) resell single-family residences to income-qualified homebuyers.

## **C. PROGRAM REQUIREMENTS**

### **Eligible Applicants**

- Applicants may be individuals, partnerships, corporations, limited liability companies or a joint venture of any or all of such entities.
- Applicants must demonstrate credit worthiness, financial capacity, relevant past experience to undertake acquisition, rehabilitation and resale of homes to income-qualified buyers, and the understanding of zoning and building code regulations to make judgments regarding project feasibility,
- Applicants without the necessary experience may form joint venture agreements with other entities with the necessary experience or skills.
- Applicants without all the necessary experience may subcontract for services after conducting a competitive bidding process complying with CDBG regulations.

### **Eligible Properties**

- Properties must be located within San Jose zip codes 95111, 95116, 95122, and 95127 as shown on Attachments G.1 through G.4.
- Properties must be single-family detached residences not subject to homeowners' association fees or other obligations.
- Eligible single-family residential properties must be zoned R-1 Single-Family Residence District, R-2 Two-Family Residence District, or R-M Multiple Residence District within the City of San Jose and must conform to the City of San Jose Zoning Ordinance available at <http://www.sanjoseca.gov/planning/zoning> with regard to use, setbacks, building height, parking, and accessory structures.
- Properties must be foreclosed upon and vacant prior to purchase. A property "has been foreclosed upon" at the point that, under State law, the mortgage or tax foreclosure is complete and the title for the property has been transferred from the former homeowner under some type of foreclosure proceeding or transferred in lieu of foreclosure in accordance with State law.

### **Ineligible Properties**

- Properties listed on the City of San Jose Historic Resources Inventory (see [www.sanjoseca.gov/planning/historic/pdf/Historic\\_Resources\\_Inventory](http://www.sanjoseca.gov/planning/historic/pdf/Historic_Resources_Inventory)) are ineligible.
- Properties located in a Special Flood Hazard Area under the Federal Emergency Management Agency (FEMA) National Flood Insurance Program are ineligible.
- Properties located in unincorporated County pockets in zip codes 95127 and 95111 are ineligible.
- Properties not conforming to the Zoning requirements described above are ineligible as verification of possible legal non-conforming uses and buildings will be too time-consuming. For example, the Zoning Ordinance allows one single-family residence per parcel in the R-1, R-2, and R-M Residence Districts. A parcel containing more than one single-family residence or an illegal second unit would not be eligible for the program.

## **Eligible Uses of Funds**

**Acquisition.** Properties acquired under this program must be purchased at a discounted price below the current market value of the property, of at least five percent (5%), as determined by a City-approved appraisal. For the program as a whole, the aggregate discount for all properties must be at least 15%.

**Rehabilitation.** Funds may be used for the costs of rehabilitating properties to comply with the Building Rehabilitation Standards and Green Building upgrades set forth below. Rehabilitation costs may include up to 20% for a contractor's overhead and profit in addition to hard and soft costs.

**Related Soft Costs.** Funds may be used for related soft costs such as: permits and fees; architectural and engineering fees; appraisal fees; title and escrow fees; marketing and sales costs, including real estate commissions in connection with property resale; property taxes and construction insurance; federally required audits; and securing the property during the rehabilitation phase.

**Down-payment Assistance Loans.** Income-eligible buyers qualify for up to \$60,000 in down-payment assistance in the form of a zero-interest, 30-year, shared-equity note. Loans will be underwritten using the City's mortgage-assistance underwriting guidelines.

**Developer Fee.** The selected entity is eligible to collect a fee equal to ten percent (10%) of City funds disbursed for the above activities. The developer fee in connection with any individual property will be payable upon resale of that property.

**Return on Leverage Funds.** Should the selected entity invest non-City funds in the program in order to increase the number of foreclosed properties that are acquired/rehabilitated/resold, a 15% return on that investment is allowed.

**Ineligible Costs.** Funds may not be used to provide improvements or finishes above standard quality as described in "Rehabilitation Grades and Standards" (see below).

## **Building Rehabilitation Standards**

- Properties must be rehabilitated in conformance with the "Rehabilitation Grades and Standards" for the City's Housing Rehabilitation Program (see [www.sjhousing.org/program/homerepair/GradesStandards.pdf](http://www.sjhousing.org/program/homerepair/GradesStandards.pdf)). City staff will need to approve the scope of work for each property.
- Rehabilitation must include remediation of asbestos and lead-based paint hazards in compliance with applicable federal standards
- Rehabilitation of structures aged 50 years or older will comply with the standards in "ATTACHMENT A TO PROGRAMMATIC AGREEMENT FOR HOUSING REHABILITATION PROGRAM" (an agreement between the City of San Jose, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer) that specifies what kinds of work can be done on older structures without consultant with the State Historic Preservation Officer in order to comply with NEPA (see Attachment F).
- Rehabilitation must include the following Green Building upgrades:
  - Exceed California Title 24 Energy Standards

- o Use only low-VOC paints
- o Install only low-VOC floor coverings
- o Install energy efficient water heaters, furnaces and built-in kitchen appliances
- o Extend natural gas line to the laundry area, where feasible
- o Install drought-tolerant plant materials should front-yard re-landscaping be necessary
- o Replace non-ULF toilets with ULF fixtures

### **Affordability Requirements at Resale**

- Properties must be resold to low- or moderate-income buyers at a price at or below the total cost of acquisition, rehabilitation, eligible soft costs and developer fee.
- Resale prices may not exceed approximately \$410,000 for a two-bedroom unit, approximately \$450,000 for a three-bedroom unit, or approximately \$485,000 for a four-bedroom unit.
- The City must approve the sales price.
- As a condition of the City's downpayment assistance loan, the City will record a 30-year, shared-equity note. If the property is resold before the expiration of the affordability term, the City will take a share the increased equity in proportion to the City's share of financing the acquisition transaction.

