

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

**SUBJECT: MASTER AGREEMENTS FOR
COMMUNITY ENGAGEMENT
CONSULTANTS**

DATE: June 11, 2022

Approved



Date

06/16/22

RECOMMENDATION

Adopt a resolution authorizing the City Manager or designee to:

- a) Negotiate and execute up to nine master agreements for on-call community engagement consultants for a total maximum compensation of up to \$4,000,000. The initial terms of the master agreements will be from July 1, 2022 to June 30, 2025 with City options to extend for two additional years for total contract terms of up to five years.
- b) Exercise options to extend the master agreements for up to an additional two years under the same terms and conditions.
- c) Negotiate and execute amendments to the master agreements to shift funding between the master agreements provided the total maximum compensation does not exceed \$4,000,000.

OUTCOME

Approval of staff's recommendation would enable the creation of a new bench of on-call community engagement consultants that staff can hire as needs arise. This action does not require appropriation of any funding, as funding for work under the master agreements would be encumbered as part of future service orders, subject to the appropriation of funds.

BACKGROUND

Each year, the City of San José (City) undertakes a variety of decision-making processes that involve the public. For the larger efforts, the City contracts with consultants to provide the outreach services or supplement City staff efforts. Consultants provide a range of services, such as strategy development, stakeholder assessments, meeting design and facilitation, preparation of

graphics and documents, event planning and implementation, development of digital tools, data collection, and outreach assistance.

Through the typical Request for Proposal (RFP) process, staff often gets far along with planning for an engagement process before they can procure and onboard a consultant for a specific project. In those events, staff misses out on the knowledge and skills of these professionals during a critical time, and the consultants miss out on understanding the nuances of the project. Ideally, the City would begin working with the consultant much earlier, which would promote more thoughtful, inclusive, and effective engagement processes. In general, City Council has directed staff to pursue options for streamlining procurement processes.

In response to these issues, the Office of Economic Development and Cultural Affairs staff collaborated with the Office of Racial Equity and others in the City Manager's Office on an RFP for master agreements for community engagement and facilitation consultants (see Attachment A for the full RFP). The objective of the RFP process is to award multiple master agreements to qualified on-call consultants that can assist with various community engagement processes over the next several years. The intent of having a bench is to enable the timely selection of consultants as needs arise. City staff would issue service orders under the master agreements for each specific project or engagement. The service orders would include specific tasks, deliverables, budgets, deadlines, and other applicable details.

The RFP asked consultants to submit qualifications for one or more of the following technical areas:

- Community advisory committee assistance
- Public outreach and community engagement
- Meeting facilitation
- Communications
- Event planning
- Community needs assessment
- Evaluation

The RFP included the following criteria:

- Project timeliness
- Local government experience
- Community development experience
- Experience with populations of interest
- Diversity, Equity, and Inclusion knowledge
- Bilingual capacity
- Consensus experience
- Constructive decision-making experience
- Project management
- Public communications
- Local and Small Business preferences

The RFP bid period was three weeks, running from April 12, 2022 through May 3, 2022. Staff received 23 responses. A panel of three City staff evaluated the responses against the criteria in the RFP, resulting in the proposed list of nine consultants in the following section. Staff reached out to a list of community leaders and offered the opportunity to serve on the evaluation panel, but no one responded to this offer.

ANALYSIS

Staff recommends moving forward with the following nine consultants:

1. Actionable Insights, LLC
2. Baird + Driskell Community Planning
3. CultureWonk
4. EMC Research
5. Katz & Associates / InterEthnica Joint Venture
6. PlaceWorks
7. Raimi + Associates
8. Resource Development Associates
9. Winter Consulting LLC

These consultants submitted complete responses to the RFP, met the minimum qualifications, and scored 60 or higher on the RFP criteria according to the evaluation panel.

With City Council's authorization, staff would begin to negotiate master agreements with these consultants. As shown in the table below, the master agreements would range from \$100,000 to \$500,000, depending on the range of technical areas provided by that consultant. For example, \$500,000 corresponds to the consultants that qualified for all seven technical areas in the RFP. The specific contract amounts are not final. Staff may shift funding between the master agreements provided the total maximum compensation does not exceed \$4 million. Of this amount, staff intends to reserve \$500,000 for contingency, which may be added to any of the agreements, so long as the cumulative total does not exceed \$4 million.

Consultant	Recommended Contract Amount
Actionable Insights, LLC	\$200,000
Baird + Driskell Community Planning	\$500,000
CultureWonk	\$350,000
EMC Research	\$100,000
Katz & Associates / InterEthnica Joint Venture	\$500,000
PlaceWorks	\$500,000
Raimi + Associates	\$500,000

Resource Development Associates	\$350,000
Winter Consulting LLC	\$500,000
<i>Contingency</i>	\$500,000
TOTAL	\$4,000,000

The initial term of the master agreements would be three years with an option to extend for up to two years for a total of five years. The recommendation includes the authority for the City Manager or designee to exercise the options for up to an additional two years under the same terms and conditions.

The Office of Economic Development and Cultural Affairs staff would manage the agreements and track service orders under each, but the agreements would be available to City staff in all departments. Moving forward, City staff would contact the Office of Economic Development and Cultural Affairs when they would like to procure a consultant under the master agreements for their project. The project manager would then send a “Request for Services” to the qualified consultants for the relevant technical areas. Staff would consider the responses, select the consultant that best meets the project’s needs, and prepare a Service Order, including the scope, timeline, and not-to-exceed cost. The Office of Economic Development and Cultural Affairs (or City Manager’s Office) project manager would sign the Service Order. The consultant would need to provide proof of the required insurance and meet all applicable contract requirements in order to execute the Service Order. Staff would encumber funds prior to executing each service order, which may require an appropriation of funds by the City Council.

This effort supports the goal to streamline procurement processes. Having a bench of qualified consultants would enable the timely selection of consultants as needs arise. More time would support the goal to effectively engage community members in meaningful ways, particularly those that do not often participate. Being able to rely on one competitive procurement process to serve many future projects would also conserve significant staff time and resources by consolidating administrative tasks.

CONCLUSION

Approval of staff’s recommendation would enable the creation of a new bench of up to nine on-call community engagement consultants that staff can hire as needs arise, without going through a full RFP procurement process for each specific project or engagement. The combined value of the master agreements would be up to \$4 million. This action does not require the appropriation of any funding at this time, as staff would encumber funding for work under the master agreements when executing future service orders, subject to appropriation of funds.

EVALUATION AND FOLLOW-UP

Office of Economic Development and Cultural Affairs staff would track service orders under each master agreement. Contracts would be available for public review through GILES.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 28, 2022 City Council meeting.

Staff advertised the RFP to potential proponents through registered consultants in Biddingo, by email, and LinkedIn.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

This action will have no immediate effect on the City's budget. The consultants will perform work under future service orders, which would be subject to appropriation of funds at that time.

The intent of this process is to enable streamlining of the consultant procurement process, enabling staff to save significant time and money on administrative tasks during the life of the master agreements.

HONORABLE MAYOR AND CITY COUNCIL

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Subject: Master Agreements for Community Engagement Consultants

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CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

NANCI KLEIN
Director of Economic Development
and Cultural Affairs

For questions, please contact Lori Severino, Assistant to the City Manager, at (408) 535-3537.

Attachment: Request for Proposal - Consulting Services Request for Qualifications: Master Agreements for Community Engagement and Facilitation Consultants

Solicitation Documents

0 COVER

CONSULTING SERVICES REQUEST FOR PROPOSAL (RFP) OED-RFP-2022-04-01

Consulting Services Request for Qualifications: Master Agreements for Community Engagement and Facilitation Consultants

Release Date:	04/12/2022 PT
Procurement Contact: Address: E-mail Address:	Tara Reid 200 East Santa Clara Street San José, CA 95113-1905 tara.reid@sanjoseca.gov
Deadline for Questions and Objections: <ul style="list-style-type: none">• Written Questions/Clarifications• Objections to Specifications/Requirements	04/27/2022 12:00:00 PT Objections to specifications and/or questions must be submitted in writing using the Biddingo Question and Answer utility at http://www.biddingo.com/sanjose .
Proposal Due Date and Time: Location:	05/03/2022 12:00:00 PT Proposal responses must be submitted online through Biddingo prior to the proposal due date and time.

1 INTRODUCTION AND OVERVIEW

The City of San José's Office of Economic Development (OED), a division of the City Manager's Office, is seeking to develop a master list of qualified consultants that can assist with various community engagement processes over the next several years.

The consultants will provide a range of services in the following technical areas, as described in Section 4 below:

- a.** Community advisory committee assistance
- b.** Public outreach and community engagement
- c.** Meeting facilitation
- d.** Communications
- e.** Event planning
- f.** Community needs assessment
- g.** Evaluation

Consultants may submit qualifications in response to this RFP for one or more of the above-mentioned technical areas. If submitting qualifications for multiple technical areas, consultants shall submit the qualifications as one packet, clearly identifying which technical areas they are submitting qualifications for.

