

Tabulation Report

Solicitation Number: CSJ-ORS-ESR-2023

Solicitation Name: EXECUTIVE RECRUITMENT AND SEARCH SERVICES FOR THE CITY OF SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN AND FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM

Publish Date: 11/22/2023 PT

Closing Date: 12/15/2023 17:00:00 PT

The Office of Retirement Services (ORS) oversees the investment of assets and administers the benefits of the two Defined Benefit Retirement Plans for the City of San Jose employees. One plan is for the sworn police and fire employees called the Police and Fire Department Retirement Plan (Plan). The other plan is for all other eligible City employees called Federated City Employees' Retirement System (System). The Boards of Administration (Boards) for the System and the Plan, collectively known as "the Retirement Plans", are seeking proposals from qualified executive search firms to assist the Boards in the selection of a new Chief Executive Officer (CEO).

Solicitation Documents

1 INTRODUCTION

1. The City of San Jose, California has established defined benefit plans and health care trusts for the benefit of City employees and their beneficiaries. The Boards of Administration ("Boards") of the San Jose Police and Fire Department Retirement Plan and the Federated Employees' Retirement System (together, the "Plans") are the trustees of the Plans and their related health care trusts. The Boards in turn delegate the day-to-day administration of the Plans to the Office of Retirement Services (ORS), a department of the City of San Jose. ORS is responsible for the day-to-day investment of assets and administration of benefits under the Board's direction and oversight.
2. The Boards are seeking proposals from a qualified executive search firm to assist the Boards in the selection of a new Chief Executive Officer (CEO), the most senior executive of ORS.
3. The Boards have asked their Joint Personnel Committee (JPC), comprising certain members of both Boards, with managing the CEO recruitment process.
4. This Request for Proposal (RFP) details the requirements needed by the Plans and instructs interested proposers on the application and selection process. All firms meeting the minimum qualifications outlined in Section 3 of this RFP are invited to respond (Respondent).

2 BACKGROUND

The Federated City Employees' Retirement System and the Police and Fire Department Retirement Plan are separate defined benefit retirement plans serving the employees and retirees of the City of San José. Both Retirement Plans use employer and employee contributions and investment earnings on those contributions to provide eligible retirees with defined-benefit pensions based on their years of service and highest compensation. The Plans also provide medical benefits, survivor benefits, and permanent disability benefits to qualified members and their beneficiaries. The two plans differ from each other in their eligibility requirements; employer and employee contribution rates; eligibility for benefits for retirees' spouses, dependents, and beneficiaries; pension benefits and other related retiree benefits. The Plans' benefits are tiered based upon the date of employees' initial membership into the Plans. For more information about the different tiers and their benefit structures, please refer to the Plans' respective Annual Comprehensive Financial Reports (ACFR) located in the website referred to below.

Operating under the state law, the City Charter and the City Municipal Code, the Boards separately administer their Plans and separately require ORS' services. The Boards meet regularly on a monthly basis, except in July, and each Board has various committees that also meet periodically.

1. The Federated Board of Administration consists of seven members: two active City employees who are elected by active members of the system, a Retiree Representative, three public members who are not connected with the City, and another public member who is recommended by the other six Board members and approved by the City Council. All public members must have at least 12 years of experience relevant to the administration of a public retirement plan. The Board is appointed by the City Council and serves in accordance with Section 2.08, Part 10 of the San José Municipal Code. Other information about the Federated City Employees' Retirement System can be viewed at <https://www.sjretirement.com/>.
2. The Police and Fire Board of Administration consists of nine members: two active City employees elected by members of the System (one from the Police Department and one from the Fire Department), two retired plan members elected by the Retiree Association, four public members who are not connected with the City, and another public member who is recommended by the eight other Board members and approved by the City Council. All public

members must have at least 12 years of experience relevant to the administration of a public retirement plan. The Board is appointed by the City Council and serves in accordance with Section 2.08, Part 12 of the San José Municipal Code. Other information about the Police and Fire Department Retirement Plan can be viewed at <https://www.sjretirement.com/>.

3. The Boards' specific duties include consideration of requests for retirement benefits, investment of the retirement funds, determining employees' eligibility for membership in the pension plan, and for disability and survivor benefits. In fulfilling their fiduciary responsibilities, the Boards enlist outside consultants for a variety of professional services. The Boards possess plenary investment authority, and they also possess the authority to make reasonable rules for the administration of the Plans.
4. Net position restricted for pension and postemployment healthcare benefits as of June 30, 2023 were \$3.3 billion and \$5.0 billion, respectively, for Federated and for Police and Fire. There are approximately 10,700 and 4,700 members served, of which over 4,600 and 2,600 are retirees, respectively.
5. The CEO of ORS is appointed by and serves at the pleasure of the two Boards. The CEO is the senior administrative executive with responsibility for administering the Plans as directed and overseen by the Boards, and has statutory authority to hire, promote, evaluate, discipline, suspend and terminate all ORS employees (other than the Chief Investment Office who is appointed by the Boards) who are necessary to carry out the administration of the Plans. The CEO is a City employee and their compensation is set by the City Council on the recommendation of the Boards. The Boards annually evaluate the CEO's performance and recommend the CEO's compensation to the City Council.