### **Homebuyer Requirements**

- Properties must be sold to households with gross incomes at or below one-hundred and twenty percent (120%) of Area Median Income (AMI), adjusted for household size, as determined by the HUD (see "Moderate Income" at [www.sjhousing.org/data/eligible.html](http://www.sjhousing.org/data/eligible.html))
- The City must verify the income eligibility of the homebuyer
- The homebuyer must attend a HUD-approved homebuyer training program
- The homebuyer must occupy the unit as his/her principal residence

### **Disbursement of Funds**

For acquisition, the City will wire funds to escrow. For rehabilitation and soft costs, funds will be disbursed on a reimbursement basis only for costs actually incurred. Payment for construction costs will be made on a progress payment basis, subject to the approval of each draw request by the City. The City will retain ten percent (10%) of the amount budgeted for construction as a performance retention, to be released upon recordation of a Notice of Completion, release of all liens, and satisfactory compliance with any other City requirements.

### **Program Income**

Upon the resale of individual properties, any net proceeds in excess of the Developer Fee will be repaid to the City. Net proceeds would then be available to the selected entity, through July 2013, to be re-invested in additional properties to be acquired, rehabilitated and resold.

### **Reporting Requirements**

The selected entity must provide written monthly reports City that include activities performed, milestones reached and any timeline changes so that City staff can anticipate

upcoming approvals needed, what costs need to be reimbursed, and stay informed about progress being made to expend the NSP funds.

### **Environmental Review Requirements**

The City will obtain clearance under the National Environmental Policy Act (NEPA) and/or the California Environmental Quality Act (CEQA) for the entire Acquisition/Rehabilitation/Resale of Single-Family Homes Program. That clearance will be based on eligibilities, standards and procedures spelled out elsewhere in this RFP (e.g.: compliance with the Programmatic Agreement in the rehabilitation of structures 50+ years old; the ineligibility of properties listed on the City's Historic Resources Inventory; limitations on the value of rehabilitation work on properties located in Flood Zones).

### **Federal Funding Requirements**

All activities funded by this program will be required to comply with applicable federal statutes and laws, including but not limited to:

- Section 3 of the U.S. Housing Act of 1968, as amended (generally requires affirmative outreach to various categories of low-income, female and minority individuals and subcontractors in hiring and contracting)
- Fair Housing Act of 1988 (affirmatively furthering fair housing, including nondiscrimination in the resale of properties)
- National Environmental Policy Act (NEPA ) (see program-wide clearance discussion above)
- Prevailing wage requirements imposed by the federal government (also known as "Davis-Bacon") (see below).
- Appraisals must be prepared in compliance with the Uniform Relocation Act and Real Property Acquisition Policies (URA) and implementing regulations (49 CFR Part 24).

### **Prevailing Wage**

To the extent that the selected respondent will be concurrently acquiring or concurrently rehabilitating eight (8) or more homes, the labor for the rehabilitation work will have prevailing wage requirements which will be monitored by the City's Office of Equality Assurance. The prime contractor is responsible for compliance of all subcontractors, including lower tier subcontractors, with prevailing wage provisions. The City's Office of Equality Assurance is charged with the responsibility to monitor and enforce prevailing wage requirements and ensure that payment of the proper wage is occurring. The Office requires the contractor and all subcontractors to file labor compliance documents with supporting documentation, including certified payrolls. Written documentation must be filed within 10 days of issuance of a Notice to Proceed. Certificates of Completion are not issued until all required documents are filed. All questions regarding prevailing wage requirements are to be directed to:

City of San Jose  
Office of Equality Assurance  
200 E. Santa Clara Street, 5<sup>th</sup> Floor  
San Jose, CA 95113  
Phone: 408-535-8430

### **Special Auditing Requirement**

In compliance with OMB Circular a-133, the respondent's activities financed by federal funds will subject to an annual audit of: financial statements; internal controls; and compliance with applicable laws, regulations and contracts.

### **Other Standard Requirements**

See Attachment E for Standard Terms and Conditions of City of San Jose Contracts/Agreements.

### **PART III. TERM OF AGREEMENT**

It is anticipated that the term of this agreement will have an initial term of 18 months, with the possibility of up to four 12-month extensions thereafter, at the discretion of the City.

### **PART IV. HOW TO OBTAIN THIS RFP AND PROCEDURE FOR SUBMITTING QUESTIONS AND INQUIRIES**

#### **How to Obtain this RFP**

This RFP 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 e-mail at [www.bidSync.com](mailto:www.bidSync.com). The listing of this RFP on the City of San Jose's Bidline ([www.sanjoseca.gov/purchasing/default.asp](http://www.sanjoseca.gov/purchasing/default.asp)) is linked directly to BidSync.

