



**HOUSING DEPARTMENT**

**REQUEST FOR QUALIFICATIONS**  
(RFQual No. CSJHD-6-12-13)

**REQUEST FOR QUALIFICATION (RFQual)**  
**HOUSING IMPACT FEE NEXUS STUDY**

**RESPONSE DUE DATE:**

**Monday, July 8, 2013**  
**4:00 PM (Pacific Time)**

## CITY OF SAN JOSÉ HOUSING IMPACT FEE NEXUS STUDY

### 1. Introduction

- 1.1. The City of San José Housing Department is seeking qualifications from individuals and firms to conduct a nexus study analyzing the impact that residential development has on the need for affordable housing in San José. The study should be consistent with the requirements of the Mitigation Fee Act. Prospective respondents are advised to read *all* information in the Request for Qualifications (RFQual) carefully prior to submitting a proposal.
- 1.2. The selected consultant will be required to produce, complete or coordinate all deliverables identified in this RFQual. Respondents to this RFQual shall review each deliverable to determine if the firm/individual has the capacity, knowledge and/or experience to complete each item.

### 2. Background

- 2.1. While the demand for affordable housing continues to grow, the funding available to support affordable housing activities has been severely constrained. The California State Supreme Court's decision in December of 2011 cleared the way for the abolishment of the State's Redevelopment Agencies (RDAs) effective February 2, 2012. The 20% tax increment from the RDA was a significant source of revenue for new construction of affordable housing. The source is no longer available. Absent new sources of funds or other tools, the loss of this critical revenue source will make it very challenging for the City to facilitate the development of affordable housing.
- 2.2. On January 12, 2010, the San José City Council approved a Citywide Inclusionary Housing Ordinance that required affordable housing obligations on all new, for-sale developments of 20 or more units. This Ordinance has been the subject of a legal challenge, and although it has been upheld by the appellate court, the challenger may yet appeal to the California Supreme Court.
- 2.3. On June 4, 2012, the City Council directed Housing Staff to solicit an independent consultant to conduct a nexus study that examines the impact that residential housing development has on the City's need for affordable housing and to return to the City Council with recommendations. City Council directed that the nexus study report should examine the feasibility of such a fee; should examine the aggregate impact of a potential fee and the city's current impact fees on the feasibility of housing development; and, should provide the necessary quantitative support for such a fee. The specific type of fee contemplated by the memo to City Council is a development impact fee that is subject to all of the provisions of the Mitigation Fee Act. The purpose of this RFQual is to determine which consultant can provide the best substantiated study, make best use of the City's local data, and also to identify the best practices with

respect to generating this type of funding for affordable housing. Also, based on the City's experience with its Inclusionary Housing Ordinance and San José's status as the largest city in Northern California, it is very likely that any City adopted affordable housing impact fee would be challenged in court; thus, the trial experience of the respondent and the respondent's identified experts is important. The respondent should be prepared both to explain the methodology used for its nexus study in layman's terms and to document and respond to questions by trained professionals regarding the methodology and data.

### **3. Guidelines and Format to Reference when Responding to this RFQual**

3.1. The following guidelines are provided for standardizing the preparation and submission of proposals. The intent is to assist respondents in the preparation of their submissions and to assist the City by simplifying the review process by providing standards for comparison of submissions.

3.2. Statements submitted in response to this RFQual shall include a complete response to the requirements in this section in the order presented. Statements should be a straightforward delineation of the respondent's capability to satisfy the intent and requirements of this RFQual, and should not contain redundancies and conflicting statements.

3.3. Respondents must submit one signed original, three copies, and one electronic (CD) copy of the proposal to the City of San José Housing Department by 4:00 PM on Monday, July 8, 2013. Proposals shall be submitted in a sealed envelope clearly marked Housing Nexus Study and addressed to:

City of San José Housing Department  
Attention: Housing Nexus Study Manager  
200 East Santa Clara St., 12<sup>th</sup> Floor  
San José, CA 95113

Proposals shall contain the following information in the order listed:

#### **a) Introductory Letter**

The letter should state the respondent's name, mailing address, telephone number, and contact name. The letter shall address the respondent's understanding of the project based on this RFQual and any other information the respondent has gathered. The letter should include a statement discussing the respondent's interest and qualifications for this type of work. A principal of the firm authorized to legally bind the firm shall sign the letter.