3 MINIMUM QUALIFICATIONS

All Respondents must clearly show and document in the proposal the following minimum qualifications. Any response that does not demonstrate that the Respondent meets these minimum qualification by the Submissions Deadline will be considered non-responsive and will not be eligible for consideration. The Respondent must:

1. have at least ten (10) years of significant experience in recruitment of executive staff on behalf of public pension plans.
2. identify at least two firm staff who are proposed to provide services under this RFP, each of whom has at least ten (10) years of significant experience in recruitment of executive staff.
3. identify at least five clients for which Respondent successfully recruited executive professionals in the last five years.

4 SCOPE OF SERVICES

The services shall include, but are not limited to, the following:

1. Meet with the JPC to obtain information regarding expectations, requirements, and responsibilities of the position.
2. Develop detailed Position Specification reflecting ideal candidate profile, job requirements, experience, education, knowledge, skills and abilities required for the position, including creating the recruitment flyer and brochure.
3. Develop strategy to obtain a diverse and highly qualified candidate pool for consideration by the JPC.
4. Prepare recruitment plan(s) with timelines reflecting key milestones.
5. Spearhead a direct networking campaign to attract top talent, including personal outreach and executing an active advertising plan which may include national, regional, in-state and local advertising elements as determined through initial meetings with the JPC.
6. Review resumes and screen applicants, evaluate candidate's qualifications, and confirm information through individual interviews.
7. Provide periodic status reports and updates to the JPC. This includes providing assessments and insights of candidates to assist the JPC in determining recruitment progress and quality of candidate pool.
8. Verify finalists' education and perform confidential background checks.
9. Prepare written in-depth profiles on highly qualified candidates referred for consideration.

10. Provide a candidate pool of three (3) to five (5) highly qualified diverse candidates for the position. Candidates should be pre-qualified as to acceptance of the Retirement Plans' compensation/benefits parameters, receptive to relocating to the San Jose area, and possess a desire for the position..
11. In conjunction with the JPC, develop and participate in the final interview process, including developing appropriate questions, identifying panelists, scheduling, and related matters.
12. Review interview results with the JPC and consider additional candidates, if required.
13. Provide advice and counsel to the JPC to ensure that a successful candidate emerges from the group of highly qualified professionals identified for consideration.
14. Conduct in-depth reference checks to verify candidates' employment qualifications, attitudes, and individual strengths.
15. Assist with the development of the Employment Offer and compensation negotiations, as needed.
16. Notify prospective candidates who were not selected.
17. Attend and participate in meetings of the JPC, as requested, to successfully complete the engagement.
18. Assist in negotiations and communications with the successful candidate, as requested.

5 OBJECTIONS

Any objections as to the structure, content or distribution of this RFP must be submitted in writing to the procurement contact identified in this RFP by the submission deadline for Questions and Answers. Objections must be as specific as possible, and identify the RFP section number and title, as well as a description and rationale for the objection.

6 PROCEDURE FOR SUBMITTING QUESTIONS AND INQUIRIES

1. 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 prior to the specified Q&A deadline. The JPC will provide a written response to all questions in the form of an Addendum.
2. Questions answered on the Biddingo Question and Answer portal shall be considered addenda to this solicitation.
3. The Boards shall not be responsible for nor be bound by any oral instructions, interpretations, or explanations issued by the Boards 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.

7 PROPOSAL SUBMISSION AND TIMELINE

You must respond to this RFP by the due date and time as stated on the cover sheet of this RFP in order for your proposal to be considered.

7.1 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 should attach their proposal and all required documentation to their 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. 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.
5. The Boards are 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.

6. The JPC must receive your response to this RFP electronically through Biddingo by the specified proposal due date and time for your proposal to be considered.

7.2 RESPONSE DOCUMENTS / SUBMISSION REQUIREMENTS

1. In order to expedite the evaluation process, each Proposal shall be organized in accordance with this section. Proposals that do not follow the specified format outlined below, or fail to provide the required documentation, may receive lower scores, or if found to be non-responsive, be disqualified. In the event of any conflict between any of the Proposal documents, resolution thereof shall be in the JPC’s sole discretion.
2. Submittals shall address all RFP sections in the same order presented in order to facilitate the evaluation process and be responsive to each section.
3. All responses to this RFP should follow the outline of the RFP requirements and should fully respond to each section as appropriate.