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

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

#### **Procedure for Submitting Questions and Inquiries**

Questions and inquiries can be posed orally at the Mandatory Pre-Submittal Meeting scheduled for **June 26, 2009, at 10:00 a.m.** in Room 1047, San Jose City Hall, 200 East Santa Clara Street, San Jose. Written questions and inquiries must be made through the contact listed in the Executive Summary of this RFP via e-mail or BidSync no later than **5:00 p.m. on July 6, 2009**. The City will provide a written response to each question in the form of an Addendum to the RFP and posted on BidSync by July 13, 2009.

## **PART V. SUBMITTAL REQUIREMENTS - PROPOSAL FORMAT, CONTENT, AND DELIVERABLES**

### **A. Proposal Format**

A table of contents, page numbers, and tabbed dividers are required to facilitate the review and evaluation process. Applications must be completely bound with comb-binding or three-ring binders. Three-ring binders are preferred for their versatility.

### **B. Proposal Content**

#### **1. Narrative Description**

In a narrative (12-point font, not to exceed three pages), describe how the program will be implemented by the respondent, including: how soon after a contract is signed that certain specific activities will begin; the steps that will be followed in implementing the program; which parties will be performing which specific tasks; what outside sources of funding and in what amount are proposed to leverage the City's NSP funds; timelines/milestones for various activities and steps in the process; and how the respondent intends to comply with HUD's NSP regulations.

#### **2. Proposer Experience**

- In a brief narrative, describe each entity that is a part of the respondent team its history.
- Describe the proposer entity(s) and identify its members, including names, addresses, and phone numbers of key representatives.
- Provide resumes showing relevant qualifications and experience of the principals and key personnel of the entity(s).
- Identify the lead agency and the fiscal agent with the authority to represent and make legally binding commitments on behalf of the respondent.
- Describe the respondent's familiarity with local zoning, building code, flood insurance and historic preservation regulations.
- Describe the entity's relevant experience with acquiring, rehabilitating, and reselling existing single-family residences and with marketing, pricing and selling units to low- and moderate-income borrowers.

#### **3. Completed Project Information and Technical Capability**

- Provide up to five examples in urban environments, of single-family residential acquisition, rehabilitation and/or resale projects, including leveraging of financial resources if relevant.
- Please include the following information for each project cited above:

- a. Location map and photographs.
- b. Present the total development cost, including acquisition, hard, soft and holding costs; identify sources of funding; resale proceeds; and the return on investment (ROI) achieved.
- c. Describe the role that the respondent played in the project. Identify any unique challenges associated with the project and ways in which the project benefited the surrounding community.
- d. Describe the public agency involved in the project, if any, including the name and telephone number of the contact person and the services provided.
- e. Identify the specific relationships, and contact information, for the entity(s) that provided the debt and equity invested.

#### **4. Financial Capacity**

- Provide two years worth of financial statements for businesses or federal income tax returns for individuals.
- Document liquid assets, including lines of credit, available to the respondent team.
- Identify any transactions of any members of the respondent team that have resulted in foreclosure, declaration of default, or have been determined to be non-performing loans during the last five years.

#### **5. Draft MOU Between Joint Venture Team Members**

If the respondent is a consortium of separate businesses and/or individuals, provide a draft Memorandum of Understanding that spells out the responsibilities and obligations of each party and how developer fees will be distributed.

#### **6. Attachments**

- Certification Form (Attachment A to this RFP) executed by each joint venture team entity.
- Request for Contracting Preference for Local and Small Businesses, if applicable (Attachment B to this RFP)
- Previous Customer Reference Worksheets (Attachment C to this RFP), one each for (a) a lender, (b) a supplier, and (c) a public agency
- Conflict of Interest Form (Attachment D to this RFP) executed by each joint venture team entity.

#### **C. Deliverables**

Provide six (6) bound and numbered paper sets of the information requested under Submittal Requirements by the RFP due date identified herein plus an electronic copy on a CD.

## **PART VI. SELECTION PROCESS, CRITERIA AND TIMEFRAME**

### **A. Selection Process**

The Housing Department staff will assemble a selection panel, which may consist of City employees from other departments as well as independent outside parties, in order to conduct the selection process. The Director of Housing is the sole and final decision-maker regarding the selection recommendation to the City Council and reserves the right to reject any or all submittals or proposals.

A Mandatory Pre-Submittal Meeting will be held for all interested respondents at 10:00 a.m. on June 26, 2009, in Room 1047 in City Hall, 200 East Santa Clara Street, San Jose. Questions from potential respondents will be addressed by Housing Department staff at this meeting.

Written questions and inquiries can also be sent to the primary contact identified in the Executive Summary by July 6, 2009.

Written responses to all questions and inquiries plus a summary of the June 26<sup>th</sup> Pre-Submittal Meeting will be posted on BidSync (and the City of San José's BidLine) by July 13, 2009.

In the first phase of the process, interested developers or developer teams will submit proposals ("Proposals") in response to this RFP.