#### **b) Table of Contents**

The respondent shall insert a comprehensive table of contents denoting Sections c through i of the proposal as indicated below.

**c) Qualifications**

Describe the respondent's capability of actually undertaking and performing the work described in this RFQual. The proposal shall address the following:

- i) Organizational narrative. Provide a narrative and other information documenting the capacity of the respondent's team to conduct a housing nexus study and to provide the related information and services, including best practices recommendations as outlined in this RFQual. Clearly describe the qualifications of the project team, including experience on similar past projects, experience of the team members working together on similar projects, any expert knowledge in the field of affordable housing, and knowledge and trial experience, if any.
- ii) Firm experience. The proposal shall include a summary of your experience in completing comprehensive nexus studies assessing impacts of housing or commercial projects, with an emphasis on housing nexus studies that met the goals of your clients in the last five years. Projects included shall include the client name and location. At least five examples of recent, relevant projects shall be provided. If possible, describe any major challenges faced and solutions developed to address them. Highlight any such study completed within Santa Clara County.
- iii) Previous legal challenges and trial experience. The proposal shall include a description of any legal challenges brought against Consultant's prior nexus studies.
- iv) Team member experience. The qualifications, experience, and title position of each member of the project team must be provided. The proposal should indicate each team member's responsibility for project tasks. Identify the experts and list their trial experience. Identify the lead person who will be the primary liaison with the City and each individual who will work with the City. Include resumes for each person to be assigned. Include any professional designations and affiliations, certifications, licenses, etc.
- v) References. Provide at least three references for similar projects, including the project information and contact information (name, title, phone, email address). References may be contacted as part of the selection process, and will be asked to comment on work quality and performance.

**d) Responses to Issues Identified in Exhibit B**

Responses to this RFQual should be organized so as to address responses to the questions in Exhibit B. Responses should demonstrate the respondent's ability to meet the defined minimum qualifications by citing the level of knowledge as well as experience in the items listed. Answers will be evaluated according to content, indications of success in meeting objectives, familiarity with Santa Clara County and San José in the context of relevant knowledge of housing nexus studies, and trial experience.

**e) Work Plan**

The work plan should indicate the respondent's ability to meet each specification or objective outlined in this document. The work plan should address the items of work as described in this RFQual. The plan should be simple, be easy to read and follow, and should address and satisfy the objectives and specifications as listed in the Scope of Work and Deliverables sections of this RFQ.

The work plan should address the following:

- i) Methodology, technique, and approach to management of the project, including the methodology to be used in the completion of a nexus study, and identifying any other relevant best practices for funding affordable housing. The description should include any peer reviews of the methodology/ modeling approach used by the proposer.
- ii) Approach to providing each of the services and meeting the objectives indicated in this RFQual.
- iii) A proposed schedule for completing the project.
- iv) Any unique or innovative technologies or approaches to the project proposed to be used.
- v) A description of the level and type of City staff support required to fulfill the completion of the work plan.
- vi) The respondent's experience presenting to stakeholder groups including: City/County staffs, elected bodies, the development community, and other groups. Please explain the firm's approach when presenting to the public.

**f) Budget/Pricing**

Utilize Exhibit C to submit a line-item budget showing all directed and indirect costs associated with completing the items discussed in this RFQual. Respondents are required to provide a fee structure including, if applicable, the hourly rate of the team members to be assigned to the matter, and proposed cost and expense reimbursement levels.

Respondents are required to provide line item descriptions and pricing, applicable sales tax, and a total final price. No cost increases shall be passed onto the City after the proposal has been submitted. Direct costs (e.g. printing, travel expenses, tax) are to be listed as a separate line item, with any mark-up specified.

**g) Schedule**

Submit a comprehensive schedule for completing of the project within the prescribed timeframe outlined in this RFQual. The schedule should include a kick-off meeting/conference call, dates for completion of individual sections, administrative draft release, public review of draft release, final draft, and City Council adoption. Respondents should describe their ability to travel easily to San José for the purposes of meetings, public hearings, and/or stakeholder gatherings.

## **h) Supporting Information**

This section may include graphs, charts, photos, resumes, references, etc. in support of the respondents' qualifications and/or work plan.

