



REQUEST FOR PROPOSAL

(Qualifications Based RFP)

RFP Number # 10-PBCE01

RFP NAME: ARCHITECTURAL REVIEW COMMITTEE

Brief Description of Requirement: Request for Qualifications for members for the City of San José's Architectural Review Committee.

Timeline:

RFP release date:	Friday, October 22, 2010
Contact name: Address: Phone: Fax: E-mail address:	Page Benway 200 E. Santa Clara St. 3 rd Floor Tower San Jose, CA 95113-1905 408-535-7887 408-292-6055 page.benway@sanjoseca.gov
Deadline for questions and objections:	Friday, November 5, 2010
RFP due date: Time: Location:	Friday, November 19, 2010 4:00 PM Dept. of Planning, Building & Code Enforcement 200 E. Santa Clara St. 3 rd Floor Tower San José, CA 95113-1905

1 INTRODUCTION

The Department of Planning, Building and Code Enforcement of the City of San José (“City”) requests a Statement of Qualifications (“SOQ”) from individuals desiring to provide consultant services by serving on an Architectural Review Committee (“ARC”) to review selected development projects in the Downtown area for conformance with the City of San José *Downtown Design Guidelines*, proposed buildings over 100 feet citywide, and freeway signs. The committee was initially formed in 2005 in response to Zoning Ordinance changes developed to streamline the development review process including the delegation of approval authority for certain downtown development to the Director of Planning. In Fall of 2006, the City Council expanded the Enhanced High-rise Design Review process to include buildings 100 feet or greater in height throughout the City. In 2010, Council added design review for freeway signs.

2 BACKGROUND

The City intends to select five to ten members for the ARC from design professionals with a background in the fields of art, architecture, urban design, city and environmental planning, engineering, and historic preservation. They will then work in smaller groups to review specific development proposals at the schematic design and design development project phases. The attached scope of services provides more specific information on the overall permitting process.

Compensation is a set amount for each proposal reviewed at an ARC meeting, subject to the maximum compensation specified in the Agreement.

An Agreement may be awarded to the most qualified Applicants based on this Request for Qualifications and interview process, and may have annual options to renew the Agreement.

3 SCOPE OF WORK

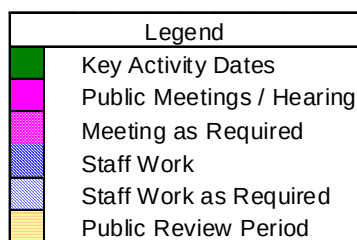
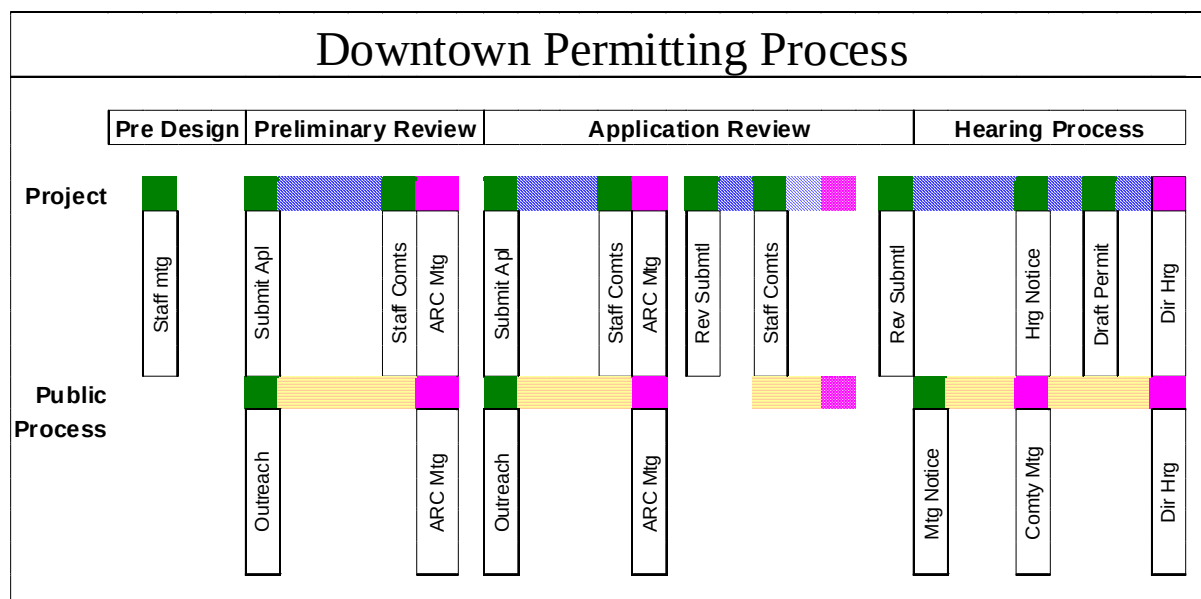
The professional consultant services to be provided by the selected Applicants will consist of serving as an Architectural Review Committee to review proposed building greater than 100 feet, select downtown proposals, and freeway sign designs. The role of the ARC in this process is to serve as an advisory board to the Director of Planning, Building and Code Enforcement.