Written Proposals delivered by the deadline indicated herein will be reviewed and evaluated by the selection panel based on the evaluation criteria for Proposals outlined below. During this evaluation process, City staff and the selection panel members may, at their discretion, contact references and industry sources, investigate previous projects and current commitments, and take any other information into account in their evaluation of the responses. The Housing Department reserves the right to request clarification or additional information from respondents.

Based on the evaluations by the selection panel, a "short list" of respondents will be prepared. The respondents on the short list would then be interviewed by the selection panel.

At the final phase, it is expected that a respondent or respondent team will be selected for recommendation to the City. The Housing Department staff will prepare a staff report to the City Council seeking approval of the selected respondent/respondent team.

### **B. Evaluation Criteria for Qualifications**

Each response to this RFP will be rated and scored numerically according to the following schedule:

| Proposal Responsiveness                                                                                                                                                            | Pass/Fail |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| Proposed implementation of the program, including an understanding of the NSP single-family program requirements, timeliness, and appropriateness of the lead person for each task | 20%       |

|                                                                                                                                                                                                |     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Familiarity with local zoning, building code, flood insurance and historic preservation regulations                                                                                            | 5%  |
| Experience with acquisition, rehabilitation, and marketing and resale of single-family homes to low- and moderate-income buyers, including coordination with local affordable housing agencies | 30% |
| Financial capacity                                                                                                                                                                             | 15% |
| Leveraging HUD NSP funds with outside funding                                                                                                                                                  | 20% |
| Local Business Enterprise                                                                                                                                                                      | 5%  |
| Small Business Enterprise                                                                                                                                                                      | 5%  |

**C. Timeframe and Schedule**

***Proposals must be received physically at the Housing Department of the City of San José, 200 East Santa Clara Street, 12<sup>th</sup> Floor, San Jose, CA 95113 no later than 4:00 p.m. PST on July 24, 2009.*** All responses must be addressed to the attention of Ron Eddow, Senior Development Officer, and marked on the outside "Request for Proposals: NSP Single-Family Program."

The tentative schedule for selection of a respondent for the NSP Single-Family Acquisition/Rehabilitation Program is summarized below:

|                                                                                                       |                           |
|-------------------------------------------------------------------------------------------------------|---------------------------|
| Issuance of RFP                                                                                       | June 12, 2009             |
| Mandatory Pre-Submittal Meeting<br><b>(200 E. Santa Clara Street, Room 1047)</b>                      | 10:00 a.m., June 26, 2009 |
| Deadline for Submitting Written Questions                                                             | July 6, 2009              |
| Answers to Oral and Written Questions to be Posted                                                    | July 13, 2009             |
| Respondent/Respondent Team Proposals Due<br><b>(200 E. Santa Clara Street, 12<sup>th</sup> floor)</b> | 4:00 p.m., July 24, 2009  |
| Initial Cut of Proposals Made by City Staff                                                           | July 29, 2009             |
| Interviews with Finalist Respondents                                                                  | August 5 & 6, 2009        |
| City Council Approves Selection of Respondent                                                         | September 1, 2009         |
| Execution of Contract Between City and Respondent                                                     | September 9, 2009         |

## **PART VII. PUBLIC NATURE OF PROPOSAL MATERIAL**

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 sent 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 be considered a public record in its entirety subject to the procedures in set forth below. Do not mark your entire proposal as “confidential”. 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.

Although the California Public Records Act recognizes that certain confidential 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.

## **PART VIII. GROUNDS FOR DISQUALIFICATION**

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

[http://www.sanjoseca.gov/clerk/cp\\_manual/cpm\\_0\\_35.pdf](http://www.sanjoseca.gov/clerk/cp_manual/cpm_0_35.pdf)

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

Contact regarding this procurement with any City official or employee or Evaluation team other than the Primary Contact listed in the Executive Summary from the time of issuance of this solicitation until the end of the protest period.

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

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

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

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

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

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

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

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

#### **PART IX. CONFLICT OF INTEREST**

The successful proposer shall avoid all conflict of interest, or appearance of conflict of interest, in performance under contract with the City. A proposer that has any conflict or appearance of conflict, including serving as consultant, officer or staff to a borrower or developer currently or previously conducting business in San Jose, shall be reported in the response to this RFP. Any conflict or appearance of conflict after this contract is awarded, must be immediately reported to the City. Each party in the respondent entity needs to fill out the Conflict of Interest form included in this RFP as Attachment D, and include those executed Forms in the respondent's submittal.

#### **PART X. NONDISCRIMINATION/NONPREFERENTIAL TREATMENT**

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

#### **PART XI: ADDITIONAL TERMS AND CONDITIONS**

- A. This RFP does not commit the City to pay any costs incurred in the submission of the Proposal or in making any necessary studies or analysis in preparation or submission of the Proposal.
- B. The City reserves the right without limitation to:
  - 1. Execute an agreement with one or more proposers based solely on the proposal and any approved additions;
  - 2. Enter into an agreement with another proposer in the event that the originally selected proposer defaults or fails to execute an agreement with the City;
  - 3. Enter into negotiations with one or more proposers;
  - 4. Modify and re-issue the RFP;
  - 5. Take action regarding the RFP as may be deemed to be in the best interest of the City.
- C. The City reserves the right to verify any information provided during the RFP process. The City may contact references listed or any other person known to have contracted with a proposer.
- D. An Agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and of the selected proposer.
- E. The successful proposer will be required to demonstrate evidence of insurance in accordance with the insurance provisions listed in Attachment E (Exhibit E) of this RFP.