## **i) City of San José Consultant Agreement Standard Terms and Conditions**

Attachment C is a copy of the City of San José's standard Consultant Agreement. Please review this document carefully and note in the proposal any exceptions or alterations to the Contract. Alterations or changes to the Contract that were not in the service provider's response will not be allowed after the selection of the consultant.

## **4. Acceptance or rejection of response**

The City's Housing Department reserves the right to accept or reject any item or group(s) of items of a response. Additionally, the Housing Department may, for any reason, decide not to award an agreement as a result of this RFQual.

## **5. Inquiries and/or clarifications**

5.1. Request for clarification of the RFQual shall be emailed to:

- Patrick Heisinger (Senior Development Officer) – [patrick.heisinger@sanjoseca.gov](mailto:patrick.heisinger@sanjoseca.gov)
- Mark Gerhardt (Administrative Officer) - [mark.gerhardt@sanjoseca.gov](mailto:mark.gerhardt@sanjoseca.gov)

5.2. Questions must be received before 12:00 Noon on June 24, 2013.

5.3. The City's Housing Department will submit answers to any and all questions in the form of an addendum to the RFQual. The addendum will be sent to all parties to whom the RFQual has been issued not later than three (3) business days prior to the due date for receipt of the response and will become part of the RFQual. Prospective consultants should await the City Housing Department's reply to inquiries/clarifications prior to submitting their final responses to this RFQual.

## **6. Instructions to Respondents**

6.1 These instructions outline the requirements governing the format and content of the response and the approach to be used in its development and presentation. Only that information which is essential to an understanding and evaluation of the response should be submitted.

6.2 A response and all attachments shall be in English, complete, and free of ambiguities, alterations, and erasures. A duly authorized officer or agent of the prospective consultant shall execute them. In the event of conflict between words and numerals, the words shall prevail.

6.3 Cover letter and Proposal Consistent with Section 3.3

- a) Exhibit A – Response Form
- b) Exhibit B – Responses to the questions listed in Exhibit B of this RFQual. The questions must be completely addressed in the text of your proposal and be presented in the order of the questions in Exhibit B.
- c) Exhibit C – Cost Form
- d) Exhibit E – Insurance Requirements
- e) Two complete project reports that demonstrate strong evaluation skills and the ability to get down to the root of problems and offer creative solutions.
- f) A list of current projects.
- g) Most recently audited or current financial statements.
- h) If a respondent wishes to be considered for the City’s local and small business preference program, please submit Exhibit F – Contracting Preference for Local and Small Businesses. If Consultant fails to submit the proper information with the quote, he/she will be denied consideration for local preference. The information cannot be submitted after the RFQual submission deadline.
- i) Any conflict or appearance of conflict, including serving as evaluator to a borrower or developer currently or previously conducting business in San José, shall be reported in the response to this RFQual. In addition, applicants’ responses should identify a strategy for ensuring that no conflict or appearance of conflict shall arise should the respondent be awarded this contract with the City of San José.

## 7. Consultant Contact

Consultant shall provide name, address, telephone, FAX number and e-mail address of an individual in their organization to whom notices and inquiries by the City’s Housing Department should be directed as part of this response.

Name:  
Address:  
Telephone #:  
FAX #:  
E-Mail Address:

## 8. Screening Criteria

8.1. At a minimum, respondents to this RFQual with complete proposals will be considered to the extent they demonstrate the following: Five years of direct experience conducting housing impact or commercial linkage fee nexus studies.

## 9. Evaluation

9.1 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.

9.2 Submittals from interested individuals and agencies will be evaluated on the quality of their answers to the RFQual questions, their submitted work samples, their estimated costs for performing work, and reference checks. Written responses to the RFQual questions will not be returned.

9.3 Responses will be evaluated separately based upon the following criteria and point system (maximum of 100 points):

Strength of Consultant (65 Points)

- Professional qualifications: Experience of the individual/agency in providing a comprehensive defensible nexus study, and defending its nexus studies (30 Points)
- Demonstrated ability to create an detailed nexus study and related reports according to the goals of the client and consistent with this RFQual (25 Points)
- Demonstrated ability to deliver materials on-time, no errors, and within budget (10 Points)

Cost Proposal (15 points)

- Appropriateness of estimated Cost of Services relative to services provided to the City.

Small and Local Business qualification (up to 10 bonus Points total)

- See PART XVI Contracting Preference for Local and Small Business

Other Factors (10 points)

- Proposal is well-organized, professionally communicated, and meets RFQual specifications (10 Points).