7.3 ATTACHMENTS

1. **Required Attachment Submittals** – The following documents must be completed and submitted with your technical proposal:
 - Attachment A - Proposal Cover Page and Checklist
 - Attachment B - Questionnaire
 - Attachment C – Cost Proposal
2. Optional Attachment Submittals
 - Attachment D, Local and Small Business Preference: This form must be provided if the proposer is requesting consideration. If this form is not included with your proposal, consideration for local and small business preference shall not be granted. This form may not be submitted at a later date.

7.4 OTHER

1. This RFP does not commit the Plans to pay any costs incurred in the submission of a proposal or in making any necessary studies or designs for the preparation thereof, nor the purchase or contract for the services.
2. After acceptance of the successful proposal by the Plans, the successful Respondent(s) shall be obligated to enter into an agreement consistent with the proposal submitted.
3. Should the successful Respondent fail to execute the agreement, the Plans shall have the right to seek legal remedies against the Respondent and an action for damages and shall have the right to award to the next responsive Respondent.

7.5 TIMELINE

RFP Issue Date	November 22, 2023
Deadline for Submission of RFP Questions by Search Firms	December 1, 2023
JPC response to Submitted Questions from Search Firms	December 8, 2023
Deadline for Proposals from Executive Search Firms	December 15, 2023
Review of Proposals and Short-Listing of Firms	January 5, 2024
Interview Short-Listed Firms and Final Selection	January 19, 2024

8 PROPOSAL EVALUATION AND CRITERIA

1. The JPC will evaluate proposal submissions. The JPC reserves the right to interview prospective firms /individuals prior to making its selection. The JPC also reserves the right to rely on information from sources other than the information provided by the respondents.
 2. Responses will be evaluated as outlined in this section.
 3. The JPC reserves the right to accept an offer in full, or in part, or to reject all offers.
- Exemplar Agreement with Exhibits. Note any exceptions to the Terms and Conditions of the Exemplar Agreement. If there are no exceptions, please return the first page of the Agreement marked “No Exceptions”. Please note that excessive changes may result in lower proposal scores, or disqualification of proposal. Please note that the insurance requirements will be included in this phase.
4. During any “phase” or at any point in the process, the JPC may seek clarification from any or all Respondents in order to better understand and evaluate the proposed solution. This process may not be used as an opportunity to submit missing documentation or to make substantive revisions to the original proposal.

8.1 PROPOSAL EVALUATION AND WEIGHTING CRITERIA

Description	Weight
Proposal Responsiveness	Pass/Fail
Proposer Experience and Qualifications	25%
Quality and Experience of Assigned Professional Personnel	40%
Method, Approach and Technical Capabilities for Executive Recruitment	25%
Local Business Enterprise	5%
Small Business Enterprise	5%

8.2 BASIS OF AWARD

1. Award will be based on the overall highest ranked proposal score.
2. Should the JPC, in its sole discretion, determine that a secondary award is required, award will be to the second highest ranked proposer.
3. Should the selected proposer(s) fail to provide post award documents as required, the JPC, in its sole discretion, may withdraw the award recommendation, and select the next highest ranked proposer for award.
4. The JPC reserves the right to accept an offer in-full, or in-part, or to reject all offers.

9 PROTESTS

If an interested party wants to dispute the award recommendation, the Protest must be submitted in writing to the CEO or Designee no later than ten (10) calendar days after the Recommendation of Award is published at the November/December Board meeting agendas of each plan, detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes of proposal requirements and/or specifications, which must be addressed in accordance with Section 5. Failure to submit a timely written Protest to the contact listed below will bar consideration of the Protest.

Protests must be addressed to the following:

Office of Retirement Services
City of San Jose
Attention: Joint Personnel Committee
1737 North First Street, Suite 600

10 GENERAL INFORMATION

1. The JPC reserves the right to accept or reject any item or group(s) of items of a response. The JPC also reserves the right to waive any informality or irregularity in any proposal. Additionally, the JPC may, for any reason, decide not to award an agreement as a result of this RFP or cancel the RFP. The JPC shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by submission of the proposal.
2. The JPC is not required to accept the lowest price proposal. Responses will be evaluated - pursuant to the process described in this RFP – to determine the most advantageous proposal on a variety of factors including but not limited to price, implementation costs, design quality, features, and performance.
3. Do not include sales tax in your price quotation. The JPC will work with the selected supplier to add sales tax as appropriate and will incorporate it into the Purchase Order.
4. Statistical information contained in this RFP is for informational purposes only. The JPC shall not be responsible for the complete accuracy of said data.
5. The JPC reserves the right to verify any information provided during the RFP process and may contact references listed or any other persons known to have contracted with the Proposer.
6. This RFP, its general provisions, and the terms and conditions identified hereto shall be incorporated in any agreement resulting from this solicitation, and the RFP and its terms and conditions, plus attachments shall control unless the Agreement expressly provides otherwise.
7. The laws of the State of California shall govern this RFP process and any resulting agreements. All services provided to the JPC shall comply with all applicable policies, rules, and regulations which may be in effect during the term of the Agreement, as well as all federal, state and local statutes, ordinances and regulations. The successful vendor will be required to comply with all applicable equal opportunity laws and regulations.
8. The Plans 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 proposals. The Plans shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.
9. Failure to carefully read and understand this RFP may cause the proposal to be out of compliance, rejected by the JPC, or legally obligate the proposer to more than it may realize. Information obtained by the proposer from any officer, agent or employee of the City shall not affect the risks or obligations assumed by the proposer or relieve the proposer from fulfilling any of the RFP conditions or any subsequent contract conditions. Only the format described in the RFP and the attachments included with this RFP will be accepted as compliant for the submitted proposal. Failure to completely fill out all required attachments may result in disqualification.
10. This RFP does not commit the Plans to award a contract.

