REQUEST FOR PROPOSAL

REVENUE ENHANCEMENT SERVICES FOR SALES AND USE TAX, UTILITY USERS TAX AND FRANCHISE FEES, AND LODGING TAXES AND FEES

RFP Number #10-11-01RM
1  **INTRODUCTION**

The City of San José, a municipal corporation (hereinafter “City”), located in Santa Clara County, California, is seeking proposals from independent, qualified consultants (hereafter “Consultant”) firms to provide revenue enhancement services for Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees (Transient Occupancy Tax, Convention Center Facilities District Tax, Hotel Business Improvement District Fee).

2  **BACKGROUND/PROJECT GOALS**

Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees are significant sources of revenue for the City’s General Fund. The revenues are key to providing City services such as public safety, transportation, libraries, parks, etc. Therefore, it is crucial for the City to proactively perform audits to protect these revenue sources.

The City’s primary revenue enhancement services goals to be attained by the Consultant are:

- To ensure the proper and accurate remittance of taxes and fees due to the City;
- To educate business operators on the proper collection and remittance of respective taxes and fees;
To provide City staff information and analysis on tax and fee revenue trends; and;

To acquire and disseminate information about new or proposed legislation that could affect the City's tax and fee revenue.

3 **SCOPE OF WORK**

Listed below are the minimum elements that the City anticipates it will need in completing this project. The successful Proposer shall, along with other services, identify and correct reporting errors and recover revenue for the City.

3.1 **Sales and Use Tax Audit Program**

A. The Consultant shall provide, at minimum, the following Sales and Use Tax services:
   
   a. Taxable nexus field audits; and
   
   b. Permitization audits; and
   
   c. Deficiency assessment audits; and
   
   d. Purchase audits; and
   
   e. Quarterly Distribution Report audits.

B. For each error and/or omission identified and verified, the Consultant shall prepare and submit substantiating documentation to the City, State Board of Equalization (“BOE”) and taxpayer in order to facilitate correction of the error and/or omission and the pursuit of revenue recoveries from eligible prior periods.

C. Consultant shall conduct technical research and analysis to support the City in securing adoption of clarifying administrative rules, resolutions, ordinance revisions, regulatory amendments and legislation to facilitate correction and prevention of these errors and/or omissions, including:

   a. Providing ongoing consultation services to the City regarding interpretation of sales and use tax data, sales and use tax revenue estimation and other requests related to sales and use tax;

   b. Assisting in defining specific geographic areas for which the City would have an interest in knowing the Sales and Use Tax produced (e.g., within Redevelopment Agency or enterprise zone boundaries).

D. Consultant shall provide policy, regulatory and legislative technical support services to the City in conjunction with the Sales and Use Tax program with the intent of preventing and/or correcting misallocations and/or deficiencies.

E. Consultant shall provide both computer files and written reports to the City as follows:
a. A database with all sales tax producers in San José in a format compatible with the City’s computer operating system. This database, at minimum, will include names, addresses, social security numbers or federal employer identification numbers where available and sales tax allocations for each business.

b. Updates to the database using the information obtained from the BOE. Perform quarterly updates of sales tax permit records and distribution reports. Perform monthly updates of registration control information.

c. Written sales and use tax reports on a quarterly basis within 30 days following receipt of the quarterly distribution report. Reports shall include the following:

i. Top sales tax generators and the revenue generated by each, ranked in descending order according to the amount of Sales and Use Tax produced;

ii. Analysis of sales tax by business category, including comparisons to statewide and other comparable averages; ranked in descending order according to the amount of Sales and Use Tax produced;

iii. Major business analysis, including analysis of reporting and accounting aberrations that could distort revenue patterns;

iv. Geographic performance and trends for areas specified by the City;

v. Updates of state and federal regulations affecting Sales and Use Tax procedures and collections, including analysis of financial and administrative impact on City;

vi. Special reports as determined by City and Consultant; and

3.2 Utility Users Tax and Franchise Fee Audit Program

The Consultant shall provide at a minimum the following Utility Users Tax and Franchise Fees analysis, services and tasks during the initial term of the agreement as stated in Section 6 for approximately 250 telecommunication service providers and 25 energy and water service providers (including 2 franchise fee agreements):

A. Utility Users Tax and Franchise Fee Compliance Reviews

a. Consultant shall verify that providers and sellers of electricity, gas, thermal energy, sub-metered service providers, water, and telecommunication services are fully and accurately collecting and remitting Utility Users Tax as required per City ordinance.
b. Consultant shall verify that electric, gas, and water franchisees are accurately reporting fees due to the City.