**10. Selection of Consultant**

10.1. The City’s Housing Department will make the final decision regarding the selection of a consultant based upon an evaluation of the qualifications. The City’s Housing Department reserves the right to negotiate project deliverables and associated costs.

**11. RFQual Timeline**

11.1 The approximate schedule for consultant selection (dates are subject to change):

Issuance of RFQual	<b>June 12, 2013</b>
Submittal of any written questions	<b>June 24, 2013</b>
City’s deadline to respond to questions	<b>June 27, 2013</b>
Deadline for proposal submissions	<b>July 8, 2013</b>

Selection of consultant	<b>July 12, 2013</b>
Contract execution	<b>July 23, 2013</b>
Performance of work	<b>July 23, 2013 – November 2013</b>

**12. RFQual Process Policies for the City of San José**

12.1 Small/Local Business Enterprise

It is the policy of the City of San José to encourage business activity in San José. The City recently amended the San José Municipal Code that provides a preference for Local Business Enterprises and Small Business Enterprises when evaluating providers for contractual services. The amendment went into effect as of June 18, 2004. Although the ordinance provides greater detail related to all professional and general service contracts, the area of concern for this RFQual is the section pertaining to professional and general service contracts where cost is not the determinative factor in selecting the most advantageous proposal. For this RFQual, qualified Local Business Enterprises (“LBE”) will receive 5 points credit (5% of the total 100 points possible) in the evaluation process and if a qualified LBE is also a qualified Small Business Enterprises (“SBE”), then the firm will receive an additional 5-point credit.

12.2 Exhibit F, Request for Contracting Preference for Local and Small Businesses is included in this package, and is to be completed and included in RFQual submittals. If the respondent fails to submit the proper information with its response to this RFQual, it will be denied consideration for local preference. The information cannot be submitted later.

12.3 Public Record: Responses become property of the City of San José

- Responses to this RFQual become the exclusive property of the City of San José. At such time as the City Manager’s Office recommends a consultant to the City Council, all responses received to this RFQual become a matter of public record and shall be regarded as public records, with the exception of those elements in each response which are defined by the consultant as business or trade secrets and plainly marked as “Confidential,” “Trade Secret,” or “Proprietary.” The City shall not in any way be liable or responsible for the disclosure of any such response or portions thereof, if they are not plainly marked as “Confidential,” “Trade Secret,” or “Proprietary” or if disclosure is required under the Public Records Act. Any response which contains language purporting to render all or significant portions of the response “Confidential,” “Trade Secret,” or “Proprietary,” shall be regarded as nonresponsive.
- Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of San José may not be in a position to establish that the information, which a consultant submits, is a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the City will provide the consultant who submitted the information with reasonable notice to allow said consultant to seek protection from disclosure by a court of competent jurisdiction.

12.4 Non-discrimination/Preferential Treatment

The successful consultant shall fully comply with Chapter 4.08 of the San José Municipal Code and shall not discriminate against or grant preferential treatment to any sub consultant on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity or national origin in the performance of City of San José contracts. Any consultant who so discriminates or gives preferences shall be deemed not to be a responsible consultant in accordance with City of San José Charter Section 1217.

### **13. Exemplar Agreement(s)**

13.1 Exhibit D (Exemplar Agreement) and Exhibit E (Insurance Requirements) outline the City's standard terms and conditions as part of the agreement between the City and successful consultant.

13.2 Consultant is required to include the Insurance Acknowledgement portion of Exhibit E with their submittal.

### **14. City Business Tax and License**

Any consultant doing business with the City of San José is required to pay a City of San José business tax. Successful consultant(s) must show proof of the tax being paid or pay the City business tax at time of contract award. Please contact the City's Treasury Division of the Finance Department at (408) 535-7055 to determine applicable costs.