The City intends to award multiple on-call master consultant agreements this spring.

2 BACKGROUND

Each year, the City undertakes a variety of decision-making processes that involve the public. For the larger efforts, the City contracts with consultants. Consultants provide a range of services, such as strategy development, stakeholder assessments, meeting design and facilitation, preparation of graphics and documents, event planning and implementation, development of digital tools, data collection, and outreach assistance.

Through the typical RFP process, staff often gets far along with planning for an engagement process before they can procure a consultant. They miss out on the knowledge and skills of these professionals during a critical time, and the consultants lose out on understanding the nuance in the development of the engagement plan. Ideally, the City would begin working with the consultant much earlier, which would promote more thoughtful, inclusive, and effective engagement processes. The intent of this RFP approach is to provide for the timely selection of consultants as needs arise.

The intent is to secure Master Agreements with multiple consultants that cover the range of technical areas. The City reserves the right to reject all proposals or pursue additional Master Agreements depending on the range of responses and qualifications of the consultants.

Following selection of qualified consultants, the City will execute an on-call master agreement with each consultant (see Attachment A for the Master Agreement Template). When staff need services in one or more of the technical areas, staff will send a "Request for Services" to the qualified consultants. Staff will consider the responses, select the consultant that best meets the project's needs, and prepare a Service Order, including the scope, timeline, and not-to-exceed cost. At that time, the consultant will need to provide proof of the required insurance and meet all applicable contract requirements in order to execute the Service Order (see Exhibit C in the Master Agreement Template for anticipated insurance requirements).

3 TECHNICAL AREAS

Consultants shall perform tasks in one or more of the following technical areas in support of a community engagement process. The list of tasks under each technical area is not meant to be exhaustive, but rather provide a general sense of the type of work needed for that category.

A. Community advisory committee assistance

- Help develop frameworks and legal documents to establish new committees comprised of external individuals such as representatives of community-based organizations
- Help administer community advisory committees (prepare agendas and meeting minutes, facilitate meetings, etc.)
- Coordinate with and involve stakeholders in the above tasks

B. Public outreach and community engagement

- Develop strategies for sharing information and gathering feedback as part of a decision-making process
- Complete stakeholder assessments and other analyses in support of strategy development
- Develop and implement in-person and digital engagement methods
- Assist the City with outreach and information sharing tasks

C. Meeting facilitation

- Design meeting structures and agendas
- Use consensus building and mediation techniques
- Facilitate meetings with the public and stakeholders, ranging from small to large group sizes
- Take notes; prepare meeting summaries and report-back documentation

D. Communications

- Produce graphics
- Develop and implement marketing, branding, and/or social media campaigns
- Produce and maintain websites for the engagement process
- Social media campaigns
- Translate documents into Spanish, Vietnamese, and other languages as needed

E. Event planning

- Identify and secure meeting venues
- Plan and implement meeting logistics such as audio/visual, refreshments, accessibility, and vendor coordination
- Coordinate with professional interpreters
- Plan and implement virtual or hybrid meeting logistics

F. Community needs assessment

- Prepare and administer surveys and/or prepare community/neighborhood needs assessments
- Collect and analyze quantitative and qualitative data
- Conduct associated outreach and engagement tasks
- Prepare documents and presentations that summarize the assessment process and findings

G. Evaluation

- Develop and track metrics for engagement process and outcomes
- Develop and conduct evaluations of the process periodically and/or at project completion

4 DESIRED QUALIFICATIONS

The successful consultants will have the following attributes:

- Ability to conduct business in California, as a consulting firm or a 501(c)(3) non-profit.
- Ability to provide one or more of the services listed above in Section 3.
- Score above a 60% on the following criteria
- Support reflection, experimentation, and adaptation of the engagement strategy

RFP Scoring Table

Criteria Title	Criteria Description	Scoring
Criteria specific to this RFP		
Project timeliness	Proven track record of completing project deliverables within a timely manner and within budget	Up to 10%
Local government experience	Experience working with local governments in Santa Clara County	Up to 10%
Community development experience	Ability to work on sensitive and complex community development issues affecting the City of San José	Up to 10%
Experience with populations of interest	Experience working with low-income communities, communities of color, limited English proficiency, youth, and other under-represented populations	Up to 10%
DEI knowledge	Knowledge about inclusive, equitable, and accessible outreach and engagement strategies	Up to 10%
Bilingual capacity	Bilingual staff (particularly Spanish and Vietnamese)	Up to 10%
Consensus experience	Skilled in conflict resolution and consensus-building techniques, especially working with diverse stakeholders and cross-sector groups	Up to 10%
Constructive decision-making experience	Proven track record of assisting with decision-making processes that achieve community and stakeholder buy-in	Up to 10%
Project management	Skilled in project management	Up to 5%
Public communications	Skilled in effective public communications, including document and presentation production	Up to 5%
City of San Jose requirement for all contracts		
Local business enterprise	See Section 15 and Attachment E	5%
Small business enterprise	See Section 15 and Attachment E	5%
TOTAL	Total of all points across all criteria	0 – 100%

Failure to meet all of these desired qualifications will not result in disqualification but may result in lower scores.

5 TERM OF AGREEMENT

It is anticipated that the initial term of the agreement resulting from this solicitation will be three (3) years with an option to extend for up to two (2) years for a total of five (5) years.

The total agreement amount for each qualified consultant receiving a master agreement may be up to \$500,000 for the maximum five-year term of the agreement, depending on the technical areas of the consultant and total amount of qualified consultants selected.

6 HOW TO OBTAIN THIS RFP

- A. This solicitation may be downloaded from the Biddingo solicitation posting system at <http://www.biddingo.com/sanjose>. You may also access this solicitation, along with other City of San José solicitations, at <https://www.sanjoseca.gov/your-government/departments/finance/purchasing/bid-opportunities>.
- B. Vendors wishing to respond to this solicitation must register with Biddingo at <http://www.biddingo.com/sanjose>. If you have a problem registering, contact Biddingo directly at (800) 208-1290 or by email to info@biddingo.com.
- C. All addenda and notices related to this procurement will be posted by the City on Biddingo. In the event that this solicitation is obtained through any means other than Biddingo, the City will not be responsible for the completeness, accuracy, or timeliness of the final solicitation document.
- D. Prospective subcontractors should note that once registered with Biddingo, they may view all organizations (with name and contact information) who download the solicitation document.
- E. There is no cost to the vendor to register, receive notifications, or submit responses for City of San José solicitations using Biddingo.

7 PROCEDURE FOR SUBMITTING QUESTIONS AND INQUIRIES

- A. All questions and inquiries regarding this solicitation (including, but not limited to, questions about the products or services to be procured, any discrepancies or omissions, or requests for clarifications) must be made through the Question and Answer portal on Biddingo. The City will provide a written response to all questions in the form of an Addendum. Questions answered on the Biddingo Question and Answer portal shall be considered addenda to this solicitation.
- B. The City shall not be responsible for nor be bound by any oral instructions, interpretations, or explanations issued by the City or its representatives. Should discrepancies or omissions be found in this solicitation or should there be a need to clarify this solicitation, requests for clarification should be submitted online through Biddingo.

8 OBJECTIONS

- A. Any objections as to the structure, content, or distribution of this RFP must be submitted through the Question and Answer portal on Biddingo. Objections must be as specific as possible and must identify the RFP section number and title, as well as a description and rationale for the objection.
- B. All objections, questions, and inquiries pertaining to this RFP must be received by the Deadline for Questions and Objections specified on the cover sheet.

9 PROPOSAL SUBMITTAL REQUIREMENTS

Include the following information in your submittal:

1. **Submittal Cover Form:** complete the Submittal Cover Form (Attachment B of this RFP), indicating:
 - a. contact information (name, title, address, phone number, and email) for the individual to whom questions regarding your proposal should be addressed;
 - b. summary of your company's history, including years in business, names previously used, mergers, other company affiliations, etc.;
 - c. overview of the services that your company can provide based on the list of technical areas in Section 4 of this RFP; and a
 - d. description of how your company meets the criteria listed in the desired qualifications (Section 3)
2. **Customer Reference Form:** provide three (3) project examples completed within the last eight (8) years, including contact information for references, using the Customer Reference Form (Attachment H).
 - a. Submitted Customer Reference Forms will be evaluated and scored as part of the Experience and Qualifications Evaluation Criteria and will initially be scored based solely on the information provided by the proposer in the submitted Customer Reference Forms. Therefore, it is important to provide complete, detailed, and descriptive information for each customer reference.
3. **Resumes:** provide a resume for key personnel that would provide the services in the technical areas for which you are proposing (minimum 1; maximum 3)
4. **Certification Form:**
 - a. An authorized representative must sign the **Certification Form** (Attachment D). By signing this form, you are acknowledging that you have read and investigated all aspects of the RFP and are aware of the applicable procedures and requirements, including the Master Agreement Template and insurance requirements.
5. **Request for Local and Small Business Enterprise Preference, if applicable**
6. **Cover letter (optional)**
 - a. You may provide a cover letter that provides any other information you would like to share as part of the proposal.