11 GROUNDS FOR DISQUALIFICATION

1. All Proposers are expected to have read and understood the City's Procurement and Contract Process Integrity and Conflict of Interest adopted on August 26, 2014. A complete copy of the policy can be found below starting with page 69:
2. <https://www.sanjoseca.gov/home/showpublisheddocument/19565/636685574772270000>
3. Any proposer who violates the Policy will be subject to disqualification. Generally, the grounds for disqualification include:
 - Contact regarding this procurement with any Plans 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.

- Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.
- Influencing any of the Plans' staff member or evaluation team member throughout the solicitation process, including the development of specifications.
- Evidence of submitting incorrect information in the response to a solicitation or misrepresent or fail to disclose material facts during the evaluation process.

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

- Offering gifts or souvenirs, even of minimal value, to Plans officers or employees.
- Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City/ORS.
- Evidence of Respondent's inability to successfully complete the responsibilities and obligations of the proposal.
- Proposer's default under any Plans' agreement, resulting in termination of such Agreement.

12 EXAMINATION OF PROPOSED MATERIAL

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

13 TERMS AND CONDITIONS OF AGREEMENT

1. Upon conclusion of the RFP process, the JPC will make a recommendation to the Boards regarding the selection based upon the evaluation of the proposals. The Plans will enter into negotiations with one or more Respondent (s). Respondent(s) shall enter into a contract with each of the Plans in substantial conformity with the selected proposal and the form of the Plans' Standard Terms and Conditions. The JPC reserves the right to negotiate project deliverables and associated costs.
2. All agreements will require the Respondent to adhere to the terms of their proposal and to act in accordance with all applicable laws and regulations.
3. An agreement shall not be binding or valid with the Plans unless and until it is executed by authorized representatives of the Plans.

14 LOCAL AND SMALL BUSINESS PREFERENCE

1. 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.
2. In order for the Respondent to be eligible for local and/or small business preference, the Respondent must meet the following requirements:
 - For local preference, Contractor must have a current San José Business Tax Certificate Number and have an office in Santa Clara County with at least one employee.
 - The small business preference is a subset of the local preference. For small business preference, Contractor must first qualify as a local business as mentioned above and have a total number of employees of 35 or less (regardless of where they are located).
 - If proposer meets the eligibility requirements and wants to receive the preference, the proposer must complete Attachment E, 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 Respondent(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.

15 PUBLIC NATURE OF PROPOSAL MATERIAL

1. All correspondence with the JPC including responses to this RFP will become the exclusive property of the Plans 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 JPC 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.
2. Therefore, any proposal which contains language purporting to render all or significant portions of their proposal “Confidential”, “Trade Secret” or “Proprietary”, or fails to provide the exemption information required as described below will be considered a public record in its entirety subject to the procedures in Section 26.5.
3. Do not mark your entire proposal as “confidential”.
4. The JPC 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.
5. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the Plans 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 JPC will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

16 NON-DISCRIMINATION / NON-PREFERENTIAL TREATMENT

The successful Respondent 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 the proposed contracts.

17 ATTACHMENTS AND EXHIBITS TO THIS RFP

17.1 ATTACHMENT A - PROPOSAL COVER PAGE AND CHECKLIST

PROPOSAL COVER PAGE AND CHECKLIST

(TO BE SUBMITTED ON RESPONDENT’S LETTERHEAD)

Respondent Name:

Respondent Address:

By submitting this response, the undersigned hereby affirms and represents that they have reviewed the proposal requirements and have submitted a complete and accurate response to the best of their knowledge. By signing below, I hereby affirm that the respondent has reviewed the entire RFP and intends to follow all requirements.

Respondent specifically acknowledges the following facts:

1. Respondent has the required technical expertise and has sufficient capacity to provide the services outlined in the RFP.

2. Respondent has no unresolved questions about the RFP and believes that there are no ambiguities in the scope of work.

3. The fee schedule or price proposal sent in response to the RFP is for the entire scope of work and no extra charges or expenses will be paid by the Plans.