### **15. Exhibits**

- Exhibit A – Response Form
- Exhibit B – Elements to Address in Responses
- Exhibit C – Cost Form
- Exhibit D – Exemplar Agreement (Sample only)
- Exhibit E – Insurance Requirements/Acknowledgement
- Exhibit F – Request for Contracting Preference for Local and Small Business
- Exhibit G – Example Scope of Work and Deliverables

**EXHIBIT A**

**RESPONSE FORM**

**Consultant**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Contact Person Name and Title: \_\_\_\_\_

Contact Person Telephone: \_\_\_\_\_

Contact Person Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**EXHIBIT A - RESPONSE FORM  
(Continued)**

**CONSULTANT'S REPRESENTATIONS**

Consultant understands, agrees, and warrants that:

- 1) Consultant has carefully read and fully understands the information that was provided by the Housing Department to serve as the basis for submission of this response to the Housing Department Program Evaluator RFQual.
- 2) Consultant has the capability to successfully undertake and complete the responsibilities and obligations of the response being submitted.
- 3) This response may be withdrawn by requesting such withdrawal in writing ten (10) calendar days prior to the date that the response is due.
- 4) All information contained in the response is true and correct to the best of consultant's knowledge.
- 5) Consultant did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other consultant in regard to the amount, terms, or conditions of this response.
- 6) Consultant did not receive unauthorized information from any City of San José staff member or consultant during the response period except as provided for in the Request for Qualifications package or addenda thereto.
- 7) Consultant can exhibit independence to complete the housing nexus study and is not affiliated in any way with the program administration or execution.
- 8) By submission of this response, consultant acknowledges that the City of San José has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by consultant, and consultant hereby grants the City of San José permission to make said inquiries, and agrees to provide any and all requested documentation in a timely manner.

(Continued)

**CONSULTANT'S SIGNATURE**

No response shall be accepted which has not been signed in ink in the appropriate space below:

1. If Consultant is an INDIVIDUAL, sign here (include a notarized affidavit attesting to the authenticity of said signature):

Date \_\_\_\_\_ Consultant's Signature \_\_\_\_\_  
\_\_\_\_\_  
Consultant's Typed Name and Title

2. If consultant is a PARTNERSHIP or JOINT VENTURE, at least two (2) Partners or each of the Joint Venturers shall sign here (include a notarized affidavit attesting to the authenticity of said signatures):

\_\_\_\_\_  
Partnership or Joint Venture Name (type or print)  
Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Member of the Partnership or Joint Venture  
Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Member of the Partnership or Joint Venture

3. If consultant is a CORPORATION, the duly authorized officer(s) shall sign as follows:  
The undersigned certify that they are respectively:

\_\_\_\_\_(Title) and \_\_\_\_\_(Title)

of the corporation named below; that they are designated to sign this Response Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

\_\_\_\_\_  
Corporation Name (type or print)  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT B

### **Elements to Address in Responses**

Responses to this RFQual should be organized so as to address responses to the questions listed below. Responses should demonstrate the respondent's ability to meet the defined minimum qualifications by citing the level of knowledge as well as experience in the items listed. Responses will be evaluated according to content, indications of success in meeting objectives, and familiarity with Santa Clara County and San José in the context of relevant knowledge of housing nexus studies.

Unless otherwise noted, responses to questions 1-7 should be limited in length to no more than five (5) pages. In your submission, please:

1. Discuss in detail the methodology you use to complete housing nexus studies. The proposal shall describe the methodology used for its previous housing nexus studies, the geographic datasets used for modeling, and the types of datasets that the software can utilize. Please describe how this method would incorporate data specific to the City of San José, and why this methodology is superior to other methodologies.
2. Describe your knowledge of impact fees, and the Mitigation Fee Act.
3. Describe your experience working with and presenting to public officials, development industry stakeholders, and the general public. Describe your approach to sequencing critical stakeholder engagement throughout the process of the study's development and finalization.
4. Confirm whether your firm could provide the City with an administrative draft of the housing nexus study on or before August 30, 2013. If not, identify the earliest date you could provide an administrative draft.
5. Confirm whether your firm could provide the City with a final draft of the housing nexus study on or before October 4, 2013. If not, identify the earliest date you could provide a final draft.
6. Identify the staffing model you would use to complete the nexus study, including the number, identity, and qualifications of individual staff. Identify which staff member would be the lead for this project, and, if different, which staff member would be the main liaison for day-to-day communications with the City.
7. Name three clients the City may contact regarding your experience completing nexus studies and regarding your ability to present outcomes to community stakeholders as well as to elected bodies. Please include names, addresses, e-mail addresses, and phone and fax numbers of references.

(100 possible points)

**EXHIBIT C**

**COST FORM  
(In US Dollars)**

Please provide an estimate of the total costs (in U.S. Dollars) attributable to the completion of all items listed in the Scope of Services requirements. Costs should be outlined by appropriate categories and summed for presentation of a total quote for consultation services performed.