At the schematic design and design development phases (see permitting process flowchart below), the City will provide the ARC with available plans and project information to be able to review the projects for conformance with applicable policies, guidelines, and ordinances.

For example, the goal of the *Downtown Design Guidelines* is to define expectations, provide predictability and allow flexibility. The City of San Jose *Downtown Design Guidelines* have three principal objectives:

1. To enhance the character of the City and ensure that new development sensitively fits the City's expectations for the context, character and quality that will define San Jose.
2. To encourage creativity, achieve design excellence and provide a reasonable degree of certainty for the developer by establishing a common understanding of design criteria and development standards among the developer, neighbors and the City early in the design and siting of new development.
3. To provide flexibility in the application of design criteria.

The full text of the City of San Jose *Downtown Design Guidelines* can be found at the following url: http://www.sanjoseca.gov/planning/pdf/dg_downtown.pdf



For example, the Architectural Review Committee would review proposed projects at two stages.

1. Preliminary Review – Prior to filing a development application with the Planning Division, high-rise developments in the Downtown Core Area, as defined in the General Plan, as well as the remainder of the City will go through a comprehensive

preliminary review process with Planning, Public Works, Police, and Fire Department staff. The ARC will be a part of this process helping to mold the schematic design of the project at the early stages. It is the City's intent to give the developer comprehensive written comments at the preliminary review stage, so that the development review phase can be expedited and the developer may proceed through the application process with a high degree of certainty.

2. Planning Application – High-rise developers will submit Site Development Permit applications on sites zoned DC Downtown Primary Commercial Zoning District. Staff normally provides written comments to the developer within 30 days of application filing. During this design development phase, the ARC would be expected to review the high-rise project for conformance to the *Downtown Design Guidelines*, and for conformance to previous comments made during the preliminary review stage. The ARC would advise the Director of Planning, Building and Code Enforcement, or his designee, on what improvements could be made to enhance the design of the proposed project.

In addition, the Architectural Review Committee will review proposed freeway signs at one stage:

1. Planning Application – Developers will submit a development permit for any desired freeway sign. Staff normally provides written comments to the developer within 30 days of application filing. During the application review phase, the ARC would be expected to review the freeway sign for conformance to the *Freeway Sign Design Guidelines*. The ARC would advise the Director of Planning, Building and Code Enforcement, or his designee, on what improvements could be made to enhance the design of the proposed freeway sign.

The description of the services required for this Request for Qualification (RFQ) is general in nature to allow flexibility in implementation.

4 DESIRED QUALIFICATIONS

MINIMUM ELIGIBILITY REQUIREMENTS

- 4.1** At the minimum, respondents to this Request for Qualifications will possess the following:
- 4.2** Eligible individuals must have recent experience and have demonstrated knowledge working on, and clearly explaining, the design priorities of high-rise and/or urban infill projects in response to urban design parameters. Applicants should exhibit a working knowledge of regional and international architectural design standards; precedents and concepts as they relate to the composition of form; and assembly of materials and enhancement of the public realm. Applicants should also demonstrate the ability to comment concisely on critical issues in a respectful and productive manner. Experience working on historic preservation projects and signage is highly desirable.
- 4.3** Eligible applicants must have an address located in the United States. In addition, local business enterprises (LBE) and small business enterprises (SBE) will be given preference per the San José Municipal Code (see also paragraph 11.2 below).
- 4.4** Eligible applicants shall have a minimum of three (3) years' experience in the fields of art, architecture, landscape architecture, engineering, urban design, or city and environmental planning. Applicants shall provide evidence that for their claimed field of expertise they possess the appropriate Bachelor's, Graduate or Professional degree and/or a valid professional registration/license in the claimed field of expertise. U.S. Green Building Council (USGBC), Leadership in Energy and Environmental Design (LEED) Certification, and Professional Qualifications of the Secretary of Interiors Standards are desirable.
- 4.5** Possession of a City of San José Business License or an acknowledgement that it will obtain one if selected for negotiation of a contract.
- 4.6** List of three (3) professional references and three (3) client references on high-rise or urban infill projects.
- 4.7** Complete all attachments.
- 4.8** STATEMENT OF QUALIFICATIONS

4.8.1 A cover letter stating project interest which includes:

4.8.1.1 A statement describing why an applicant is considered qualified to perform the professional work required in a responsive manner; and

4.8.1.2 A description of experience working and interacting with diverse groups of people in the public sector, community, and the development industry.