4. Respondent has completely disclosed to the Plans all facts bearing upon any possible interests, direct or indirect, that Respondent believes any member of the Plans, or other officer, agent, or employee of the Plans presently has, or will have, in this contract, or in the performance thereof, or in any portion of the profits thereunder.

5. Materials contained in proposals and all correspondence and written questions sent during the RFP process may be subject to disclosure pursuant to the Act.

6. Respondent is not currently under investigation by any state or federal regulatory agency for any reason.

7. The signatory below is authorized to bind the respondent contractually.

Signed: _____ Date: _____

Title: _____

17.2 ATTACHMENT B - QUESTIONNAIRE

QUESTIONNAIRE

(RESPONDENT SHALL USE QUESTIONNAIRE NUMBERING IN ITS PROPOSAL)

To respond to this RFP, Respondent must respond to each of the items below, in the same order listed. Completeness, clarity and brevity will be looked upon favorably. Please restate each question in bold face before your response and be as specific as possible.

1. Firm Organization and Background:

- a. Please provide a short introduction and executive summary of not more than two pages which includes the name, address, telephone number, email address and facsimile number of the person authorized to represent the Respondent with respect to all notices, negotiations, discussions and other communications relating to this RFP, to any further selection process, and to negotiations related to a contract for the services described in this RFP.

- b. Please provide narrative statements which demonstrate that Respondent meets the minimum qualifications set forth in Section 3. Narrative statements should not exceed three pages and should address the following:
 - i. years of experience conducting executive searches;
 - ii. identify and describe the experience of at least two firm staff who are propose to provide services under this RFP, each of whom has at least ten (10) years of experience in recruitment of executive staff for public pension clients; and
 - iii. identify at least two public pension plan clients for which Respondent successfully recruited executive professionals in the last five years (please include the name, title and contact information for each reference and please note that references may be checked at any point during the RFP process).

- c. Please provide an overall description of Respondent's firm, including the following:
 - i. Respondent's organizational structure, e.g., corporation, partnership, limited liability company);
 - ii. ownership structure;
 - iii. years in existence;
 - iv. years of experience conducting executive searches;
 - v. financial condition;
 - vi. total number of employees; and
 - vii. headquarters and regional office locations, including the number of firm staff at each location who provide executive search services relevant to this RFP.

- d. Briefly describe each firm staff member who may be assigned to provide services under this RFP, including for each staff member:
 - i. location of office;
 - ii. title and role within Respondent's firm;
 - iii. number of years with Respondent's firm;
 - iv. years of experience providing executive search services;
 - v. expected role and any specialized expertise; and
 - vi. relevant public pension executive searches within the past five years.

2. Executive Search Methodology

- a. Please provide a description of the firm's recruitment methodology to conduct executive searches.
- b. Please describe the average time taken to perform a typical executive search supported by a typical timeline listing typical milestones and their time to completion. Please consider that the searches may include discussions/approvals at public meetings at various key milestones of the process.
- c. Please describe your strategies proposed for the recruitment process, including a discussion of the geographic scope of the recruitment process and strategies for recruiting candidates.
- d. Recommendations as to methods of interviewing and vetting the candidates and which your firm have found to be most successful.
- e. The scope and nature of the background search: who should conduct it and who should be contacted?
- f. Whether or not your services would include drafting and negotiating the employment agreement on behalf of the JPC.

3. Executive Search Experience

- a. Provide a complete listing of the firm's executive searches for high-level executives for public pension plans during the last five years, identifying: a) the name of the City, b) the time period during which the search took place, c) the number of applicants, d) the number of persons interviewed, e) the procedures utilized in interviewing, vetting, negotiating the contract with and hiring the executive, f) the name of the person selected, g) the beginning salary agreed to be paid to the successful candidate, and h) whether that person still occupies the position. Please provide the names, positions and contact information of persons working at these cities who we could contact to obtain information about the results of your recruitment efforts on their behalfs.
- b. List all executive searches commenced over the past five years which will not be completed with an explanation.

- c. Provide a list of all City of San Jose executive search engagements within the past 10 years, if any.
- d. Provide links or examples of several recruitment brochures and marketing materials.

4. Miscellaneous

- a. Please discuss any additional information that Respondent would like the JPC to know about Respondent that may impact consideration of Respondent as a potential service provider to the Plans.

17.3 ATTACHMENT C - COST PROPOSAL

COST PROPOSAL

1. Please include detail regarding scope and cost of services, deliverables and timeframe for completion of the project.
2. Please describe Respondent's proposed fee arrangement for the services described in this RFP, including hourly rate at which ORS would be billed for any services the JPC might request outside the scope of the items in your proposal.
3. Provide an explanation of how total costs for executive searches are determined in the firm's response to this RFP.
4. Discuss any additional information related to the proposed fees that Respondent believes will be relevant to the JPC in considering the Respondent's fees.