## **PART XII. PROTESTS**

If an unsuccessful Proposer wants to dispute the award recommendation, the Protest must be submitted in writing to the Director of Housing no later than ten calendar days after announcement of the successful Proposer, detailing the grounds, factual basis and providing all supporting information. Failure to submit a timely written Protest to the contact listed below will bar consideration of the Protest.

The address for submitting protests is:

Leslye Krutko, Director of Housing  
City of San Jose  
200 East Santa Clara Street, 12<sup>th</sup> Floor  
San Jose, CA 95113

## ATTACHMENT A

### Certifications

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

### **PROPOSER REPRESENTATIONS**

1. Proposer did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms, or conditions of this proposal.
2. Proposer additionally certifies that neither proposer nor its principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, any California State agency, or any local governmental agency.
3. Proposer acknowledges that all requests for deviations, exceptions, and approved equals are enclosed herein and that only those deviations, exceptions, and approved equals included in the RFP document or permitted by formal addenda are accepted by the City.
4. Proposer did not receive unauthorized information from any City staff member or City Consultant during the Proposal period except as provided for in the Request for Proposals package, formal addenda issued by the City, or the pre-proposal conference.
5. Proposer hereby certifies that the information contained in the proposal and all accompanying documents is true and correct.
6. Please check the appropriate box below:
  - ☐ If the proposal is submitted by an individual, it shall be signed by him or her, and if he or she is doing business under a fictitious name, the proposal shall so state.
  - ☐ If the proposal is submitted by a partnership, the full names and addresses of all members and the address of the partnership, the full names and addresses of all members and the addresses of the partnership, the full names and addresses of all members and the address of the partnership shall be stated and the proposal shall be signed for all members by one or more members thereof.
  - ☐ If the proposal is submitted by a corporation, it shall be signed in the corporate name by an authorized officer or officers.
  - ☐ If the proposal is submitted by a limited liability company, it shall be signed in the corporate name by an authorized officer or officers.

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

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

# ATTACHMENT B

## Preference for Local and Small Businesses

| City of San Jose<br>Request for Contracting Preference for Local and Small Businesses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                              |                                              |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|----------------------------------------------------------|
| <p>Chapter 4.06 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.</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 <b>dollar value</b> 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 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 <b>additional 5% to 10% points</b> in the <b>scoring</b> of their proposal.</p> |                                                                                                                                                              |                                              |                                                          |
| The following determinations have been made with respect to this procurement: (for official use only)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                              |                                              |                                                          |
| <b>Type of Procurement</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <input type="checkbox"/> Bid                                                                                                                                 | <input type="checkbox"/> Request for Quote   | <input checked="" type="checkbox"/> Request for Proposal |
| <b>Type of Preference</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <input type="checkbox"/> Price is Determinative<br><input checked="" type="checkbox"/> Price is Not Determinative                                            |                                              |                                                          |
| <b>Amount of Preference</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | LBE preference = 2.5% of <b>Cost</b><br>SBE preference = 2.5% of <b>Cost</b><br>LBE preference = 5% of <b>Points</b><br>SBE preference = 5% of <b>Points</b> |                                              |                                                          |
| In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                              |                                              |                                                          |
| <b>Business Name</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                              |                                              |                                                          |
| <b>Business Address</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                              |                                              |                                                          |
| <b>Telephone No.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                              |                                              |                                                          |
| <b>Type of Business</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <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><br>In order to qualify as an LBE you must provide the following information:<br>Current San Jose Business Tax Certificate Number <span style="border: 1px solid black; display: inline-block; width: 150px; height: 20px; vertical-align: middle;"></span><br>Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County: <span style="border: 1px solid black; display: inline-block; width: 250px; height: 40px; vertical-align: middle;"></span>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                              |                                              |                                                          |
| <b>**SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE</b><br>In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your <b>entire</b> business --NOT just local employees, or employees working in the office address given above.<br>Please state the number of employees that your Business has: <span style="border: 1px solid black; display: inline-block; width: 50px; height: 20px; vertical-align: middle;"></span>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                              |                                              |                                                          |
| 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<br>I declare under penalty of perjury that the information supplied by me in this form is true and correct.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                              |                                              |                                                          |
| Executed at: _____, California<br>Date: _____<br>Signature: _____<br>Print name: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                              |                                              |                                                          |

**ATTACHMENT C**  
**PREVIOUS CUSTOMER REFERENCE WORKSHEET**

Provide reference information for the product you are quoting and used in a manner and environment similar in size and scope to the requirements of this project.

|                                                                                           |  |
|-------------------------------------------------------------------------------------------|--|
| Name of Customer:                                                                         |  |
| Customer Address                                                                          |  |
|                                                                                           |  |
|                                                                                           |  |
| Customer Contact Name(s)                                                                  |  |
|                                                                                           |  |
|                                                                                           |  |
| Customer Contact Phone Number(s)                                                          |  |
|                                                                                           |  |
|                                                                                           |  |
| Brief description of work performed for this client (use additional sheets if necessary): |  |
|                                                                                           |  |

**ATTACHMENT D**  
**CONFLICT OF INTEREST FORM**

To be completed by consultants making proposals.