4.8.2 A two-page "Summary Statement of Minimum Eligibility Requirements" addressing the items in Sections 4.2 to 4.7 above with examples and attaching the appropriate certifications and/or licenses.

4.8.3 Based on the Applicant's "Summary Statement of Minimum Eligibility Requirements" and with reference to the selection criteria in Section 11.1, provide information about previous related experience, as described in this RFP. Applicants are also requested to list all relevant urban infill and high-rise projects that they have worked on over the last three to ten (3-10) years, including the following:

4.8.3.1 Name, location and description of project.

4.8.3.2 Estimated construction value on each project.

4.8.3.3 Brief description of the Applicant's involvement in each project.

4.8.3.4 Name, address, phone number, and e-mail address of client with name of contact person.

4.8.3.5 Applicant's history in performing the required work.

4.8.3.6 Dates of projects.

4.8.3.7 Brief description of important features.

4.8.4 Commitment to or ownership interest in property, projects or duties that may conflict with serving on the Architectural Review Committee.

4.8.5 List of contracts/agreements terminated for convenience or default by the Applicant within the past three years, if any.

4.8.6 List any litigation or potential conflicts of interest with the City, the Redevelopment Agency, or others that now affects or may affect in the future Applicant's ability to perform.

4.8.7 Execute a confidentiality agreement not to use or release any proprietary or copyrighted information obtained from applicants in the Architectural Review process for their own or clients interests.

5 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. If you have a problem registering online, contact BidSync directly toll-free at (800) 990-9339 or by email at info@bidsync.com.

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

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

6 TERM OF AGREEMENT

It is anticipated that the term of this agreement will be effective through December 31, 2012, assuming a contract start date of January 1, 2011, with the option of renewing for three successive one-year periods.

7 COMPENSATION AND WORK HOURS

Selected consultants will be paid for \$1,000 per project reviewed per meeting. Selected consultants will be paid \$500 per freeway sign reviewed per meeting. This compensation rate assumes attendance and participation at the ARC meeting, and preparation including site visits prior to the meeting.

8 PROCEDURE FOR SUBMITTING QUESTIONS AND INQUIRIES

- 8.1** All questions/inquiries must be made through the contact listed on the cover sheet of this document, via BidSync. Contact with representative(s) other than name listed in this RFP is grounds for disqualification. The City will provide a written response to all questions in the form of an Addendum.

9 OBJECTIONS

- 9.1** Any objections as to the structure, content or distribution of this RFP must be submitted in writing to the Contact listed on the cover sheet of this document. Objections must be as specific as possible, and identify the RFP section number and title, as well as a description and rationale for the objection.
- 9.2** All objections, questions and inquiries must be received by the deadline stated on the cover sheet.

10 PROPOSAL SUBMITTAL REQUIREMENTS

You must respond to this RFP by the due date and time as stated on the cover sheet of this document in order for your proposal to be considered. Proposals must be submitted and addressed to the attention of the contact listed on the cover sheet of this document, clearly labeled RFP-10-PBCE01.

10.1 REFERENCES

- 10.1.1** Provide three (3) professional references and three (3) client references on high-rise or urban infill projects.

10.2 FEE STRUCTURE

- 10.2.1** Compensation for work done under this RFP is set. There will be no negotiation on compensation.

10.3 ATTACHMENTS

- 10.3.1** Attachment A – Proposal Certification

- 10.3.2** Attachment B – Request for Contracting Preference for Local and Small Businesses

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

10.3.3 Attachment C – City’s Terms and Conditions; Exhibit E, Insurance Provisions

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

10.3.4 Attachment D - Previous Customer Reference Worksheet

10.3.5 Attachment E – Conflict of Interest Form

11 SELECTION PROCESS AND EVALUATION CRITERIA

11.1 SELECTION PROCESS

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

11.1.2 Responses will be evaluated as outlined in this section.

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

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

11.2 EVALUATION CRITERIA

Description	Weight
Proposal Responsiveness	Pass/Fail
Experience of Proposer	35%
Customer Satisfaction/Firm Reputation	20%
Interview	35%
Local Business Enterprise	5%
Small Business Enterprise	5%

12 GROUND FOR DISQUALIFICATION

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

http://www.sanjoseca.gov/clerk/cp_manual/CPM_0_35.pdf

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

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

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

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

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

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

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

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

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

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

13 CONFLICT OF INTEREST

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

14 GENERAL INFORMATION

- 14.1** The successful Proposer will be required to demonstrate evidence of insurance in accordance with the insurance provisions listed in Attachment C (Exhibit E).
- 14.2** All costs associated with responding to this request are to be borne by the Proposer.
- 14.3** It is the City's policy that the selected firm shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San José contracts.