17.4 ATTACHMENT D - LOCAL AND SMALL BUSINESS PREFERENCE

<p>City of San Jose Request for Contracting Preference for Local and Small Businesses</p>	<p>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.</p> <p>In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (<i>regardless of where they are located</i>) of your firm is 35 or fewer.</p> <p>There are two ways in which the preference can be applied. In procurements where price is the determinative factor (<i>i.e. there are not a variety of other factors being considered in the selection process</i>) the preference is in the form of a credit applied to the 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.</p>
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17.5

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

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

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

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

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

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

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

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

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

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

Please state the number of employees that your Business has:

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

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

Executed at: _____, California

Date:

Signature

Print name

List of Attachment

File	Description	Reattachment Required	Limited Preview
1 Standard City Contract CEO Search Firm - Exhibit 1.pdf			

EXHIBIT 1 - Standard Consultant Agreement

(Non-Capital Projects)

This Agreement is between the Boards of Administration (“Boards”) for the San Jose Police and Fire Department Retirement Plan and the Federated City Employees’ Retirement System, and [Insert Consultant’s Legal Name], [Insert Type of Business Entity] (“Consultant”).

This Agreement is made and entered into this ___ day of _____ 20__ (“Contract Date”).

THE BOARDS AND CONSULTANT AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

- 1.1 **General:** This Agreement sets forth the terms and conditions under which the Consultant will provide professional consulting services to the Boards.
- 1.2 **Exhibits:** This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:
- Exhibit A:** Scope of Basic Services
 - Exhibit B:** Compensation
 - Exhibit C:** Insurance Requirements
- 1.3 **Director:** “Director” means the Director of Office of Retirement Services 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 business.
- 1.5 **Entire Agreement:** This 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 Agreement may be modified only by a written amendment executed by the parties.

2. AGREEMENT TERM

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

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

3. SCOPE OF SERVICES

- 3.1 **Basic Services:** “Basic Services” means the services set forth in **Exhibit A**. The Consultant must perform the Basic Services to the Director’s satisfaction.
- 3.2 **Additional Services:** “Additional Services” means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate but are not included in the Basic Services.
 - 3.2.1 **Authorization:** The Boards will not compensate Consultant for any Additional Services without the Director’s prior written authorization.
 - 3.2.2 **Director’s Authorization:** The Director may authorize the Consultant to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The Director must authorize the Consultant to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the Consultant for such services. The Director is authorized to execute the amendment for Additional Services for the Boards.

4. INTENTIONALLY OMITTED

5. BOARDS’ CONTRACT MANAGER

The Boards’ contract manager for this Agreement is:

Name: Benjie Chua Foy	Phone No.: 408-794-1030
Department: Office of Retirement Services	Email: benjie.chua-foy@sanjoseca.gov
Address: 1737 N. First Street, Suite 600, San Jose, CA 95112	

The Director can change the above contract manager by giving the Consultant written notice.

6. CONSULTANT’S STAFFING

- 6.1 **Consultant’s Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant’s contract manager, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 (“Form 700”), and the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the Boards, the Consultant must comply with the requirements of Subsection 17.2 below.

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

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

6.2 Contract Manager's Authority: The Consultant's contract manager is authorized to act on behalf of the Consultant.

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 this provision.

7. USE OF SUBCONSULTANTS

7.1 Authority to Use: Whichever of the following is marked applies to this Agreement:

- The Consultant can **not** use any subconsultants without the Director's prior written approval.
- The Consultant will use the following subconsultants for the specified areas of work. The Consultant can not remove, replace or add to any of the subconsultants identified in this provision without the Director's prior written approval.

Subconsultant's Name	Area of Work
1.	
2.	
3.	

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

7.2 Subconsultant Work: The Consultant warrants all services and deliverables provided by any subconsultants 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 or Boards, and shall not represent or act as the Boards' 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 Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.

8.3 Indemnity: The Consultant shall place in each Subcontractor agreement indemnity obligations in favor of the Boards in the exact form and substance of those contained in Section 11 below.

9. STANDARD OF PERFORMANCE

The Consultant represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The Consultant represents that its performance of the Basic Services 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 Total Compensation: The maximum amount the Boards will pay the Consultant for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is **\$50,000** ("Maximum Total Compensation").

10.2 Intentionally Omitted.

10.3 Exhibit B - Compensation: The Boards will pay the Consultant up to the Maximum Total Compensation in accordance with **Exhibit B**.

10.3.1 Compensation Table: **Exhibit B** sets forth a compensation table establishing the manner in which the Boards will pay the Maximum Compensation to the Consultant ("Compensation Table"). The Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.

10.3.2 Schedule of Rates and Charges: If the Boards will compensate the Consultant for any Basic Services on a time-and-materials basis, then **Exhibit B** also sets forth a schedule of the Consultant's rates and charges ("Schedule of Rates and Charges"). The Schedule of Rates and Charges is subject to the following requirements:

10.3.2.1 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 Consultant Premium Pay.