The total proposed cost of services should include any reimbursements and other charges. Only one total cost should be presented which will ultimately provide the basis for comparison of all quotes received.

Please specify an hourly billing rate. Time required to bill the Housing Department for services rendered should be excluded from the rate identified.

In addition, respondents should include a sample billing invoice and a sample statement (detailing budget status by line item and related work completed) that would be submitted monthly to the Housing Department.

**EXHIBIT D**

**EXEMPLAR AGREEMENT**

This Agreement is made and entered into \_\_\_\_\_, by and between the City of San José, a municipal corporation (City), and \_\_\_\_\_, a \_\_\_\_\_ corporation (Consultant).

**RECITALS**

WHEREAS, the City of San José desires to obtain consultant services for an housing nexus study; and

WHEREAS, Consultant has the necessary professional expertise and skill to perform such services;

NOW, THEREFORE, the Parties agree as follows:

**a) SCOPE OF SERVICES**

Consultant, at its sole cost and expense, except as hereinafter provided, and to the satisfaction of City, shall perform such services as are set forth in the Scope of Services attached hereto as Exhibit A (*to be attached with agreement*).

**b) TERM OF AGREEMENT**

The term of this Agreement shall be from \_\_\_\_\_ to \_\_\_\_\_, inclusive, subject to the provisions of Section 9 of this Exemplar Agreement.

**c) COMPENSATION**

The compensation to be paid to Consultant shall be as set forth in “Compensation,” attached hereto as Exhibit B (*to be attached with agreement*).

**d) 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.

**e) 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.

**f) 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.

**g) INSURANCE REQUIREMENTS**

Consultant agrees to have and maintain the policies set forth in "Insurance" which is attached hereto as Exhibit E. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San José 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.

**h) NONDISCRIMINATION**

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

**i) TERMINATION**

***Termination for convenience***

City shall have the right to terminate this Agreement, without cause, by giving not less than seven (7) days' written notice of termination.

***Termination for default***

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.

***Termination Authority***

The CSJ Housing Department Director is empowered to terminate this Agreement on behalf of City.

***Obligations upon termination***

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.

**j) COMPLIANCE WITH LAWS**

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

**k) 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.

**l) 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.

**m) 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.

**n) CONSULTANT'S BOOKS AND RECORDS**

***Maintenance during Term***

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.

***Maintenance after Term***

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.

***Inspection***

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.

***Custody of Records***

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.

**o) CONFLICT OF INTEREST**

Consultant shall avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement. The selected consultant will be required to execute a Conflict of Interest and Non-Disclosure Agreement.

**p) GIFTS**

***Prohibition on Gifts***

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 José Municipal Code.

***No Offer***

Consultant agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

***Breach of Agreement***

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 i) of this Agreement.

**q) 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 José 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.

**r) GOVERNING LAW**

This Agreement must be construed—and its performance enforced—under California law.

**s) 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 where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

**t) 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:	City of San José City Hall Housing Department/12 <sup>th</sup> Floor 200 East Santa Clara San José, CA 95113 Attn: Patrick Heisinger – Senior Development Officer
To CONSULTANT:	

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

**u) MISCELLANEOUS**

***Survival of Provisions***

If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

***Headings***

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

***Time of the essence***

Time is of the essence in this Agreement.

**v) PRIOR AGREEMENTS AND AMENDMENTS**

This Agreement, including all Exhibits and Attachments 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 only be modified by a written amendment duly executed by the parties to this Agreement.

**WITNESS THE EXECUTION HEREOF** on the day and year first hereinabove written.

APPROVED AS TO FORM:

CITY OF SAN JOSE,  
a municipal corporation

\_\_\_\_\_

Name:

Senior Deputy City Attorney

By \_\_\_\_\_

Name:

Title:

By \_\_\_\_\_

Name:

Title:

**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) Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, including products and completed operations; and
- 2) The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and
- 3) Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
- 4) Professional Liability Errors and Omissions.