List of Attachment

	File	Description	Reattachment Required	Limited Preview
1	Attachment B- 2022-03-07 Submittal Cover Form.docx			
2	Attachment C-Customer Reference Form.pdf			
3	Attachment D- Proposal Certification Form.pdf			

10 GENERAL REQUIREMENTS

- A. To expedite the evaluation process, each proposal response should be organized in accordance with the information included in this bid document. Proposals that do not follow the specified format or fail to provide the required documentation will receive lower scores or, if found to be non-responsive, may be disqualified. In the event of a conflict between any of the proposal documents, resolution thereof shall be in the City's sole discretion.
- B. Vendors shall use the forms provided by the City to provide RFP responses in the areas indicated. Do not attempt to override or bypass spreadsheet functionality or modify City-provided forms in providing responses.
- C. Delivery/Electronic Submission**
1. All responses to this solicitation must be submitted electronically through Biddingo. Bid responses are secure and are not accessible by anyone but the bidder until after the bid end date and time indicated in this solicitation.
 2. Proposers must submit all required documentation. Upload required forms and documentation through Biddingo and submit with your solicitation response.
 3. Any questions regarding how to upload attachments or submit a response through Biddingo should be directed to Biddingo at (800) 208-1290 or by email to info@biddingo.com.
 4. **Please note: Attaching documentation to the bid will not automatically submit your bid. You must click the SUBMIT button before your bid response will be submitted. Until you receive the electronic receipt for your bid submission, you have not submitted your bid.**
 5. Proposers may modify their electronic responses prior to bid close; however, please note that if you modify a submitted response, be sure that you **resubmit** it prior to the bid closing date and time. It is the sole responsibility of the vendor to ensure that their entire solicitation response is submitted prior to the solicitation closing date and time.
 6. The City is not responsible for any late or incomplete submissions, including those due to technical issues with Biddingo. It is recommended that bidders allow sufficient time to seek assistance from Biddingo in the event there are unforeseen issues that affect the bidder's ability to upload and submit their solicitation response.
 7. The City must receive your response to this RFP electronically through Biddingo by the specified proposal due date and time for your proposal to be considered.
- D. Formatting:** Proposals should be in Times New Roman, Arial, or some similar, easily readable font. The size of the font should not be smaller than 11, and margins should be 1 inch or more.

10.1 SELECTION PROCESS

Proposal responses will be evaluated as outlined in this Section.

- A. City staff will screen proposals to ensure that the proposer submitted all required elements and is responsive to any technical specifications and minimum qualifications.
- B. An evaluation team of City staff will evaluate and score proposal submissions that meet the minimum requirements, based on the criteria in Section 3 of this RFP.
- C. The evaluation process may include oral interviews.
- D. Subject matter experts from outside the City (such as community leaders) may also be on the evaluation team or participate during oral interviews (if applicable).

- E. The City reserves the right to rely on information from sources other than the information provided by the respondents.
- F. The evaluation team will identify the consultants that score well against the desired qualifications and together provide a broad range of services across the technical areas.
- G. Staff may need to seek City Council approval to negotiate and execute the Master Agreements with the selected consulting firms, depending on the contract amount.
- H. Staff will notify the selected consultants and initiate the process to execute the Master Agreement (see Attachment A for the Master Agreement Template). Staff will also notify the respondents that were not selected.

10.2 SERVICE ORDERS

When staff need services in one or more of the technical areas, staff will send a "Request for Services" to the qualified consultants. Staff will consider the responses, select the consultant that best meets the project requirements, and prepare a Service Order, including the scope, timeline, and not-to-exceed cost. At that time, the consultant will need to provide proof of the required insurance and meet all applicable contract requirements in order to execute the Service Order (see Exhibit C in the Master Agreement Template for anticipated insurance requirements).

12 GROUNDS FOR DISQUALIFICATION

- A. All solicitation respondents are expected to have read and understand the "Procurement and Contract Process Integrity and Conflict of Interest," Section 7 of the Consolidated Open Government and Ethics Provisions adopted on August 26, 2014. A complete copy of the Resolution 77135 can be found at: <https://www.sanjoseca.gov/home/showdocument?id=19565>.
- B. Any vendor who violates this policy will be subject to disqualification. Generally, the grounds for disqualification include:
 - 1. Contact regarding this procurement with any City official or employee or evaluation team member other than the Procurement Contact or Purchasing Officer from the time of issuance of this solicitation until the end of the protest period.
 - 2. Evidence of collusion, directly or indirectly, among vendor respondents in regard to the amount, terms, or conditions of this solicitation or their respective responses.
 - 3. Influencing any City staff member or evaluation team member throughout the solicitation process, including the development of specifications.
 - 4. Evidence of submitting incorrect information in response to a solicitation or misrepresenting or failing to disclose material facts during the evaluation process.
- C. In addition to violations of the Process Integrity Guidelines, the following conduct may also result in disqualification:
 - 1. Offering gifts or souvenirs, even of minimal value, to City officers or employees.

2. Existence of any lawsuit, unresolved contractual claim, or dispute between Proposer and the City.
3. Evidence of respondent's inability to successfully complete the responsibilities and obligations of the proposal.
4. Respondent's default under any City contract resulting in termination.
5. Evidence of any wage theft judgements as described in the Certification Form.

13 CONFLICT OF INTEREST

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

- A. 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.
- B. Proposer(s) may not have any interest in any potential proposers for future City procurements that may result from the work performed under the agreement resulting from this RFP.

14 GENERAL INFORMATION

- A. The City reserves the right to waive any informality or irregularity in any response. Additionally, the City may, for any reason and at its sole discretion, decide not to award a contract as a result of this solicitation or to cancel the solicitation altogether. The City shall not be obligated to respond to any proposal submitted nor be legally bound in any manner by submission of the proposal.
- B. The City is not required to accept the lowest submitted priced. Responses will be evaluated to determine the most advantageous (best value) proposal on a variety of factors including, but not limited to, price, design, quality, features, and performance.
- C. The City reserves the right to accept or reject any item(s) or groups of items in a response and may elect to award by line item(s) if it is found to be in the City's best interest to do so.
- D. The City also reserves the right, in its sole discretion, to make multiple awards. In the event the City elects to make multiple awards, awards will be made in rank order starting with the highest ranked vendor based on the selection criteria established for this solicitation.
- E. In the event any respondent to this solicitation cannot meet a specified budget requirement, the City reserves the right to award to the next highest ranked vendor in accordance with the selection criteria set forth for this solicitation.

- F. Freight and/or shipping charges shall be provided at no additional cost to the City, i.e., "FOB Destination Prepaid," unless specified as a separate line item in this solicitation.
- G. Vendors should not include sales tax in their submitted pricing. The City will work with the selected vendor to add sales tax as appropriate and will incorporate it into the final contract.
- H. The City of San José is exempt from federal excise tax, including federal transportation tax. The City will provide an exemption certificate as appropriate.
- I. Statistical information contained in this solicitation is for informational purposes only. The City shall not be responsible for the complete accuracy of said data.
- J. Any estimated quantities provided are for quoting purposes only and are not to be interpreted as a guarantee to purchase any amount. Any variations from the estimated quantities do not entitle the vendor to an adjustment in unit pricing or rates.
- K. The City reserves the right to verify any information provided during the solicitation process and may contact any provided references or any other persons or entities known to have contracted with the responding vendor.
- L. The City may require audited financial statements as certified by an independent Certified Public Accountant. Do not submit these documents unless they are requested.
- M. The laws of the State of California shall govern this solicitation process and any resulting agreements, including any required vendor agreements for subscriptions, licensing, maintenance, support, hosting, etc.
- N. All goods and services provided to the City by the successful vendor shall comply with all City policies, rules, and regulations which may be in effect during the term of the agreement, as well as all applicable federal, state, and local statutes, ordinances, and regulations. The successful vendor is also required to comply with all applicable equal opportunity laws and regulations.
- O. The City shall not be liable for any pre-contractual expenses incurred by prospective vendors or selected contractors, including, but not limited to, costs incurred in the preparation or submission of solicitation responses. The City shall be held harmless and free from any liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this solicitation.
- P. All products (if applicable) must be of new, unused condition, unless otherwise requested in this solicitation.
- Q. Failure to carefully read and understand this solicitation in its entirety, including all accompanying documentation, may cause response submittals to be out of compliance or rejected by the City or may legally obligate the respondent to more than it intends or realizes.