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

10.3.2.2 **No Increases:** The Boards will *not* increase the Schedule of Rates and Charges during the Agreement term.

10.3.2.3 **Conflict:** In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.

10.4 **Compensation Table – Part 1:** Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services. 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 Boards will compensate the Consultant. Each task number corresponds to the same task number in **Exhibit A**. If a task number included in **Exhibit A** is not included in the Compensation Table, then the Boards 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 Boards 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 Boards 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 Boards will compensate the Consultant in accordance with the Schedule of Rates and Charges included in **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 Boards will pay the Consultant for completing the task(s).

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

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 Boards. 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 Boards.

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

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

10.5.2 Maximum Amount of Reimbursable Expenses: The Boards 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 Boards.

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 Boards 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 Boards’ 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 Boards’ 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 other expenses expressly identified in Exhibit B as being reimbursable.	As specified, not to exceed 10%

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

10.6 Compensation Table – Part 3: Part 3 indicates whether the Boards will compensate the Consultant separately for subconsultant costs incurred in providing any part of the services. If the Boards will compensate the Consultant for subconsultant costs, the Boards will do so in accordance with the following terms and conditions.

10.6.1 Actual Costs: The Consultant can invoice the Boards 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, if one is included in **Exhibit B**, must be the subconsultant's actual rates and charges exclusive of any markup. The Boards will compensate the Consultant in accordance with those rates and charges.

10.6.3 Maximum Amount: The Boards 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 Boards.

10.7 Compensation Table – Part 4: Part 4 sets forth the maximum compensation that the Director can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the Consultant that would result in compensation exceeding this maximum amount is at no cost to the Boards.

10.8 Tax Forms Required: The following are conditions on the Boards' obligation to process any payment pursuant to this Agreement:

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 Boards with a properly completed Internal Revenue Service Form W-9 before the Boards 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 Boards 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 Boards 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 Boards will process payment.

11. INDEMNIFICATION

11.1 Obligation: The Consultant shall defend, indemnify and hold harmless the Boards and its officers, the Office of Retirement Services, their 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 Basic Services and any Additional Services; 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

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

- 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 Boards' use of any services, deliverables or other items provided by the Consultant pursuant to the requirements of this Agreement; or
- Any breach of this Agreement.

11.2 Limitation on Obligation: The obligation in Subsection 11.1 above shall 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 Boards, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the Boards' 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 Boards' acceptance of any insurance in accordance with Section 12 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 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 Agreement.

12. INSURANCE REQUIREMENTS

12.1 General: The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.

12.2 Documentation: Before performing any services, the Consultant must submit to the Boards' 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 work product (including electronic equivalents) without restriction or limitation upon their use, and immediately when and as created by the Consultant or any other person engaged directly or indirectly by the Consultant to perform the Consultant's services pursuant to this Agreement: reports, drawings, plans, 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 Boards. 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 Boards all copyrights to such works when and as created.

13.3 Intentionally Omitted.

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

- 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 services pursuant to this Agreement.
- 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 between the Consultant and its Subcontractors that are needed to perform the Basic Services.
- 14.4 **Survival:** This Section 14 survives the expiration or earlier termination of this 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 Boards' final payment to the Consultant under this 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 Boards; and
 - All Work Product and other records evidencing Consultant's performance.
- 15.2 **Producing Records:** At any time during the Agreement term or during the period of time that the Consultant is required to retain the Records, the Office of Retirement Services, the Director, the Board, its Plan Counsel,, 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 the Office of Retirement Services 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 Boards.
- 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 Agreement if the compensation under this Agreement exceeds \$10,000.

16. NON-DISCRIMINATION/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.

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

16.2 Intentionally Omitted.

16.3 Subcontracts: The Consultant shall include Subsection 16.1 of this Agreement in each subcontract that it enters into in furtherance of this 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 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 Agreement. The Consultant has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the Boards 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 Agreement, and identified 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 person begins performing services under this Agreement 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 Boards:

- The Consultant's performance of the services required by this Agreement 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 if the services required by this Agreement comprise 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 Boards 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 the services required by this Agreement might have on its ability to obtain contracts to perform future services.

18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

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

18.1 General: The Consultant shall perform its obligations under the 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: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement>. Environmental procurement policies and activities related to the completion of Consultant's 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 Agreement 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 Agreement immediately upon written notice for any material breach by the Consultant. If the Director terminates the Agreement 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 Boards.