15 LOCAL AND SMALL BUSINESS PREFERENCE

Chapter 4.12 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference shall be 5 points if the business is local and an additional 5 points if the business is small. In order for the Proposer to be eligible for local and/or small business preference, the Proposer must complete Attachment C, Request for Contracting Preference for Local and Small Businesses. If the Proposer fails to complete this form and submit it with the proposal, the Proposer will be denied consideration for local/small business preference. This information cannot be submitted later.

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

16 PUBLIC NATURE OF PROPOSAL MATERIAL

- 16.1** All correspondence with the City including responses to this RFP will become the exclusive property of the City and will become public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) All documents that you send to the City will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.
- 16.2** Therefore, any proposal which contains language purporting to render all or significant portions of their proposal "Confidential", "Trade Secret" or "Proprietary", or fails to provide the exemption information required as described below will be considered a public record in its entirety subject to the procedures in Section 15.5.
- 16.3** Do not mark your entire proposal as "confidential".
- 16.4** The City will not disclose any part of any proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to this RFP will be subject to public disclosure. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as "Trade Secret" and refer to the appropriate section of the Public records Act which provides the exemption as well as the factual basis for claiming the exemption.
- 16.5** Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of San José may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary", the City will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

17 PROTESTS

- 17.1** If an unsuccessful Proposer wants to dispute the award recommendation, the Protest must be submitted in writing to the Joe Horwedel no later than ten calendar days after announcement of the successful Proposer, detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes of proposal requirements and specifications, which must be addressed in accordance with the above Section. Failure to submit a timely written Protest to the contact listed below will bar consideration of the Protest.
- 17.2** The address for submitting protests is:
- Attention: Mr. Joe Horwedel
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113

ATTACHMENT A

Certification

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

PROPOSER REPRESENTATIONS

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

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

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

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

ATTACHMENT B – LOCAL AND SMALL BUSINESS PREFERENCE

City of San Jose Request for Contracting Preference for Local and Small Businesses			
Chapter 4.12 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor. In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (<i>regardless of where they are located</i>) of your firm is 35 or fewer. There are two ways in which the preference can be applied. In procurements where price is the determinative factor (<i>i.e. there are not a variety of other factors being considered in the selection process</i>) the preference is in the form of a credit applied to the dollar value of the bid or quote. For example, a non-local vendor submits a quote of \$200 per item and a LBE submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199. In procurements where price is not the determinative factor such, as an RFP, typically a variety of factors are evaluated to determine which proposal best meets the City's needs. In procurements such as these, a qualified LBE will be given 5% and a qualified SBE will be given an additional 5% of the total points in the scoring.			
The following determinations have been made with respect to this procurement: (for official use only)			
Type of Procurement	☐ Bid	☐ Request for Quote	☒ Request for Proposal
Type of Preference	☐ Price is Determinative		
Amount of Preference	☒ Price is Not Determinative		
	LBE preference = 2.5% of Cost	LBE preference = 5% of Points	
	SBE preference = 2.5% of Cost	SBE preference = 5% of Points	
In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.			
Business Name			
Business Address			
Telephone No.			
Type of Business	☐ Corporation	☐ LLC	☐ LLP
	☐ General Partnership	☐ Sole proprietorship	☐ Other (explain)
*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE In order to qualify as an LBE you must provide the following information: Current San Jose Business Tax Certificate Number Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County: 			
**SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your entire business --NOT just local employees, or employees working in the office address given above. Please state the number of employees that your Business has: 			
Based upon the forgoing information I am requesting that the Business named above be given the following preferences (<i>please check</i>): ☐ Local Business Enterprise ☐ Small Business Enterprise			
I declare under penalty of perjury that the information supplied by me in this form is true and correct.			
Executed at: _____, California Date: _____ Signature _____ Print name _____			

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

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

SECTION 1. SCOPE OF SERVICES.

CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from _____ to _____, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed Dollars (\$0.00). The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

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

SECTION 8. INDEMNIFICATION.

CONSULTANT shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONSULTANT's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.

CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Human Resources or the Director's authorized designee ("Risk Manager") of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.
- C. CITY's _____ is empowered to terminate this AGREEMENT on behalf of CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this AGREEMENT, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.