- R. Information obtained by any vendor respondent from any officer, agent, or employee of the City shall not affect the risks or obligations assumed by the vendor or relieve the vendor from fulfilling any of these solicitation conditions or any subsequent contract conditions.
- S. Only the response format specified in this solicitation will be accepted as compliant for submitted responses. Failure to fully complete and submit all required forms and documentation may result in disqualification.

15 LOCAL AND SMALL BUSINESS ENTERPRISE PREFERENCE (LBE/SBE) (if applicable)

- Chapter 4.12 of the San José Municipal Code provides a preference for Local and Small Businesses in the procurement of goods and services that are not specifically precluded from these preferences.
- If the basis of an award is price determinative (awarded to the low bidder), the amount for the preference shall be 2.5% of cost for local and an additional 2.5% of cost for small.
- If the basis of an award is evaluative (awarded to the best value respondent), the amount of preference shall be 5% of total points for local and an additional 5% of total points for small.
- To be considered for Local and Small Business Enterprise Preference, you must complete the Request for Local and Small Business Enterprise Preference Form and submit it with your solicitation response. Vendors who fail to complete and submit the Request for Local and Small Business Enterprise Preference Form with their solicitation response will not be considered for the preference. This information cannot be submitted after the specified solicitation response submittal deadline.
- To receive the LBE preference, you must have both of the following:
 - i. **A valid San José Business Tax Certificate Number:** The business tax certificate number below should match to the address and business name for which the preference is being claimed and must be current as of the proposal due date. Vendors should verify their information through the City's Business Tax Lookup at <https://www.sanjoseca.gov/your-government/departments/finance/business-tax-registration/business-tax-lookup> prior to submittal.
 - ii. **A legitimate business presence in Santa Clara County with at least one full time employee:**

The City has interpreted a legitimate business presence to require:

 - the local address for which the preference is being requested is of a commercial nature and the primary purpose of the location is to serve as a principal, regional, branch, or satellite business office; or
 - in the case of a business located in a residential dwelling, the business must either be a valid home occupation as an incidental use of the business owner's primary dwelling, or the residential dwelling is exclusively used for a commercial nature and the primary purpose of the location is to serve as a principal, regional, branch or satellite business office. The City reserves the right to request additional documentation and supporting information to confirm that the preference should be applied, including, but not limited to, lease agreements, proof of payments, employee information, signage, website, and location
- You must first qualify as an LBE to qualify for the SBE Preference. If you receive the LBE preference and the total number of employees for your firm (regardless of where they are located) is 35 or fewer, you also qualify to receive the SBE preference.
- The preference shall only be considered for the prime respondent(s). However, in the event that the responding firm is a Joint Venture (JV) or Partnership as indicated on the Response Certification Form, the local preference shall apply if any one of the firms in the JV or Partnership meets the definition for a Local Business Enterprise. In order for a JV or

Partnership to be considered for the Small Business Enterprise Preference, the aggregate of all of the employees that make up the JV or partnership must meet the definition for a small business.

- Refer to the Request for Local and Small Business Enterprise Preference Form for additional details.

16 PUBLIC NATURE OF PROPOSAL MATERIAL

- A. All materials submitted in response to this solicitation shall become a public record and retained as property of the City of San José. These materials are subject to disclosure under the State of California Public Records Act (California Government Code Section 6250 et seq.). There are limited and narrow exceptions to this disclosure requirement.
- B. Do **NOT** include confidential or proprietary information in your response material as it may be disclosed if requested by any member of the public.
- C. If you must include confidential or proprietary information that you believe is exempt from disclosure, you must (1) clearly mark the specific information as "Confidential," "Trade Secret," or "Proprietary;" (2) state the specific provision in the Public Records Act that provides the exemption; and (3) provide the factual basis for claiming the exemption in each specific instance.
- D. In the event you claim such an exemption, you must include a redacted version of your submission and state in the submission the following: ***"[insert Respondent Name] shall indemnify the City and the City's officers, employees, and agents and hold them harmless from any claim or liability and defend against any action brought against the City for City's refusal to disclose trade secrets or other proprietary or confidential information contained in [insert Respondent Name]'s solicitation response to any person making a request. This indemnification obligation shall be through the term of the City's Records Retention Schedule which is four (4) years after the date of award or cancellation of this solicitation for non-awarded vendors and four (4) years after contract termination for awarded vendors."***
- E. Failure to meet the requirements set forth in Sections C and D above shall constitute a waiver of your right to exemption from disclosure.
- F. Any material which contains language purporting to render all or significant portions of the submission "Confidential," "Trade Secret" or "Proprietary," or fails to provide the exemption information required above will be considered a public record in its entirety.
- G. Although the California Public Records Act recognizes that certain confidential or proprietary information may be protected from disclosure, the City of San José may not be able to establish that the information is a trade secret or otherwise proprietary. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the City will provide the respondent who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.
- H. The City will not disclose any part of any response before it announces a Recommendation of Award or Notice of Intended Award on the grounds that there is a substantial public interest in not

disclosing responses during the evaluation process. After the announcement of a Recommendation of Award or Notice of Intended Award, all responses received to this solicitation will be subject to public disclosure.

17 PROTESTS

- A. If an interested party wants to dispute the award recommendation, they must submit their protest in writing to the Department Director or Designee no later than ten (10) calendar days after the Recommendation of Award is published, detailing the grounds, factual basis, and providing all supporting information. Protests will not be considered for disputes of requirements or specifications, which must be addressed in accordance with the Objections Section above. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.
- B. Protests must be addressed to the following:

City of San José
Attention: Rachel Quirimit
200 East Santa Clara Street, 12th Floor
San José, CA 95113

Protests may be submitted by email to rachel.quirimit@sanjoseca.gov, with a copy to the RFP Procurement Contact specified for this solicitation.

18 CITY BUSINESS TAX

The awarded vendor(s) must comply with the San José Municipal Code Chapter 4.76 with respect to the payment of any applicable City Business Tax prior to the commencement of work. Contact Finance /Revenue Management by phone at (408) 535-7055 or businesstax@sanjoseca.gov to determine applicable tax costs. Additional information about the business tax and registration process can be found on the City's website at <http://www.sanjoseca.gov/businesstax>.

19 CALIFORNIA SECRETARY OF STATE REGISTRATION

The awarded vendor(s) must have a current and valid registration with the California Secretary of State to conduct business with the City of San José. You can verify this and find more information through the California Secretary of State website at <https://www.sos.ca.gov/business-programs/business-entities/>. This will be verified by the City prior to contract execution.

20 ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES

- A. The City has adopted an "Environmentally Preferable Procurement" (EPP) policy. The goal is to encourage the procurement of products and services that help to minimize the environmental impact resulting from the use and disposal of these products. The EPP policy may be found on the City's website at <http://www.sanjoseca.gov/home/showdocument?id=1268>.

- B. In accordance with the EPP policy, vendors are encouraged to offer Energy Star, Green Seal, EcoLogo, or EPEAT certified products as applicable. The City also suggests that proposers offer products and services that are produced or delivered with minimal use of virgin materials, maximum use of recycled materials, and reduced waste, energy usage, water utilization, and toxicity in the manufacture and use of products.
- C. Vendors are encouraged to offer Energy Star certified products, products that meet FEMP (Federal Energy Management Program) standards for energy consumption, and products that are produced with recycled materials, where appropriate, unless otherwise specified in this solicitation.

22 OTHER PUBLIC AGENCY PURCHASES

It is intended that other public agencies be permitted to purchase under the same terms resulting from this procurement. Any participating public agency shall accept sole responsibility for placing orders, arranging deliveries and/or services, and making payments to the vendor. The City of San José will not be liable or responsible for any obligations, including but not limited to, financial responsibility in connection with participation by other public agencies.

23 SUBMITTAL CHECKLIST AND RFP DOCUMENTS

Attachment A: Master Agreement Template (including [City's Standard Terms and Conditions](#), [Insurance Requirements](#), and standard Service Order Form)

	Requirement	Reference Section	RFP Document
1	Submittal Cover Form	9. Proposal Submittal Information	Attachment B
2	Customer Reference Form	9. Proposal Submittal Information	Attachment C
3	Resumes (1-3)	9. Proposal Submittal Information	
4	Certification Form	9. Proposal Submittal Information	Attachment D
5	Request for Local and Small Business Enterprise Preference if applicable	16. Local and Small Business Enterprise Preference	Attachment E
6	Cover letter	9. Proposal Submittal Information	

List of Attachment

	File	Description	Reattachment Required	Limited Preview
1	Attachment A - Master City of San Jose Agreement (Non-Capital Projects).pdf		Y	
2	Attachment B- 2022-03-07 Submittal Cover Form.docx		Y	
3	Attachment C-Customer		Y	

	Reference Form.pdf			
4	Attachment D- Proposal Certification Form.pdf		Y	
5	Attachment E- LSBEP Form.pdf			

C Insurance Requirements

At the time the City selects a qualified consultant for a given scope of work under a master agreement, the selected vendor(s) shall provide proof of insurance (certificate of insurance) meeting the specified Insurance Requirements (included in the Master Agreement Template - Attachment A) prior to execution of the Service Order. The selected Consultant(s), at Consultant's sole cost and expense, shall obtain and maintain, at a minimum, the insurance requirements while performing the scope of work. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The selected Consultant(s) agrees to provide the City with a copy of said policies, certificates and/or endorsements within 14 days of the notice of award. Failure to provide the required Certificate of Insurance may result in withdrawal of the Award and award to another Consultant.