NAME \_\_\_\_\_

DATE \_\_\_\_\_

PROPOSED ASSIGNMENT: \_\_\_\_\_

In order for the City to assess whether the personnel proposed to be assigned by the successful Proposer to work on the Proposed Assignment have a conflict of interest, this form must be completed by each person that the Proposer intends to assign.

| Questions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Yes<br>(Provide Details) | No |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----|
| 1. Do you have any official, professional, financial or personal relationships with any person or firm that might affect your judgment or your ability to provide services to the City that are fair and impartial?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                          |    |
| 2. Stock and Investments<br><br>(a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment?<br><br>(b) Does your spouse or a dependent own any stock in company likely to be affected by or involved in the Proposed Assignment?<br><br>(c) Do you hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?<br><br>(d) Does your spouse or a dependent hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?<br><br>If the answer is yes to any of the above questions, please provide the name of the company and the amount of the stock or investment. |                          |    |
| 3. Employment & Consulting<br><br>(a) Is your spouse or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?<br><br>(b) Has your spouse or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?<br><br>(c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?<br><br>If the answer is yes to any of the above questions, please provide name of employer, nature of services provided and if the dates employed or retained.                                                                                                                                                                                                          |                          |    |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| <p>4. Payments or Gifts within the past 12 months, have you received any payments or gifts</p> <ul style="list-style-type: none"> <li>• from anyone likely to be affected by or involved in the Proposed Assignment?</li> <li>• Within the past 12 months, has your spouse or a dependent received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</li> </ul> <p>If the answer is <b>yes</b>, please provide the amount the payment or value of the gift, the name and position of the payor/donor and the date of receipt.</p>                              |  |  |
| <p>5. Real Estate</p> <p>(a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the location of the property.</p>                                                                                                                                                                                                                                                       |  |  |
| <p>6. Positions</p> <p>(a) Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the name of the entity, and the title of the position held.</p> |  |  |

If during the course of the evaluation, any personal, external, or organizational impairments occur that may affect your ability to do the work and report findings impartially, notify the Program Manager immediately.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**CITY OF SAN JOSE CONTRACTS/AGREEMENTS  
STANDARD TERMS AND CONDITIONS**

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

**SECTION 1.     SCOPE OF SERVICES**

**SECTION 2.     TERM OF AGREEMENT**

**SECTION 3.     SCHEDULE OF PERFORMANCE**

**SECTION 4.     COMPENSATION**

**SECTION 5.     METHOD OF PAYMENT**

**SECTION 6.     INDEPENDENT CONTRACTOR.**

It is understood and agreed that CONTRACTOR, in the performance of the work and services agreed to be performed by CONTRACTOR, shall act as and be an independent contractor and not an agent or employee of CITY; and 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.

**SECTION 7.     ASSIGNABILITY.**

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

**SECTION 8.     INDEMNIFICATION.**

CONTRACTOR 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 CONTRACTOR'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.**

CONTRACTOR 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. CONTRACTOR agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

**SECTION 10. NONDISCRIMINATION.**

CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR shall deliver to CITY copies of all reports, documents, and other work performed by CONTRACTOR under this AGREEMENT, and upon receipt thereof, CITY shall pay CONTRACTOR for services performed and reimbursable expenses incurred to the date of termination.

**SECTION 12. GOVERNING LAW.**

CITY and CONTRACTOR agree that the law governing this AGREEMENT shall be that of the State of California.

**SECTION 13. COMPLIANCE WITH LAWS.**

CONTRACTOR 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 CONTRACTOR 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 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.

**SECTION 16. WAIVER.**

CONTRACTOR 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 CONTRACTOR shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

**SECTION 17. CONTRACTOR'S BOOKS AND RECORDS.**

- A. CONTRACTOR 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 CONTRACTOR pursuant to this AGREEMENT.
- B. CONTRACTOR 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 CONTRACTOR'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 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 be 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.

**SECTION 18. CONFLICT OF INTEREST.**

CONTRACTOR shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. CONTRACTOR 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, CONTRACTOR shall file a Leaving Office Disclosure Statement of Economic Interest (Form 700).

**SECTION 19. GIFTS.**

- A. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR. 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.**

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 of CONTRACTOR 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 CONTRACTOR:

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. Contractor's Pollution, including Lead Paint and Asbestos

#### **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. Contractor's Pollution, including Lead Paint and Asbestos: \$1,000,000

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  
Human Resources Department  
Risk Management Division  
200 E. Santa Clara Street, 2<sup>nd</sup> Floor, Wing  
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 F

### Rules for Rehabilitation of Structures 50+ Years Old

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#### ATTACHMENT A TO PROGRAMMATIC AGREEMENT FOR HOUSING REHABILITATION PROGRAM

##### Housing Rehabilitation Program Activities Not Requiring Review:

1. On structures 50 years old or greater:

- a. Any interior work within private living spaces (i.e., single-family dwellings, duplex units and multi-family apartments or condominium units, but not including lobbies, corridors, stairways, elevators or other publicly accessible interior spaces in multi-family structures) which does not affect the exterior or exterior appearance of the building, including but not limited to repair, replacement or installation of: electrical wiring and fixtures; plumbing and plumbing fixtures; furnaces and other mechanical equipment; fire or smoke detectors; cabinetry; appliances; door; floor coverings and refinishing; thermal insulation; handicap accessibility features; and painting.