B. Utility Users Tax and Franchise Fees Legislative Analysis, Risk Analysis and Reporting Services

a. Consultant shall provide updates of state and federal legislation affecting Utility Users Tax and Franchise Fee procedures and collections including analysis on economic impact.

b. Consultant shall provide risk analysis of current Utility Users Tax and Franchise Fees revenues due to evolving technology.

c. Consultant shall make recommendations on ordinance and code changes as appropriate to protect and/or enhance current and future Utility Users Tax and Franchise Fees revenue sources.

d. Consultant shall provide ongoing consultation services to the regarding interpretation of data, revenue estimation, and special revenue impact analysis reports as requested by City staff in relation to Utility Users Tax and Franchise Fees.

C. Training Services and Staff Services

Consultant shall provide City staff with post-investigation Utility Users Tax and Franchise Fee orientation and training as follows:

a. Conduct a technical seminar on local Utility Users Tax and Franchise Fees.

b. Train staff in the fundamentals of Utility Users Tax and Franchise Fees compliance techniques should the City Desire to assume responsibility for on-going compliance reviews.

3.3 Lodging Taxes (Transient Occupancy Tax, Convention Center Facilities District Tax, Hotel Business Improvement District Fee) and Fees Audit Program

Audit requirements shall include, but not be limited to, the following for approximately 85 lodging entities. The City proposed scope of services contemplates that all hotels to be audited within a two year period:

A. Review the City’s Ordinances and Resolutions requiring the collection and remittance of lodging taxes and fees due to the City.

B. Review hotel operator’s internal controls relating to the preparation of the monthly lodging taxes and fees returns in order to determine the adequacy of those procedures over the calculation and reporting of lodging taxes due to the City.

C. Verify amounts calculated and paid to the City against records maintained by the hotel operator to determine that payments were based on verifiable revenues, correctly calculated and remitted.
D. Issue a report to the City enumerating the procedures performed and the results of those procedures. The report shall include a findings section that will identify any exceptions, errors, internal control weaknesses, lodging taxes and fees due, or noncompliance that was noted as a result of the procedures performed.

E. Hold exit conference meetings with the hotel and discuss issues identified in the report submitted to the City and the expected next-steps.

F. Assist the City with corrective action or appeal processes.

G. The Consultant will prepare the following reports as indicated:
   
a. Trend Analysis for Lodging Taxes and Fees: Indicate growth and decline comparison by various categories for forecasting and analysis, on a quarterly basis.

b. Projections: For budgetary purposes, provide Transient Occupancy Tax projections based on optimistic, pessimistic and most likely economic conditions on a quarterly basis. Due by the 10th of the month following each quarter end.

H. Lodging Taxes and Fees Legislative Analysis, Risk Analysis and Reporting Services:
   
a. Consultant shall provide quarterly updates of state and federal legislation affecting Lodging Taxes and Fee procedures and collections including analysis on economic impact.

b. Consultant shall provide revenue risk analysis as a result of changes in technology.

c. Consultant shall make recommendations on ordinance and code changes as appropriate to protect and/or enhance current and future lodging revenue sources.

4 DESIRED QUALIFICATIONS

The lead consultant should be in the business of providing consultant services specific to their proposal for a minimum of 5 years.

5 HOW TO OBTAIN THIS RFP

This RFP may be downloaded from the BidSync solicitation posting system. Proposers must register with BidSync at www.BidSync.com. If you have a problem registering online, contact BidSync directly toll-free at (800) 990-9339 or by email at www.BidSync.com.

All addenda and notices related to this procurement will be posted by the City on BidSync. In the event that this RFP is obtained through any means other than BidSync, the City will not be responsible for the completeness, accuracy, or timeliness of the final RFP document.
Prospective subcontractors should note that once registered with BidSync, they will be able to view all organizations (with name and contact information) downloading the RFP document.