Should the selected vendor(s) fail to execute the Service Order or provide proof of insurance as required herein, the City shall have the right to seek legal remedies against the vendor, including forfeiture of any proposal bond, for damages. The City shall also have the right to terminate negotiations with the selected consultant(s) and commence negotiations with another qualified consultant.

24 NON-DISCRIMINATION/NON-PREFERENTIAL TREATMENT

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

Master City of San José Consultant Agreement

(Non-Capital Projects)

This Master Agreement is between the City of San José, a municipal corporation ("City"), and [Insert Consultant's Legal Name], [Insert Type of Business Entity] ("Consultant").

This Master Agreement is made and entered into this ____ day of _____ 20__ ("Contract Date")

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

- 1.1 General:** The Consultant will provide professional consulting services to the City on an as-needed basis pursuant to individual service orders issued in accordance with the terms and conditions of this Master Agreement. The type of professional consulting services the Consultant will provide can be described generally as: [Insert General Description of Professional Consulting Services]
- 1.2 Exhibits:** This Master Agreement consists of this agreement form, all Approved Service Orders (defined in Subsection 3.2 below), and the following exhibits, which are incorporated herein by reference:
- Exhibit A:** Approved Service Order Form
 - Exhibit B:** Schedule of Rates and Charges
 - Exhibit C:** Insurance Requirements
 - Exhibit D:** Schedule of Specific Services
- 1.3 Director:** "Director" means the Director of [Insert Name of Appropriate City Department] or the Director's designee.
- 1.4 Business Days:** "Business Day" and "Business Days" means the day(s) on which City Hall is open to conduct regular business with the public.
- 1.5 Entire Agreement:** This Master Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.
- 1.6 Amendments:** This Master Agreement may be modified only by a written amendment executed by the parties.

2. AGREEMENT TERM

The term of this Master Agreement is from the Contract Date to [Insert Expiration Date], inclusive, unless terminated earlier pursuant to Section 19 below.

3. SERVICE ORDERS

- 3.1 General:** The Consultant will provide professional services to the City as set forth in **Exhibit D** and as further described pursuant to individual service orders. Each service order will describe the services and deliverables (collectively "Work") the Consultant must provide the time limit within which the Consultant must complete the Work and the compensation for the Work.

- 3.2 Approved Service Order:** The City will not compensate the Consultant for any Work until the Director has executed the service order for such Work ("Approved Service Order").
- 3.3 Obligation to Issue:** The City has no obligation to issue any Approved Service Orders under this Master Agreement. The City may issue any number of Approved Service Orders provided that the sum of the maximum compensation of all Approved Service Orders cannot exceed the Maximum Total Compensation (defined in Subsection 10.1 below).
- 3.4 Preparation:** Each Approved Service Order will be in substantially the form specified in **Exhibit A**. Subject to the terms and conditions of this Master Agreement, the Consultant and the City will negotiate the specific requirements of each Approved Service Order.
- 3.4.1 Director's Request to Prepare Proposal:** The Director will request the Consultant to prepare a written service order proposal. The Director will either request the Consultant to include a draft scope of Work in its proposal, or provide the Consultant with a draft scope of Work upon which the Consultant must base its proposal.
- 3.4.2 Meeting/Site Inspection:** As part of the Director's request for the Consultant to prepare a service order proposal, the Director may require the Consultant to meet to discuss the scope and location of the Work, the schedule of performance, and any other relevant details.
- 3.4.3 Consultant Proposal:** The Consultant will prepare a written service order proposal in accordance with the Director's request. The Consultant will provide the proposal in both paper and electronic form. The proposal must include, but is not limited to, the following:
- The proposed scope of Work;
 - The name and assignment of each of Consultant's professional employees who will be principally responsible for performing the Work;
 - The names of any subconsultants the Consultant would use and the portion of Work they would perform;
 - A time schedule and cost for providing the Work; and
 - Any other information requested by the Director.
- 3.4.4 Final Service Order:** Once the Consultant and the Director agree on the terms and conditions of the proposed service order, the City will prepare the final service order.
- 3.5 Incorporation of Terms and Conditions:** Each Approved Service Order incorporates the terms and conditions of this Master Agreement, and becomes a part of this Master Agreement.
- 3.5.1 No Conflicts:** An Approved Service Order must be consistent with, and cannot alter the terms and conditions of this Master Agreement.
- 3.5.2 Agreement Controls:** The terms and conditions of this Master Agreement control over the terms and conditions contained in an Approved Service Order – even if the Approved Service Order expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Service Order are invalid and unenforceable.
- 3.6 Performance:** Subject to Subsection 3.5 above, the Consultant must perform the Work in accordance with the specific requirements of the Approved Service Order. The Consultant must

coordinate and cooperate with City staff, consultants and contractors in performing the Work, and must perform the Work to the Director's satisfaction.

4. INTENTIONALLY OMITTED

5. CITY'S CONTRACT MANAGER

Attachment B of each Approved Service Order will identify the City's contract manager. The City can change its contract manager by providing the Consultant with written notice.

6. CONSULTANT'S STAFFING

6.1 Consultant's Contract Manager and Other Staffing: Attachment B of each Approved Service Order will identify the following:

- The Consultant's contract manager, and
- The Consultant(s) and/or employee(s) of the Consultant ***principally responsible*** for providing the Work.

Attachment B will also indicate whether any of the identified persons are required to file a Statement of Economic Interests, Form 700 ("Form 700"), provided that the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City. Anyone required to file a Form 700 must do so in accordance with the requirements of Subsection 17.2 below.

6.2 Contract Manager's Authority: The Consultant's contract manager must be authorized to act on behalf of the Consultant for purposes of decisions regarding the Approved Service Order.

6.3 Staffing Changes: The Director's prior written approval is required for the Consultant to remove, replace or add to any of its staffing identified in Attachment B of an Approved Service Order.

7. USE OF SUBCONSULTANTS

7.1 Authority to Use: Attachment B of each Approved Service Order will state whether or not the Consultant can use subconsultants to provide any part of the Work. If Attachment B does not authorize the Consultant to use subconsultants, then the Director's prior written approval is required for the Consultant to use a subconsultant to perform any part of the Work.

7.2 Use of Subconsultants: If Attachment B of an Approved Service Order authorizes the use of one or more subconsultants, then it will identify the name of each such subconsultant and the portion of Work each such subconsultant will perform. The Director's prior written consent is required for the Consultant to remove, replace or add to the subconsultants identified in Attachment B.

7.3 Subconsultant Work: The Consultant warrants all services and deliverables provided by any subconsultant it uses, and represents that each such subconsultant is specially trained, experienced, and competent to perform its portion of the Work.

8. INDEPENDENT CONTRACTOR

8.1 General: The Consultant has complete control over its operations and employees, and is an independent contractor. The Consultant is not an agent or employee of the City, and does not represent or act as the City's agent or employee. The Consultant does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim

it may have to any such rights.

- 8.2 Subcontractors:** As an independent contractor, the Consultant has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Consultant contracts in furtherance of this Master Agreement and/or any Approved Service Order (collectively "Subcontractors"). Subject to the requirements of Section 7 above, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Master Agreement.
- 8.3 Indemnity:** The Consultant shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

9. STANDARD OF PERFORMANCE

The Consultant represents that it will only perform Work for which it possesses all necessary training, licenses and permits. The Consultant represents that its performance of all such Work will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

10. COMPENSATION

- 10.1 Maximum Compensation:** There is a maximum compensation for this Agreement and a separate maximum compensation for each Approved Service Order.
- 10.1.1 Maximum Total Compensation – Agreement:** The maximum *total, aggregate* compensation the City will pay the Consultant for all professional fees, costs and expenses for all Approved Service Orders issued under this Master Agreement shall not exceed \$[Insert Dollar Amount] ("Maximum Total Compensation").
- 10.1.2 Maximum Compensation – Service Order:** The cover page of each Approved Service Order will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work ("Maximum Service Order Compensation"). The Consultant shall complete all Work required by the Approved Service Order for no more than the Maximum Service Order Compensation.
- 10.2 Exhibit B – Schedule of Rates and Charges:** Exhibit B sets forth a schedule of the Consultant's rates and charges ("Schedule of Rates and Charges") that applies to any services provided in an Approved Task Order on a time and materials basis. The Schedule of Rates and Charges is subject to the following requirements:
- 10.2.1 Premium Pay:** "Premium Pay" is a special pay rate for working during times that are less desirable, such as weekends, holidays or late shifts. The City will not pay the Consultant Premium Pay.
- 10.2.2 No Increases:** The City will not increase the Schedule of Rates and Charges during the Master Agreement term.
- 10.2.3 Conflict:** In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.
- 10.3 Compensation Table:** Attachment C of each Approved Service Order is a compensation table setting forth the manner in which the City will pay the Maximum Service Order Compensation ("Compensation Table"). Each Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.