In lobbies or other publicly accessible interior spaces in multi-family structures: (1) repainting of existing painted surfaces if destructive preparation treatments are not used; and (2) repair or replacement of floors, walls and ceiling s(including decorative trim and other features) when the repair or replacement is done in-kind to match the existing materials and form.

- b. Exterior repainting, irrespective of color, of existing painted surfaces if destructive preparation treatments are not used, including but not limited to waterblasting, sandblasting and chemical removal.
- c. Repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair or replacement is done in-kind to match materials and form.
- d. Replacement of deteriorated window frames when the replacement is done in-kind to match the existing materials and form.
- e. Replacement of window panes in-kind or with double or triple glazing so long as glazing is clear and not colored, and replacement does not alter existing window frame materials and form.
- f. Caulking and weatherstripping with compatibly colored materials.

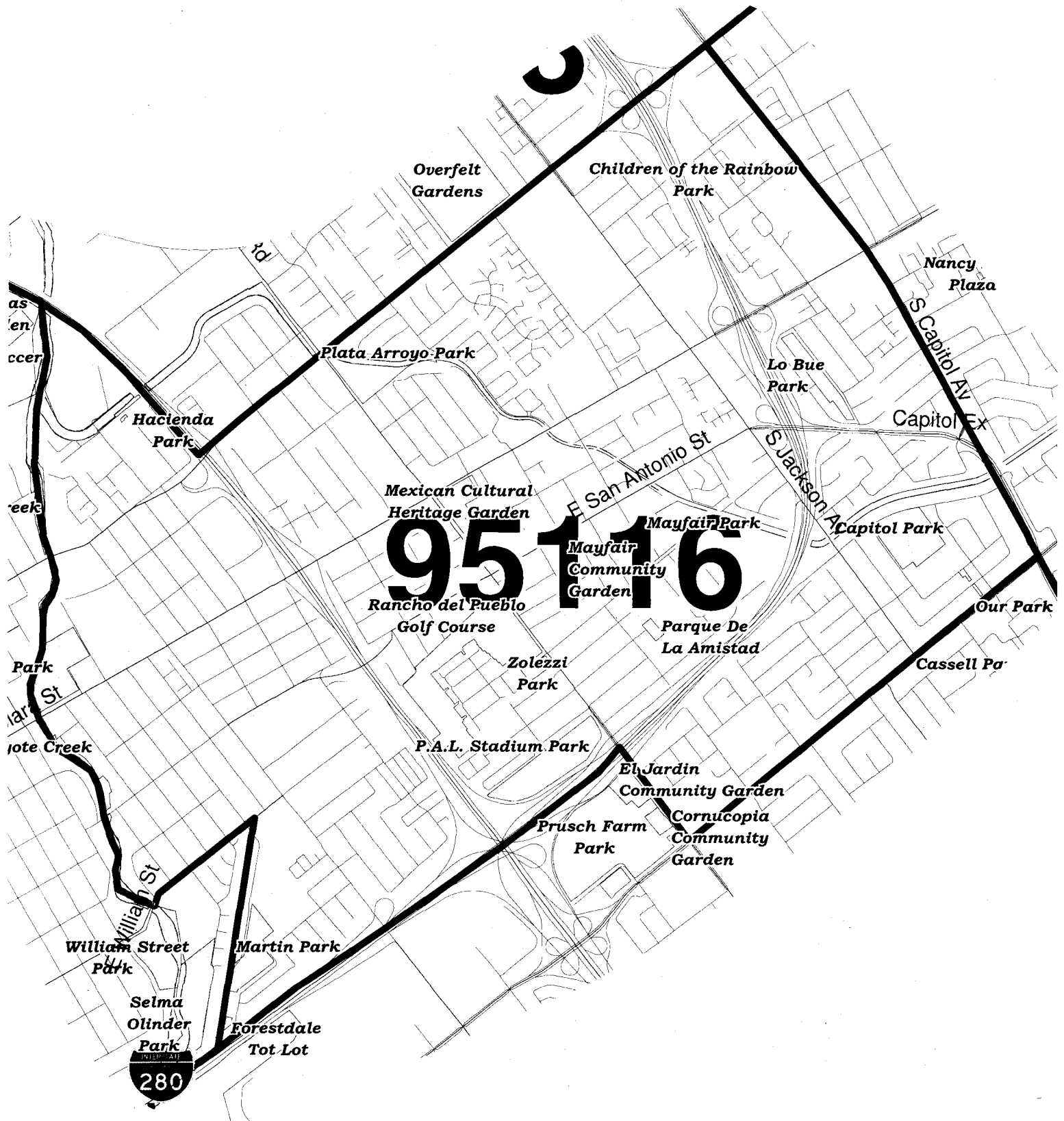
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- g. Installation of security devices, including dead bolts, door locks, window latches, and door peepholes, and the installation of electronic security systems.
  - h. Repair or replacement of fencing visible from the street when work is done in-kind to match existing materials and forms.
  - i. Installation of fencing visible from the street where there is none pre-existing.
  - j. Repair, replacement or installation of side- and rear-yard fencing, in accordance with local codes, using any which is not visible from the street, using any materials and form.
  - k. Installation of front-yard landscaping.
  - l. Repair or replacement of front driveways and walkways when work is done in-kind to match existing materials and form.
  - m. Installation of paved driveways where there is none pre-existing.
  - n. Repair or replacement of signs or awnings when work is done in-kind to match existing materials and form.
  - o. Repair or replacement of roofs when work is done in-kind to match existing materials, except that existing wood shingles or shakes may be replaced with like-colored dimensional composition shingles.