6 TERM OF AGREEMENT

The initial term of the agreement shall be for three (3) years. The City reserves the right to extend the agreement term for two (2) additional, one (1) year terms for a total of five (5) years.

7 COMPENSATION AND WORK HOURS

The proposal should include a not to exceed estimate for the entire scope of work by key phase or task, with details showing estimated labor hours, hourly rates, and reimbursable expenses as indicated on Attachment B – Cost Form. Pricing for the signed agreement is to remain fixed for a 5 year period.

8 PROCEDURE FOR SUBMITTING QUESTIONS AND INQUIRIES

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

9 OBJECTIONS

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

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

10 PROPOSAL SUBMITTAL REQUIREMENTS

10.1 You must respond to this RFP by the due date and time as stated on the cover sheet of this document in order for your proposal to be considered. Proposal responses must be submitted in hardcopy format and addressed to the attention of the contact listed on the cover sheet of this document.

10.1.1 Submit one (1) original and five (5) copies of the technical proposal clearly marked as such. The outside of the box or package and the cover or title page of each proposal shall be marked as follows: RFP 10-11-01RM, Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees (Transient Occupancy Tax, Convention Center Facilities District Tax, Hotel Business Improvement District Fee Technical Proposal. In addition, include an electronic copy of your proposal on a CD or DVD, in pdf format.
10.1.2 Submit one (1) original and one (1) copy of your cost proposal (Attachment B) in a separate sealed envelope clearly marked on the outside 10-11-01RM Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees (Transient Occupancy Tax, Convention Center Facilities District Tax, Hotel Business Improvement District Fee. Cost Proposal. Include an electronic copy on the CD or DVD required in Section 10.1.1

10.2 Proposal Organization:

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

10.2.2 Executive Summary: Include a summary containing highlights of the following:

10.2.2.1 Proposal approach for the City's scope of services

10.2.2.2 Brief history of firm and its organizational structure, including the location(s) of the office(s) in California from which the primary work on this agreement is to be performed.

10.2.2.3 Describe how the firm's team would be organized

10.2.2.4 Describe a specific situation(s) where your firm applied your advisory skills and abilities in the following areas:
   o Responsiveness and attentiveness to client's needs
   o Knowledge and understanding of Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees (Transient Occupancy Tax, Convention Center Facilities District Tax, Hotel Business Improvement District Fees.
   o Analytic capabilities
   o Oral and written communication skills

10.2.2.5 Describe how the firm will ensure responsiveness to City staff and project requirements.
10.3 REFERENCES: Proposer should provide sufficient background information to substantiate the capabilities of proposer’s team in successfully undertaking and completing this project. Identify completed projects of the same or similar nature for other local governments and/or industry enterprise including number of employees involved, period of performance, and end results. Proposer should include names, addresses and telephone numbers of three (3) California local governments, using Attachment E.

10.4 TECHNICAL
Provide a technical response and a project plan addressing the elements of the Scope of Work set forth above in Section 3. Please note a respondent may respond to one, two or all three of the following elements described in the Scope of Work:

- Sales and Use Tax Audit Program
- Utility Users Tax and Franchise Fee Audit Program
- Lodging Taxes and Fees Audit Program

10.5 FEE STRUCTURE
Submit in accordance with Section 10.1.2. Consultant has the option to submit a proposal for all three revenue enhancement services or for any individual or combination of revenue enhancement services.

- Sales and Use Tax Audit Program
- Utility Users Tax and Franchise Fee Audit Program
- Lodging Taxes and Fees (Transient Occupancy Tax, Hotel Business Improvement District, Convention Center Facilities District). Audit Program please indicate cost per lodging facility.

Indicate if any discounts would be provided should multiple project scopes be awarded and if so how much.