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

SECTION 13. COMPLIANCE WITH LAWS.

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 14. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 15. OWNERSHIP OF MATERIALS.

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

SECTION 16. WAIVER.

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 17. CONSULTANT'S BOOKS AND RECORDS.

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this AGREEMENT.
- B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.
- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

SECTION 18. CONFLICT OF INTEREST.

CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. **[if required] CONSULTANT shall file an Assuming Office Disclosure Statement of Economic Interests (Form 700) as specified in EXHIBIT F, entitled "DISCLOSURE STATEMENT", which is attached hereto and incorporated herein. Such statement shall be filed within thirty (30) days of the date of this AGREEMENT and annually thereafter by the first of April. Upon termination of this AGREEMENT, CONSULTANT shall file a Leaving Office Disclosure Statement of Economic Interest (Form 700).**

SECTION 19. GIFTS.

- A. CONSULTANT is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.
- B. CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.

- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by CONSULTANT. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

SECTION 20. DISQUALIFICATION OF FORMER EMPLOYEES.

CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 21. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F (or G, if applicable), entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 22. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

To CONSULTANT:

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 23. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 24. PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

EXHIBIT E

INSURANCE

ARCHITECT, at ARCHITECT'S sole cost and expense for the full term of this Agreement or any renewal thereof, shall obtain and maintain at least all of the following minimum insurance requirements prior to commencing any work or receiving any payments therefore under this contract:

A. **Automobile Policy**

Architect agrees to keep in good standing a valid California driver's license at all times during the term of this Agreement. Architect shall also obtain, and keep in force during the term hereof, a policy of motor vehicle public liability insurance which shall afford not less than the following amounts of coverage: bodily injury liability \$15,000 each person, \$30,000 each occurrence; property damage liability, \$5,000 each occurrence.

B. **Workers' Compensation and Employers' Liability Policy**

The policy shall be written in accordance with the laws of the State of California and providing coverage for any and all employees of contractor:

1. This policy shall provide coverage for Workers' Compensation (Coverage A).
2. This policy shall also provide coverage for \$1,000,000 Employees' Liability (Coverage B)

C. **Endorsements**

The following endorsement is required to be made a part of the above-required policy:

1. Thirty (30) days prior written notice of cancellation shall be given to the City of San José in the event of cancellation and/or reduction in coverage of any nature.

D. **Proof of Coverage**

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal 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, 2nd Wing
San Jose, CA 95113

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

And

Page Benway
200 E. Santa Clara St.
3rd Floor Tower
San Jose, CA 95113-1905

PHONE: (408) 535-7887
FAX: (408) 292-6055

E. **Exception**

If, however, the Architect does not have any employees and does not wish to cover himself/herself for Worker's Compensation, the Architect shall sign the following statement as well as the contract itself to effect a fully initiated contract:

I, as the herein-designated Architect, do not have, nor intend to have for the full term of this agreement, any employees. Furthermore, I do not wish to obtain or be covered under any Workers' Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above-required Workers' Compensation Coverage.

Signature

(Please print name of company/architect)

Date

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, 2nd Wing
San Jose, CA 95113

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

And

Page Benway
200 E. Santa Clara St.
3rd Floor Tower
San Jose, CA 95113-1905

PHONE: (408) 535-7887
FAX: (408) 292-6055

G. **Subcontractors**

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

ATTACHMENT D
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. Copy this form as appropriate.

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

ATTACHMENT E

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 (Provide Details)	No
1. Personal Relationships (a) Do you currently have or have had any official, professional, financial, or personal relationships with any person or firm associated with this assignment? (b) If yes, describe the type and extent of the relationship. (c) In your opinion, might this affect your judgment or your ability to execute this assignment in a fair and impartial manner?		
2. Stock and Investments (a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment? (b) Does your spouse or a dependent own any stock in company likely to be affected by or involved in the Proposed Assignment? (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: (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? 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 (a) Is your spouse or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? (b) Has your spouse or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? (c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? 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.		
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4. Payments or Gifts (d) Within the past 12 months, have you received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment? (e) 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? If the answer is yes, please provide the amount the payment or value of the gift, the name and position of the payor/donor and the date of receipt.		
5. Real Estate (a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment? (b) Does your spouse or a dependent own real property that is likely to be affected by or involved in the Proposed Assignment? If the answer is yes, please provide the location of the property.		
6. Positions (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? (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? If the answer is yes, please provide the name of the entity, and the title of the position held.		
7. Are you aware of any facts or circumstance that might give someone the impression that your participation in this process would create a conflict of interest?		

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

Signature

Print Name

Date