**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
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
4. 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 José, its officers, employees, agents and contractors are to be covered as additional insured 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.
2. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. **Acceptability of Insurers**

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

F. **Verification of Coverage**

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 mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

Risk Management  
Finance Department  
City of San José  
200 East Santa Clara Street

G. **Subcontractors**

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

**EXHIBIT E (Continued)**

**INSURANCE ACKNOWLEDGEMENT**

**REVIEW, EXECUTE AND RETURN WITH RFQual SUBMITTALS**

It is imperative that you review the City’s attached insurance requirements with your insurance agent(s) prior to submitting your quote / bid, as increase in your premium should be considered in your quote / bid.

Your firm may have already done business with the City and has insurance on file. However, it is important that you verify with your Insurance agent(s) that the policy (ies) is/are still in effect and the coverage(s) are the same as in the attached insurance requirements.

If you or your agent has any questions, please contact the Risk Manager’s Office at (408) 535-7061.

*I have read the above and acknowledge that insurance is required; that I have the necessary coverage; and that these insurance requirements will be made a part of the Consultant Agreement.*

**DATE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**NAME:** \_\_\_\_\_  
(Type or Print)

**COMPANY:** \_\_\_\_\_

**EXHIBIT F**

**LOCAL AND SMALL BUSINESS PREFERENCE FORM**

<b>City of San José</b> <b>Request for Contracting Preference for Local and Small Businesses</b>			
<p>Chapter 4.06 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 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 José Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (<i>regardless of where they are located</i>) of your firm is 35 or fewer.</p> <p>There are two ways in which the preference can be applied. In procurements where price is the determinative factor (<i>i.e. there are not a variety of other factors being considered in the selection process</i>) the preference is in the form of a credit applied to the <b>dollar value</b> of the bid or quote. For example, a non-local vendor submits a quote of \$200 per item and a LBE submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199.</p> <p>In procurements such as RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an <b>additional 5% to 10% points</b> in the <b>scoring</b> of their proposal.</p>			
<p>The following determinations have been made with respect to this procurement: (for official use only)</p>			
<b>Type of Procurement</b>	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote	<input checked="" type="checkbox"/> Request for Proposal
<b>Type of Preference</b>	<input type="checkbox"/> Price is Determinative	<input checked="" type="checkbox"/> Price is Not Determinative	
<b>Amount of Preference</b>	LBE preference = 2.5% of <b>Cost</b>	LBE preference = 5% of <b>Points</b>	
	SBE preference = 2.5% of <b>Cost</b>	SBE preference = 5% of <b>Points</b>	
<p><b>In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.</b></p>			
<b>Business Name</b>			
<b>Business Address</b>			
<b>Telephone No.</b>			
<b>Type of Business</b>	<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP
	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Sole proprietorship	<input type="checkbox"/> Other (explain)
<p><b>*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE</b>  <b>In order to qualify as an LBE you must provide the following information:</b></p>			

**Current San José Business Tax Certificate Number**

--

**Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County:**

--

**\*\*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 \_\_\_\_\_

## EXAMPLE SCOPE OF WORK AND DELIVERABLES

The selected consultant will produce specific deliverables utilizing a specific scope of services. The scopes of services as well as the deliverables below are examples of what the consultant will need to produce. The items below do not reflect an extensive list, and the final scope/deliverables will be completed when the City and consultant enter into a contract for services.

### Scope of Services

Respondents should use the following Scope of Work and Deliverables sections as a general guide to respond to the RFQual. (The actual scope of work for the selected respondent may vary.) In addition, respondents may supplement their proposals with additional or modified tasks and deliverables if it will strengthen their proposal.

- **Current Affordable Housing Fees.** Review the City's current policies and ordinances and all relevant documents related to affordable housing related fees, and/or impact fees, including the decision in the City's Inclusionary Housing lawsuit, *California Building Industry Association v. City of San José, et al.*, Cal.App.6<sup>th</sup>, Case No. 1-10-CV167289 (2013).
- **Data Collection.** Identify all available data sources and identify what additional data is needed to fully support the fee study, which could include the current conditions of the affordable housing market in San José. Data should be specific to San José when possible.
- **Fee Calculation and Analysis.** The consultant shall develop a methodology for calculating the appropriate cost of an impact for both rental and homeownership housing. Identify factors to be considered in evaluating the relationship between a proposed fee and the identified impact and its cost. In addition, provide a range of fees appropriate for all residential product types, including but not limited to those for apartments, condominiums, townhomes, and single-family detached units, along with definitions of those product types. Consultant shall provide recommendations regarding an impact fee structure (i.e., square footage basis, by product types, or other methodologies).
- **Additional Considerations.** The proposed new impact fee analysis shall take into account existing fees, and be compared to both (a) surrounding and (b) comparable cities. Analyze the impact an affordable housing fee would have on the feasibility of new residential development projects of different types. The analysis shall consider the current and projected construction costs, local and state fees, market value, existing City impact fees, and a reasonable profit or return on investment for the developer. Evaluate the impact of the fee on the affordability of entry-level homes in San José. Evaluate whether a fee lower than the maximum supportable would encourage development while not significantly negatively impacting the City's ability to meet the housing needs of its low and moderate-income households. Make a finding that there is a reasonable relationship between the recommended fee(s) and the deleterious public impact of the new development. The consultant may suggest additional factors that the