10.6 ATTACHMENTS

10.6.1 Attachment A – Proposal Certification
10.6.2 Attachment B – Cost Form
10.6.3 Attachment C – Request for Contracting Preference for Local and Small Businesses

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

10.6.4 Attachment D – City’s Consultant Agreement; Exhibit E, Insurance Provisions

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

10.6.5 Attachment E - Previous Customer Reference Worksheet
10.6.6 Attachment F – Conflict of Interest Form
10.6.7 Attachment G – Special Provision For Sale and Use Tax Agreement

11 SELECTION PROCESS AND EVALUATION CRITERIA

11.1 SELECTION PROCESS

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

11.1.2 Responses will be evaluated as outlined in this section.

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

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

11.2 EVALUATION CRITERIA

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<td>Technical capability</td>
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<td>Customer Satisfaction/Firm Reputation</td>
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12 GROUNDS FOR DISQUALIFICATION

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

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

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

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

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

13 CONFLICT OF INTEREST

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

13.2 The Proposer(s) selected under this RFP will be precluded from submitting proposals or bids as a prime contractor or subcontractor for any future procurement with the City if the specifications for such procurements were developed or influenced by the work performed under the agreement(s) resulting from this RFP.

13.3 Proposer(s) may not have any interest in any potential Proposer for future City procurements that may result form the work performed under the agreement resulting form this RFP.

13.4 In order to determine whether such interest may exist, all Proposers must complete the attached Conflict of Interest Form (Attachment F).

14 GENERAL INFORMATION

14.1 The successful Proposer will be required to demonstrate evidence of insurance in accordance with the insurance provisions listed in Attachment D (Exhibit E).

14.2 All costs associated with responding to this request are to be borne by the Proposer.
14.3 It is the City’s policy that the selected firm shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San José contracts.

15 LOCAL AND SMALL BUSINESS PREFERENCE

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

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

16 PUBLIC NATURE OF PROPOSAL MATERIAL

16.1 All correspondence with the City including responses to this RFP will become the exclusive property of the City and will become public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) All documents that you send to the City will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

16.2 Therefore, any proposal which contains language purporting to render all or significant portions of their proposal “Confidential”, “Trade Secret” or “Proprietary”, or fails to provide the exemption information required as described below will be considered a public record in its entirety subject to the procedures in Section 16.5.

16.3 Do not mark your entire proposal as “confidential”.

16.4 The City will not disclose any part of any proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to this RFP will be subject to public disclosure. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as “Trade Secret” and refer to the appropriate section of the Public records Act which provides the exemption as well as the factual basis for claiming the exemption.
16.5 Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked “Confidential”, “Trade Secret” or “Proprietary”, the City will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

17 PROTESTS

17.1 If an unsuccessful Proposer wants to dispute the award recommendation, the Protest must be submitted in writing to the Finance Director no later than ten calendar days after announcement of the successful Proposer, detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes of proposal requirements and specifications, which must be addressed in accordance with the above Section. Failure to submit a timely written Protest to the contact listed below will bar consideration of the Protest.

17.2 The address for submitting protests is:
   Attention: Finance Director (or designee)
   200 East Santa Clara Street, 13th Floor
   San Jose, CA 95113
ATTACHMENT A

Certification

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PROPOSER REPRESENTATIONS

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

2. Proposer additionally certifies that neither Proposer nor its principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, any California State agency, or any local governmental agency.

3. Proposer acknowledges that all requests for deviations, exceptions, and approved equals are enclosed herein and that only those deviations, exceptions, and approved equals included in the RFP document or permitted by formal addenda are accepted by the City.

4. Proposer did not receive unauthorized information from any City staff member or City Consultant during the Proposal period except as provided for in the Request for Proposals package, formal addenda issued by the City, or the pre-proposal conference.

5. Proposer hereby certifies that the information contained in the proposal and all accompanying documents is true and correct.

6. Please check the appropriate box below:

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

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

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

☐ If the proposal is submitted by a limited liability company, it shall be signed in the corporate name by an authorized officer or officers.
If the proposal is submitted by a joint venture, the full names and addresses of all members of the joint venture shall be stated and it shall be signed by each individual.

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

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Complete additional signatures below as required per # 6 above

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ATTACHMENT B – COST FORM

Submit the project charges for which you wish to be considered.

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* Non-labor

**Total Cost**  

$ 

NOTES:

1. Consultant has the option to submit a proposal for all three revenue enhancement services or for any individual or combination of revenue enhancement services. Pricing must be for total cost of project for which you are to be considered. Please indicate if any discounts would be provided should multiple project scopes be awarded and if so how much.