10.4 Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the various tasks performed in accordance with the Approved Service Order. The following terms and conditions apply to Part 1 of the Compensation Table.

10.4.1 Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number corresponds to the same task number in Attachment A of the Approved Service Order. If a task number included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.

10.4.2 Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.

10.4.3 Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the Director within 20 Business Days following completion of the task(s) to the Director's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the Director within 20 Business Days following completion of all Work to the Director's satisfaction.

10.4.3.1 Invoice: Each invoice must include sufficient information and supporting documents to establish to the Director's satisfaction that the Consultant is entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the Director's approval of such undisputed amount.

10.4.3.2 Invoices Based on Time and Materials: If time and materials is the basis of compensation, then the Consultant will base its invoice on the hours, professional fees, costs, and charges associated with the Work completed during the invoice period. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs associated with the Work completed during the invoice period. The City will compensate the Consultant in accordance with the Schedule of Rates and Charges attached to this Master Agreement as **Exhibit B**.

10.4.3.3 Monthly Invoices Based on Fixed Fee: If the Consultant invoices monthly for a "fixed fee," then the Consultant will base its monthly invoice on the percentage of Work completed during the previous month. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs incurred during the previous month.

10.4.4 Compensation (Column 4): Column 4 sets forth the total compensation the City will pay the Consultant for completing the task(s).

10.4.4.1 Time & Materials: If time and materials is the basis of compensation, then the amount in Column 4 is a "not-to-exceed" or maximum amount. Any hours worked for which payment would result in a total exceeding the amount in Column 4 is at no cost to the City. If the Consultant completes the task(s) for less than the amount set forth in Column 4, the Director (in the Director's sole

discretion) **may** use the cost savings to increase the budget of another task. The Director must authorize such reallocation of cost savings in writing.

10.4.4.2 Fixed Fee: If "fixed fee" is the basis of compensation, then the Consultant must complete the task(s) for the amount set forth in Column 4. Any hours worked for which payment would result in a total exceeding the amount in Column 4 are at no cost to the City.

10.5 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether or not the City will reimburse the Consultant separately for expenses incurred in providing the Work. The following terms and conditions apply if the City reimburses the Consultant separately for expenses.

10.5.1 Subconsultants: The cost of subconsultants is not treated as a reimbursable expense. Subsection 10.6 below addresses payment for the cost of subconsultants.

10.5.2 Maximum Amount of Reimbursable Expenses: The City will reimburse the Consultant for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the Consultant incurs in excess of the stated maximum are at no cost to the City.

10.5.3 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract manager has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Consultant acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.	No Markup
6.	Any expenses expressly identified as being reimbursable in the Schedule of Rates and Charges or in an Approved Service Order.	As specified, not to exceed 10%

10.6 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the Work. If the City will

compensate the Consultant for subconsultant costs, the City will do so in accordance with the following terms and conditions.

10.6.1 Actual Costs: The Consultant can invoice the City for no more than the actual cost of each subconsultant plus a specified markup not to exceed 5 percent.

10.6.2 Schedule of Rates and Charges: Any subconsultant rates and charges set forth in the Schedule of Rates and Charges must be the subconsultant's actual rates and charges exclusive of any markup. The City will compensate the Consultant in accordance with those rates and charges.

10.6.3 Maximum Amount: For each Approved Service Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

10.7 Intentionally Omitted.

10.8 Tax Forms Required: The following are conditions on the City's obligation to process any payment under the Master Agreement or any Approved Service Order:

10.8.1 U.S. Based Person or Entity: If the Consultant is a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Consultant is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

10.8.2 Non-U.S. Based Person or Entity: If the Consultant is not a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

11. INDEMNIFICATION

11.1 Obligation: The Consultant shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:

- The Consultant's negligent performance of all or any part of the services or deliverables provided pursuant to an Approved Service Order; or
- Any negligent act or omission, recklessness or willful misconduct of the Consultant, any of its Subcontractors, anyone directly or indirectly employed by either the Consultant or any of its Subcontractors, or anyone that they control; or
- Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any services, deliverables or other items provided by the Consultant pursuant to an Approved Service Order; or
- Any breach of this Master Agreement.

- 11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above does not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.
- 11.3 Duty to Defend:** The Consultant's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.
- 11.4 Insurance:** The City's acceptance of any insurance in accordance with Section 12 below does not relieve the Consultant from its obligations under this Section 11. The Consultant's obligations under this Section 11 apply whether or not the insurance required by the Master Agreement covers any damages or claims for damages.
- 11.5 Survival:** The Consultant's obligations under this Section 11 survive the expiration or earlier termination of the Master Agreement.

12. INSURANCE REQUIREMENTS

- 12.1 General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Master Agreement term.
- 12.2 Documentation:** Before performing any services, the Consultant must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.
- 12.3 Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

13. OWNERSHIP OF WORK PRODUCT

- 13.1 Ownership:** The City owns all rights in and to any of the following types of work product (including electronic equivalents) without restriction or limitation upon their use immediately when and as created by the Consultant or any other person engaged directly or indirectly by Consultant to perform Consultant's services pursuant to an Approved Service Order: reports, drawings, plans, specifications, data, software, models, documents or other materials developed or discovered (collectively "Work Product").
- 13.2 Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the property of the City. In the event it is ever determined that any Work Product is not a work for hire under United States law, the Consultant hereby assigns to the City all copyrights to such works when and as created.
- 13.3 Intentionally Omitted**
- 13.4 Consultant's Reuse:** With the Director's prior written consent, the Consultant may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.

14. DISCLOSURE OF WORK PRODUCT

- 14.1 Prohibition:** Except as authorized by the Director or as otherwise required by law, the Consultant shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Consultant, or (c) information prepared, developed or received by the Consultant or any of its Subcontractors in the course of performing any Work.
- 14.2 Notification:** The Consultant will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions or information that the Consultant is otherwise prohibited from disclosing.
- 14.3 Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures by and between the Consultant and its Subcontractors that are needed to perform any Work.
- 14.4 Survival:** This Section 14 survives the expiration or earlier termination of this Master Agreement.

15. AUDIT/INSPECTION OF RECORDS

- 15.1 Retention Period:** The Consultant shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the Consultant under this Master Agreement or for any longer period required by law:
- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Consultant's charges for performing services, or to the Consultant's expenditures and disbursements charged to the City; and
 - All Work Product and other records evidencing Consultant's performance.
- 15.2 Producing Records:** At any time during the Master Agreement term or during the period of time that the Consultant is required to retain the Records, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Consultant shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Consultant shall produce the requested Records at no cost to the City.
- 15.3 State Auditor:** In accordance with Government Code Section 8546.7, the Consultant may be subject to audit by the California State Auditor with regard to the Consultant's performance of this Master Agreement if the compensation of the Maximum Total Compensation exceeds \$10,000.

16. NONDISCRIMINATION/NON-PREFERENCE

- 16.1 Prohibition:** The Consultant shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.
- 16.2 Intentionally Omitted**
- 16.3 Subcontracts:** The Consultant shall include the above Subsection 16.1 in each subcontract that it enters into in furtherance of this Master Agreement.

17. CONFLICT OF INTEREST

- 17.1 General:** The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Master Agreement. The Consultant certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Consultant shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Master Agreement. The Consultant has the obligation of determining if the manner in which it performs any part of this Master Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.
- 17.2 Filing Form 700:** In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), the Consultant shall cause each person performing services under this Master Agreement, and identified in Attachment B of an Approved Service Order as having to file a Form 700 to do each of the following:
- Disclose the categories of economic interests in Form 700 as required by the Director;
 - Complete and file the Form 700 no later than 30 calendar days after the date the person begins performing services under the Approved Service Order and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
 - File the original Form 700 with the City's Clerk with a copy submitted to the Director.
- 17.3 Future Services:** The Consultant acknowledges each of the following with regard to performing future services for the City:
- The Consultant's performance of Work in an Approved Service Order may create an actual or appearance of a conflict of interest with regard to the Consultant performing or participating in the performance of some related **future** services, particularly when the Work in an Approved Service Order comprises one element or aspect of a multi-phase process or project;
 - Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Consultant from performing or participating in the performance of such future services; and
 - The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing Work in an Approved Service Order might have on its ability to obtain contracts to perform future services.
- 17.4 Violations:** The Consultant's violation of Subsections 17.1 or 17.2 above is a material breach.