City should consider for establishing the fee to ensure reasonableness, consistency and feasibility.

- Urban Villages. Review the City’s 2040 General Plan and make recommendations how key findings of the nexus study could be incorporated into the City’s Urban Village framework to support affordable housing development.
- Draft Impact Fee Study. The consultant shall prepare and provide a report that documents fee study results, including but not limited to, a description of the methodology including: the linkage between residential development and job creation at low- and moderate-income wages; housing need; findings; supporting justification; recommended impact fees; and, calculations that provide the legal nexus between the Impact Fee recommendations and new residential development. The study should evaluate the nexus between new residential development and the demand for affordable housing, and make a determination as to whether new residential construction directly and/or indirectly results in greater demand for affordable housing.
- Legal Compliance. Present the results of the study in compliance with AB 1600 (California Government Code Sections 66000 to 66026). Describe the impact on the potential fee and use of the fee revenue if the fee must meet the requirements of Government Code Section 66000. Present alternative approaches to City staff.
- Presentations. The consultant shall present information at briefing meetings with City staff at critical points in the preparation process. In addition, upon completion of the Administrative Draft Impact Fee Report, the consultant shall be prepared to present the study, including all the above elements and recommendations, at meetings with the development community and City Council.
- Final Impact Fee Study and Presentation. A final Impact Housing Impact Fee study shall be provided and presented to the City Council.

## **Deliverables**

The selected consultant shall provide the following deliverables:

1. An administrative draft and a final report. The final report shall be concise, accessible, and legally defensible. One unbound color copy of the final report shall be provided, along with one electronic copy in Microsoft Word and PDF formats. The final report must include the following items:
  - a) An executive summary summarizing key research points and the primary recommendations.
  - b) A summary of the nexus methodology used and its applicability to San José, and any legal issues related to housing impact fees
  - c) A summary of the relationship between new housing construction and low- and moderate-income job growth.
  - d) Information regarding current affordable housing options and any excess capacity provided as a result.
  - e) Land use, business, and population growth forecasts for San José through 2020.

- f) Information and tables showing the cost gap between residential housing development for several housing types and tenures.
  - g) A calculation of the affordable housing costs attributable to new residential development and determination of the maximum (and minimum, if applicable) fee supportable for new rental and for-sale development.
  - h) Analysis of what effect items such as a housing impact fee would have on the feasibility of new residential development.
  - i) If applicable, demonstration of the nexus study's compliance with AB 1600 nexus requirements as follows:
    - i. Purpose of fee
    - ii. Use of fee
    - iii. Reasonable relationship between the fee's use and the type of development
    - iv. Reasonable relationship between the need for affordable housing and the type of development
    - v. Reasonable relationship between the amount of the fee and the cost of affordable housing.
2. Presentations and/or facilitation of up to 10 project and public meetings, including display materials and handouts in PowerPoint, Excel and/or Word, and copies of necessary documents. Meetings may also include City staff and are expected to consist of the following:
- a) Project kick-off. Immediately after contract award, meet with the City to finalize a scope of work and project schedule.
  - b) Initial meetings with developer partners. Prior to moving forward with the analysis, consultant will attend two meetings with developer partners to obtain their input early in the process.
  - c) Project status meetings. The City anticipates 2-3 such meetings, which may be conducted by conference call if most convenient for both parties.
  - d) Public outreach. Two stakeholder meetings are expected, one with the affordable housing community and one with the development community.
  - e) City Council meeting. One City Council meeting is expected, with the consultant presenting conclusions and answering questions related to the nexus study.
  - f) Additional meetings may be proposed by the city and/or consultant as needed to complete the work outlined in this document.