2. All pricing is “firm fixed” for a 5-year period and must account for all costs, include all labor as well as any additional reimbursable expenses/ administrative costs required to complete each task. (Labor rates must be all inclusive)

3. Consideration for local and small business preference will be applied to the total base bid by the City as applicable. Proposers must complete Attachment C to be eligible for this preference.

4. Only prices that appear on this City Cost Form will be considered. No other pages with prices and no attached price lists will be considered.

5. In the event of a conflict between unit and extended prices, unit prices shall prevail. The City will recalculate extended prices and correct accordingly.

6. Cost proposals shall be scored based Total Cost Proposal.
**City of San Jose**

**Request for Contracting Preference for Local and Small Businesses**

Chapter 4.12 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.

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

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

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

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

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</tr>
<tr>
<td>Amount of Preference</td>
<td>LBE preference = 2.5% of Cost</td>
<td>LBE preference = 5% of Points</td>
<td>SBE preference = 2.5% of Cost</td>
</tr>
</tbody>
</table>

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

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

**LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE**

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

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

**SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE**

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

Please state the number of employees that your Business has:

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

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

- **Executed at:** ________________________________, California
- **Date:** ________________________________
- **Signature:** ________________________________
- **Print name:** ________________________________
ATTACHMENT D
CITY OF SAN JOSE
CONSULTANT AGREEMENT
STANDARD TERMS AND CONDITIONS

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

SECTION 1. SCOPE OF SERVICES.
CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled “SCOPE OF SERVICES”, which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.
The term of this AGREEMENT shall be from _____________ to ____________, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.
The services of CONSULTANT are to be completed according to the schedule set out in EXHIBIT C, entitled “SCHEDULE OF PERFORMANCE”, which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.
The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed Dollars ($0.00). The rate and schedule of payment is set out in EXHIBIT D, entitled “COMPENSATION,” which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.
Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 6. INDEPENDENT CONTRACTOR.
It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.
The parties agree that the expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONSULTANT’s obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.
CONSULTANT shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONSULTANT’s officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.
CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled “INSURANCE,” which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Human Resources or the Director’s authorized designee (“Risk Manager”) of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.
CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.
A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than thirty (30) days' written notice of termination.

B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.

C. CITY’s Finance Director is empowered to terminate this AGREEMENT on behalf of CITY.

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

SECTION 12. GOVERNING LAW.
CITY and CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.
CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 14. CONFIDENTIAL INFORMATION.
All data, documents, discussions or other information developed or received by or for CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 15. OWNERSHIP OF MATERIALS.
All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.
SECTION 16. WAIVER.
CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 17. CONSULTANT'S BOOKS AND RECORDS.
A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this AGREEMENT.

B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

SECTION 18. CONFLICT OF INTEREST.
CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

SECTION 19. GIFTS.
A. CONSULTANT is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.

B. CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.

C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by CONSULTANT. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.
SECTION 20. DISQUALIFICATION OF FORMER EMPLOYEES.
CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code (“Revolving Door Ordinance”). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 21. SPECIAL PROVISIONS.
Special provisions, if any, to this AGREEMENT are specified in Attachment G entitled, “SPECIAL PROVISIONS”, which is attached hereto and incorporated herein.

SECTION 22. NOTICES.
All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

To CONSULTANT:

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

SECTION 23. VENUE.
In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 24. PRIOR AGREEMENTS AND AMENDMENTS.
This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.
EXHIBIT E

INSURANCE

CONSULTANT, at CONSULTANT’S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and

2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles.

3. Workers’ Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

4. Professional Liability Errors and Omissions insurance for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City’s Risk Manager.

B. **Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers’ Compensation and Employers’ Liability: Workers’ Compensation limits as required by the California Labor Code and Employers Liability limits of $1,000,000 per accident; and

4. Professional Liability Errors and Omissions $1,000,000 Aggregate Limit.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY’s Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or
CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. **Commercial General Liability and Automobile Liability Coverages**
   a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
   
   b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
   
   c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
   
   d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
   
   e. Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

2. **Workers' Compensation and Employers' Liability**

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

3. **All Coverages**

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. **Acceptability of Insurers**

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

F. **Verification of Coverage**
CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose - Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor - Wing
San Jose, CA 95113-1905

G. **Subcontractors**

CONSULTANT shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.
Proposer should provide sufficient background information to substantiate the capabilities of proposer’s team in successfully undertaking and completing this project. Identify completed projects of the same or similar nature for other local governments and/or industry enterprise including number of employees involved, period of performance, and end results. Proposer should include names, addresses and telephone numbers of three (3) California local governments using Attachment E.