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

- 19.3 Delivery of Work:** If the Director terminates the Agreement – whether for convenience or for cause – the Director has the option of requiring the Consultant to provide to the Boards 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 Boards will pay the Consultant the reasonable value of services satisfactorily rendered by the Consultant to the Boards up to the date of Consultant's receipt of the written notice of termination. For services to be "satisfactorily rendered," the Director must determine that the Consultant provided them in accordance with the terms and conditions of this Agreement. The Director will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.
- 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 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 served is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the Boards: Boards of Administration for the Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System
Attn: Benjie Chua Foy
Office of Retirement Services
1737 N. First Street, Suite 600
San Jose, CA 95112
408-794-1030
Benjie.chua-foy@sanjoseca.gov

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

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

21. MISCELLANEOUS

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

- 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 Board member, City officer or designated employee from accepting any gift. The Consultant shall not offer any Board member or 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 a 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 Boards' waiver of any violation of this Agreement by the Consultant is not a waiver of any other violation by the Consultant.
- 21.4 Acceptance of Services Not a Waiver:** The Boards' 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 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 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 Agreement term.
- 21.7 Assignability:** Except to the extent this Agreement authorizes the Consultant to use subconsultants, the Consultant shall not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director's discretion, may void this Agreement if a violation of this provision occurs.
- 21.8 Governing Law:** California law governs the construction and performance of this Agreement.
- 21.9 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by either the Superior Court of California for the County of Santa Clara, or the San José Division of the Northern District of California.
- 21.10 Survival of Provisions:** If a court finds any part of this 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.
- 21.12 Execution in Counterparts:** This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- 21.13 Use of Electronic Signatures:** Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the

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

same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the Boards.

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

NOTE: The Consultant must sign one of the following representations. **The Boards will not process this Agreement unless the Consultant has signed one of the provisions.**

[[{_signer#}]] 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 Boards at the address specified in Subsection 20.3 of this Agreement.

Or

[[{_signer#}]] If the Consultant is unable to make the above certification, the Consultant acknowledges and agrees to provide the Boards 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 Agreement.

Boards of Administration for the SBan Jose Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System

Consultant

By [[{_signer#}]]

By [[{_signer#}]]

Name: **Roberto L. Pena**
Title: **Chief Executive Officer**

Name: [Insert Name.]
Title: [Insert Title of Signature.]

Approval as to Form (Plan Counsel):

Form Approved by Plan Counsel
(Maximum Total Compensation is \$100,000 or less, and standard provisions of the form are not altered.)

By [[{_signer#}]]

Approved as to Form:
[[{_signer#}]]

Name: [Insert Name.]
Title: [Insert Title of Signature.]

Name: [Insert Name.]
Title: **Plan Counsel**

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

EXHIBIT A: SCOPE OF BASIC SERVICES

(Non-Capital Projects)

The Consultant shall provide services and deliverables as set forth in this **Exhibit A**. The Consultant shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the Director.

General Description of Project: [Insert a general 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:** The Consultant will provide the following to the Boards' Contract Manager: [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:** The Consultant will provide the following to the Boards' Contract Manager: [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:** The Consultant will provide the following to the Boards' Contract Manager: [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 _____.

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

EXHIBIT B: COMPENSATION

Section 1 – Compensation Table

Part 1 – Compensation for Basic Services				
Column 1	Column 2	Column 3	Column 4	
Task Nos.	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 accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:		
<input type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants.		<input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subconsultant costs is:		
Part 3 – Subconsultant Costs				
<input type="checkbox"/> No money is budgeted for Additional Services, and the Director can not authorize any Additional Services.		<input type="checkbox"/> The Director may authorize the Consultant to perform Additional Services up to the following maximum amount:		
Part 4 – Additional Services				
Maximum Total Compensation (sum of Parts 1 through 4):				
\$				

Type text

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

Section 2 – Schedule of Rates and Charges

- Omitted.** No Schedule of Rates and Charges is included because the Boards will not be compensating the Consultant for any Basic Services on a “time & materials” basis.
- The following is the Schedule of Rates and Charges applicable to this Agreement:

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

EXHIBIT C: INSURANCE REQUIREMENTS

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; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance appropriate to CONSULTANT's profession.
5. Cyber Liability insurance covering privacy and network security liability, data recovery, and data breach response.

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 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

Consultant: [Insert Consultant's Name.]
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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 per claim and \$1,000,000 aggregate.
5. Cyber Liability: \$1,000,000 per claim and \$1,000,000 aggregate.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by 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 Boards, City of San Jose, its officers, employees and agents 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, and agents.
 - b. CONSULTANT's insurance coverage shall be primary insurance as respects to the Boards, Office of Retirement Services, its officers, employees, and agents. Any insurance or self-insurance maintained by Boards, its officers, employees, or agents 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 Boards, Office of Retirement Services, its officers, employees, or agents.
 - 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.

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

e. Coverage shall contain a waiver of subrogation in favor of the Boards, Office of Retirement Services, its officers, employees, and agents.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the Boards, Office of Retirement Services, its officers, employees, and agents.

3. Claims Made Coverages

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the Boards and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

4. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to Boards, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment 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 Boards with certificates of insurance and 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 emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose—Finance
Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

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

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