## ATTACHMENT G.1

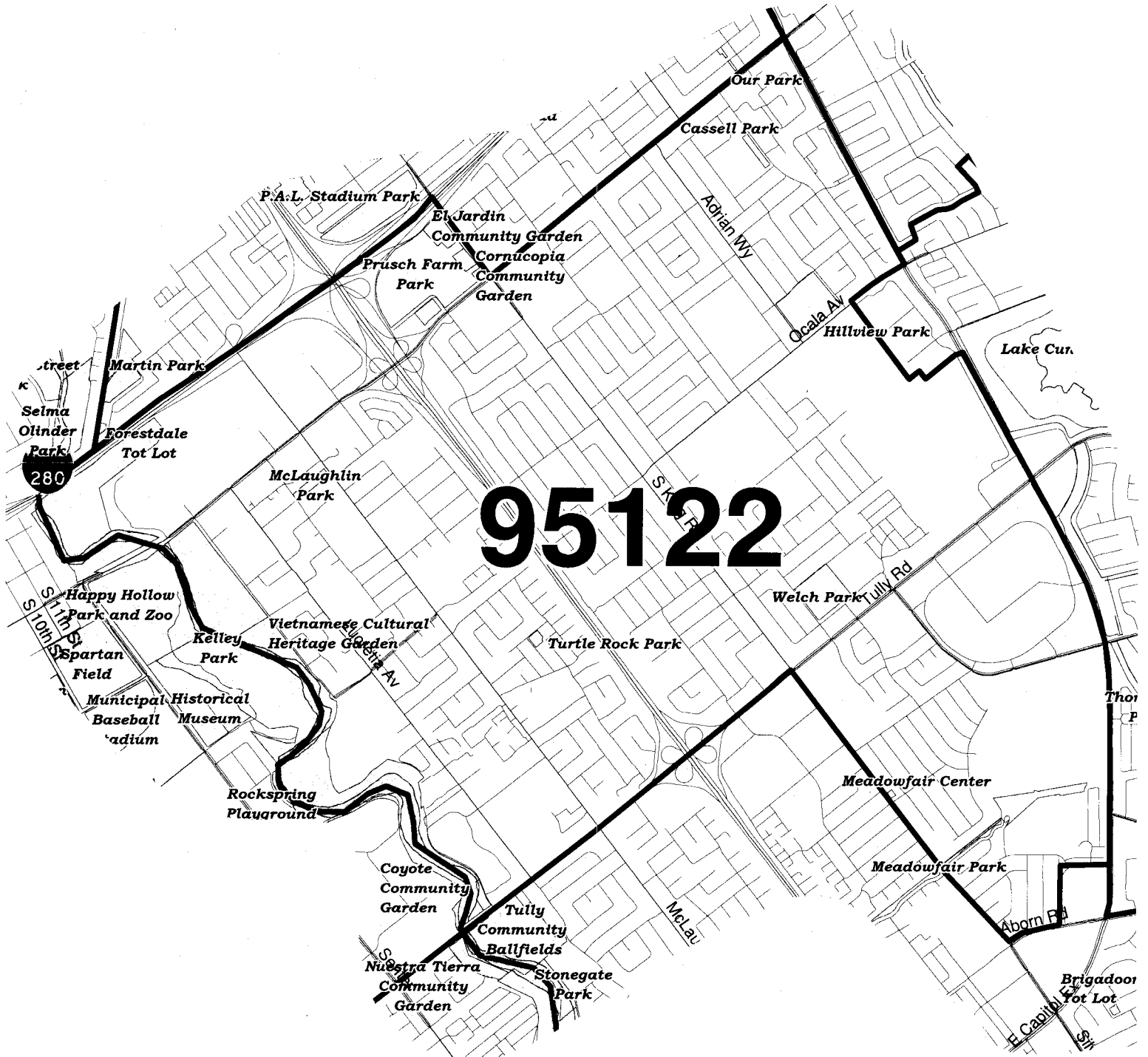
### Zip Codes Where Eligible Properties Are Located



### Zip Codes Where Eligible Properties Are Located



### Zip Codes Where Eligible Properties Are Located



## ATTACHMENT G.4

### Zip Codes Where Eligible Properties Are Located