<table>
<thead>
<tr>
<th>Name of Customer:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Address</td>
<td></td>
</tr>
<tr>
<td>Customer Contact Name(s)</td>
<td></td>
</tr>
<tr>
<td>Customer Contact Phone Number(s)</td>
<td></td>
</tr>
</tbody>
</table>

Brief description of work performed for this client (use additional sheets if necessary):
ATTACHMENT F
CONFLICT OF INTEREST FORM

To be completed by consultants making proposals.

NAME ________________________________  DATE _________________________

PROPOSED ASSIGNMENT: ________________________________

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

<table>
<thead>
<tr>
<th>Questions</th>
<th>Yes (Provide Details)</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Relationships</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Do you currently have or have had any official, professional, financial, or personal relationships with any person or firm associated with this assignment?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) If yes, describe the type and extent of the relationship.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) In your opinion, might this affect your judgment or your ability to execute this assignment in a fair and impartial manner?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Stock and Investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Does your spouse or a dependent own any stock in company likely to be affected by or involved in the Proposed Assignment?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Do you hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) Does your spouse or a dependent hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If the answer is **yes** to any of the above questions, please provide the name of the company and the amount of the stock or investment.

<table>
<thead>
<tr>
<th>Questions</th>
<th>Yes (Provide Details)</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Employment &amp; Consulting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Is your spouse or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Has your spouse or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If the answer is **yes** to any of the above questions, please provide name of employer, nature of services provided and if the dates employed or retained.
4. Payments or Gifts
   (d) Within the past 12 months, have you received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?
   (e) Within the past 12 months, has your spouse or a dependent received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?

If the answer is yes, please provide the amount the payment or value of the gift, the name and position of the payor/donor and the date of receipt.

5. Real Estate
   (a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment?
   (b) Does your spouse or a dependent own real property that is likely to be affected by or involved in the Proposed Assignment?

If the answer is yes, please provide the location of the property.

6. Positions
   (a) Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?
   (b) Does your spouse or a dependent hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?

If the answer is yes, please provide the name of the entity, and the title of the position held.

7. Are you aware of any facts or circumstance that might give someone the impression that your participation in this process would create a conflict of interest?

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

______________________________
Signature

______________________________
Print Name

______________________________
Date
ATTACHMENT G

SPECIAL PROVISIONS FOR SALES AND USE TAX AGREEMENT

Certificate of Confidentiality

The following conditions specified in Section 7056 (b)(1) of the State of California Revenue and Taxation Code are hereby made part of this AGREEMENT entered into by and between CITY and CONSULTANT:

A. CONSULTANT is authorized by this AGREEMENT to examine sales and use tax records of the Board provided to CITY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.

B. CONSULTANT is required to disclose information contained in or derived from those sales and use tax records only to an officer or employee of CITY who is authorized by resolution of the City Council to examine the information.

C. CONSULTANT is prohibited from performing consulting services for any retailer doing business in CITY during the term of this AGREEMENT.

D. CONSULTANT is prohibited from retaining the information contained in, or derived from, those sales and use tax records after this AGREEMENT has expired.

Information obtained by examination of State Board of Equalization records shall be used only for purposes related to collection of local sales and use taxes or for other governmental functions of CITY as set forth by resolution adopted pursuant to Section 7056(b) of the California Revenue and Taxation Code.

The resolution shall designate CONSULTANT as a person authorized to examine sales and use tax records and shall certify that this AGREEMENT meets the requirements set forth above in Section 7056(b)(1) of the California Revenue and Taxation Code.

CONSULTANT hereby certifies that any and all information utilized in the conduct of work performed is to be utilized only for those purposes authorized by CITY and by the Bradley-Burns Uniform Local Sales and Use Tax Law.