18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

- 18.1 General:** The Consultant shall perform its obligations under this Master Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single Serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."
- 18.2 Prohibition of City Funding for Purchase of Single Serving Bottled Water:** The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

18.3 Environmentally Preferable Procurement Policy: The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>. Environmental procurement policies and activities related to the completion of any Work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);
- The use of energy-star compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

19. TERMINATION

19.1 For Convenience: The Director may terminate this Master Agreement and/or any Approved Service Order(s) at any time and for any reason by giving the Consultant written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days' after the date of the written notice.

19.2 For Cause: The Director may terminate this Master Agreement and/or any Approved Service Order(s) immediately upon written notice for any material breach by the Consultant. If the Director terminates the Master Agreement and/or any Approved Service Order(s) for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

19.3 Delivery of Work: If the Director terminates the Master Agreement and/or any Approved Service Order(s) – whether for convenience or for cause – the Director has the option of requiring the Consultant to provide to the City any finished or unfinished Work Product prepared by the Consultant up to the date of Consultant's receipt of the written notice of termination.

- 19.4 Compensation:** The City will pay the Consultant the reasonable value of Work satisfactorily rendered by the Consultant to the City up to the date of Consultant's receipt of the written notice of termination. For Work to be "satisfactorily rendered," the Director must determine that the Consultant provided the Work in accordance with the terms and conditions of this Master Agreement and/or any applicable Approved Service Order. The Director will determine the reasonable value of satisfactorily rendered Work based on the Schedule of Rates and Charges and the Compensation Table attached to the appropriate Approved Service Order.
- 19.5 Receipt of Notice:** For purposes of this provision, the Consultant's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

20. NOTICES

- 20.1 Manner of Giving Notice:** All notices and other communications required by this Master Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally serviced is effective when personally delivered. A notice or other communication that is mailed is effective 3 Business Days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding a specific Approved Service Order must be given to the individuals identified in the Approved Service Order. All notices and other communications between the parties regarding the Master Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José
 [Insert Department]
 Attn: [Insert Name.]
 [Insert Mailing Address.]
 [Insert Telephone Number.]
 [Insert E-Mail Address.]

To the Consultant: [Insert Consultant's Name]
 Attn: [Insert Name.]
 [Insert Mailing Address.]
 [Insert Telephone Number.]
 [Insert E-Mail Address.]

- 20.4 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Master Agreement by providing notice of such change to the other party pursuant to this Section 20.

21. MISCELLANEOUS

- 21.1 Gifts Prohibited:** The Consultant represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Consultant shall not offer any City officer or designated employee any gift

prohibited by Chapter 12.08. The Consultant's violation of this Subsection 21.1 is a material breach.

- 21.2 Disqualification of Former Employees:** The Consultant represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Consultant shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Consultant's violation of this Subsection 21.2 is a material breach.
- 21.3 Waiver of a Violation:** The City's waiver of any violation of this Master Agreement by the Consultant is not a waiver of any other violation by the Consultant.
- 21.4 Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Master Agreement.
- 21.5 Compliance with Laws:** The Consultant shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Consultant's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Master Agreement.
- 21.6 Business Tax:** The Consultant represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Master Agreement term.
- 21.7 Assignability:** Except to the extent this Master Agreement authorizes the Consultant to use Subcontractors, the Consultant shall not assign any part of this Master Agreement without the Director's prior written consent. The Director, at the Director's discretion, may terminate this Master Agreement if a violation of this provision occurs.
- 21.8 Governing Law:** California law governs the construction and enforcement of this Master Agreement.
- 21.9 Disputes:** Any litigation resulting from this Master Agreement will be filed in and resolved by a federal or state court in California.
- 21.10 Survival of Provisions:** If a court finds any part of this Master Agreement unenforceable, all other parts shall remain enforceable.
- 21.11 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.

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Consultant: [Insert Consultant's Name.]
[Insert Month and Year of Agreement]

IN WITNESS WHEREOF, the City and Consultant have caused this Master Agreement to be executed by their respective duly authorized representatives as follows.

NOTE: The Consultant must make one of the following representations by placing its initials in the space provided. **The City will not process the Master Agreement unless the Consultant has initialed one of the provisions.**

_____ The Consultant certifies that the Consultant has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Consultant will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Consultant ceases to have a permanent place of business in California or ceases to do any of the above, the Consultant will promptly notify the City at the address specified in Subsection 20.3 of this Master Agreement.

Or

_____ If the Consultant is unable to make the above certification, the Consultant acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.8 of this Master Agreement.

City of San José

By _____
Name: [Insert Name.] Date
Title: [Insert Title of Signature.]

Consultant

By _____
Name: [Insert Name.] Date
Title: [Insert Title of Signature.]

Approval as to Form (City Attorney):

☐ **Form Approved by the Office of the City Attorney**
(Maximum Total Compensation is \$100,000 or less, and standard provisions of the form are not altered.)

By _____
Name: [Insert Name.] Date
Title: [Insert Title of Signature.]

☐ **Approved as to Form:**

[Sr.] Deputy City Attorney Date

Exhibit A
Master City of San José Consultant Agreement
Approved Service Order Form
(Non-Capital Projects)

Cover Page

-
- 1a. Intentionally Omitted 1b. AC Contract No.: [Insert AC No.]
2. Approved Service Order No. [Insert Number]
3. Consultant's Name: [Insert Consultant's Legal Name as it Appears on the Master Agreement]
-
4. Project Name: [Insert Name of Project for which Consultant will provide services] ("Project")
5. Project Location: [Insert the location of the Project, if applicable]
6. The Consultant and the City will implement this Approved Service Order in accordance with the Master Agreement, this cover page and Attachments "A" (Tasks), "B" (Terms and Conditions), and "C" (Compensation Table), and Exhibit "D" (Schedule of Specific Services) which are incorporated herein by references.
-

7. Budget/Fiscal:
- a. Current **unencumbered** amount in Master Agreement: \$
- b. **Maximum Service Order Compensation for this Approved Service Order:** \$
- c. New unencumbered balance in Master Agreement (7.a – 7.b): \$
- d. **Appropriation Certification:** I certify that an unexpended appropriation in the amount of the Maximum Service Order Compensation is available in the following fund(s) and that such fund(s) will be encumbered to pay for this Approved Service Order.

Fund: _____	Appn: _____	RC: _____	Amount: \$ _____
Fund: _____	Appn: _____	RC: _____	Amount: \$ _____
Fund: _____	Appn: _____	RC: _____	Amount: \$ _____

Authorized Signature: _____ **Date:** _____

8. **Division Analyst Approval:** _____ **Date:** _____
9. **Consultant Approval:** _____ **Date:** _____
10. **Approval as to Form (City Attorney):**
- ☐ Service Order Form Approved by the Office of the City Attorney
(Maximum Service Order Compensation is \$100,000 or less, and the provisions of the service order form are not altered.)
- ☐ Approved as to Form: _____ **Date:** _____
(Sr.) Deputy City Attorney
11. **City Director Approval:** _____ **Date:** _____
-

Attachment A: Tasks

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract manager.

General Description of Project for which Consultant will Provide Services: [Insert a general project description to provide context for the tasks.]

Task No. 1: [Insert title of deliverable.]

- A. **Services:** [Insert a description of the services required to perform or develop the deliverable. See the instructions for a sample list of questions that should be answered by the description.]
- B. **Deliverable:** [Insert a description of the deliverable.]
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
 - ☐ On or before the following date: _____.
 - ☐ On or before ____ Business Days from _____.

Task No. 2: [Insert title of deliverable.]

- A. **Services:** [Insert a description of the services required to perform or develop the deliverable. See the instructions for a sample list of questions that should be answered by the description.]
- B. **Deliverable:** [Insert a description of the deliverable.]
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
 - ☐ On or before the following date: _____.
 - ☐ On or before ____ Business Days from _____.

Task No. 3: [Insert title of deliverable.]

- A. **Services:** [Insert a description of the services required to perform or develop the deliverable. See the instructions for a sample list of questions that should be answered by the description.]
- B. **Deliverable:** [Insert a description of the deliverable.]
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
 - ☐ On or before the following date: _____.
 - ☐ On or before ____ Business Days from _____.

Attachment B: Terms and Conditions

1. **City's Contract Manager:** The City's contract manager for this Approved Service Order is:

Name:	Phone No.:
Department:	E-mail:
Address:	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Service Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must comply with the requirements of Subsection 17.2 of the Master Agreement, entitled "Filing Form 700."***

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
Name:	Phone No.:			
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				
3.				

3. **Subconsultants:** Whichever of the following is marked applies to this Approved Service Order:

- ☐ The Consultant can ***not*** use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

4. **Reimbursable Expenses:** If the Compensation Table set forth in **Attachment C** of this Approved Service Order states that the City will reimburse the Consultant for expenses, then only the expenses identified in Subsection 10.5.3 of the Master Agreement are Reimbursable Expenses unless the following box is marked and additional reimbursable expenses are set forth:

- ☐ In addition to the expenses identified in Subsection 10.5.3 of the Master Agreement, the following expenses are Reimbursable Expenses:

<u>Additional Reimbursable Expense(s)</u>	<u>Mark-up</u>
1. _____	_____
2. _____	_____
3. _____	_____

Notwithstanding the foregoing, any additional reimbursable expense(s) set forth in the above table will be disregarded if the Compensation Table states that the City will *not* reimburse the Consultant for any expenses.

Consultant: [Insert Consultant's Name.]
[Insert Month and Year of Agreement]

Attachment C: Compensation Table

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table. This Compensation Table is subject to the terms and conditions set forth in the Master Agreement, including without limitation Section 10 of the Master Agreement.

Part 1 – Compensation for Services and Deliverables			
Column 1	Column 2	Column 3	Column 4
Task Nos. from Attachment A	Basis of Compensation	Invoice Period	Compensation
	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses			
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.		<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:	\$
Part 3 – Subconsultant Costs			
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.		<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:	\$
Maximum Service Order Compensation (sum of Parts 1 through 3):			\$

Consultant: [Insert Consultant's Name.]
[Insert Month and Year of Agreement]

Exhibit B: Schedule of Rates and Charges

(Non-Capital Projects)

Consultant: [Insert Consultant's Name.]
[Insert Month and Year of Agreement]

Exhibit C: Insurance Requirements

(Non-Capital Projects)

Exhibit D: Schedule of Specific Services

(Non-Capital Projects)

The Consultant shall provide the schedule of services set forth in this Exhibit. The Consultant shall provide all services required by this Exhibit to the satisfaction of the City's contract manager.

General Description of Project for which Consultant will Provide Services: [Insert a general project description to provide context for the tasks.]

Service No. 1: [Insert title of service.]

Description: [Insert a description of the service that may be required pursuant to a Service Order. Information on how this service would be used in the context of a specific project may be reserved for the Service Order Attachment A. See Section 3.2 of the instructions for a sample list of questions that should be answered by the description if that information is known at the time the Master Agreement is executed.]

Service No. 2: [Insert title of service.]

Description: [Insert a description of the service that may be required pursuant to a Service Order. Information on how this service would be used in the context of a specific project may be reserved for the Service Order Attachment A. See Section 3.2 of the instructions for a sample list of questions that should be answered by the description if that information is known at the time the Master Agreement is executed.]

ATTACHMENT B: SUBMITTAL COVER FORM

Part 1: Contact Information

Company Name: _____

Address: _____

Website: _____

Primary Contact (the individual to whom questions regarding your proposal should be addressed)

Name: _____

Title: _____

Phone number: _____

Email: _____

Part 2: Company History

Please provide a summary of your company's history, including years in business, names previously used, mergers, other company affiliations, etc. Please limit to 1 page.

Part 3: Technical Areas

Please use this section to describe the services that your company can provide based on the list of technical areas in Section 3 of the RFP. Please limit descriptions to approximately 300 words.

a) Community advisory committee assistance:

b) Public outreach and community engagement:

c) Meeting facilitation:

d) Communications:

e) Event planning:

f) Community needs assessment:

g) Evaluation:

Part 4: Desired Qualifications

Please use this section to describe how your company meets the criteria listed in the desired qualifications (Section 4 of the RFP). Please limit to 2 pages.

a) Project timeliness:

b) Local government experience:

c) Community development experience:

d) Experience with populations of interest:

e) DEI knowledge:

f) Bilingual capacity:

g) Consensus experience:

h) Constructive decision-making experience:

i) Project management:

j) Public communications:

ATTACHMENT C – CUSTOMER REFERENCE FORM

Name of Client	
Client Address	
Client Contact Name(s) Email/Phone	
Brief description of work performed for this client	

ATTACHMENT D – PROPOSAL CERTIFICATION FORM

Responding Firm Name (Respondent):	
Address:	
Telephone:	
E-mail:	
Contact Person and Title:	

RESPONDENT REPRESENTATIONS

Respondent did not, in any way, collude, conspire, or agree, directly or indirectly, with any person, firm, corporation, or other Respondent in regard to the amount, terms, or conditions of this solicitation.

Respondent additionally certifies that neither Respondent 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.

Respondent 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 solicitation document or permitted by formal addenda are accepted by the City.

Respondent did not receive unauthorized information from any City staff member or City Consultant during the bidding period except as provided for in the solicitation package, formal addenda issued by the City, or any pre-bid conference.

Respondent hereby certifies that the information contained in their solicitation response and all accompanying documents is true and correct.

Please check the appropriate box below:

- ☐ If the solicitation response 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 response shall so state.
- ☐ If the solicitation response 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 response shall be signed for all members by one or more members thereof.
- ☐ If the solicitation response is submitted by a corporation, it shall be signed in the corporate name by an authorized officer or officers.
- ☐ If the solicitation response is submitted by a limited liability company, it shall be signed in the corporate name by an authorized officer or officers.
- ☐ If the solicitation response 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.

All Respondents are expected to have read and understand the “Wage Theft Prevention Policy” adopted on May 24, 2016. A complete copy of Resolution No. 77755 can be found at:
<https://records.sanjoseca.gov/Resolutions/RES77755.PDF>.

Any Respondent who has been found by a final court judgment or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws on more than one occasion or has one unpaid wage judgment in the past five years shall be disqualified. The City, at its sole discretion, may disqualify a Respondent based on one disclosed satisfied judgment consistent with the criteria set forth in the aforementioned resolution.

Respondent certifies that neither Respondent or its principals have been found by a final court judgement or final administrative action of an investigatory agency to have violated federal, state, or local wage and hour laws within the past five years from the date of the submitted bid. If Respondent or its principals are unable to certify, Respondent, for each disclosed wage and hour violation, shall provide a copy of the court order or judgment and whether the court order or judgment is satisfied including appropriate documentation demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of Respondent’s efforts to date to satisfy the order/judgment.

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

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

ATTACHMENT E – LOCAL AND SMALL BUSINESS PREFERENCE

CITY OF SAN JOSE REQUEST FOR LOCAL AND SMALL BUSINESS ENTERPRISE PREFERENCE

[Chapter 4.12](#) of the San José Municipal Code provides a preference for Local and Small Business Enterprises in the procurement of goods and services except when funding or grant programs prohibit the application of preferences.

Preference Calculations

Preferences are determined based on the type of procurement, and if the vendor qualifies as a Local Business Enterprise (LBE) or a Local and Small Business Enterprise (LBE/SBE).

- **Best Value (evaluative):** LBE preference = 5% and SBE preference = 5%
Preferences are applied based on the applicable percent of the total **available points**.
- **Lowest Price (price determinative):** LBE preference = 2.5% and SBE preference = 2.5%
Preferences are applied as a credit to the **dollar value** of the bid or quote.

Qualifying for the Local Business Enterprise (LBE) Preference

To receive the LBE preference, you must have **both** of the following:

- (1) **A valid San José Business Tax Certificate Number:** The business tax certificate number below should match to the address and business name for which the preference is being claimed and must be current as of the solicitation due date. Proposers/bidders should verify their information through the City's Business Tax Lookup at <http://www3.csjfinance.org/bizlic/bizlicForm.asp> prior to submittal.
- (2) **A legitimate business presence in Santa Clara County with at least one full time employee:** The City has interpreted a legitimate business presence to require:
 - the local address for which the preference is being requested is of a **commercial nature** and the primary purpose of the location is to serve as a principal, regional, branch, or satellite business office; or
 - in the case of a business located in a residential dwelling, the business must either be a valid home occupation as an incidental use of the business owner's primary dwelling, or the residential dwelling is exclusively used for a commercial nature and the primary purpose of the location is to serve as a principal, regional, branch or satellite business office.

The City reserves the right to request additional documentation and supporting information to confirm that the preference should be applied, including, but not limited to, lease agreements, proof of payments, employee information, signage, website, and location.

Qualifying for the Small Business Enterprise (SBE) Preference

You must first qualify as an LBE to qualify for the SBE Preference. If you receive the LBE preference and the total number of employees for your firm (*regardless of where they are located*) is 35 or fewer, you also qualify to receive the SBE preference.

LBE AND SBE PREFERENCE REQUEST - Complete the following if you are applying for the LBE or LBE/SBE preference.

Business/Proposer/Bidder Name (should match name on Business Tax Certificate):	
Current San José 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:	
Type of Business: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div> <input type="checkbox"/> Corporation <input type="checkbox"/> General Partnership </div> <div> <input type="checkbox"/> LLC <input type="checkbox"/> Sole Proprietorship </div> <div> <input type="checkbox"/> LLP <input type="checkbox"/> Other (explain) </div> </div>	
TOTAL number of employees in your Business:	

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

Executed at: _____ on Date: _____

Signature: _____ Printed Name: _____