



**REQUEST FOR PROPOSAL
 RFP 19-20-02**

REAL-TIME INTERPRETATION TOOLS

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Contact:	Erik Jensen
Delivery Address:	200 East Santa Clara Street, 17 th Floor San José, CA 95113-1905
Phone:	(408) 535-8173
E-mail Address:	erik.jensen@sanjoseca.gov
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1 INTRODUCTION AND OVERVIEW

The City of San José is transforming itself into a “smart city” and becoming a global leader for civic innovation. Becoming a “smart city” means that game-changing technologies and data-driven decision-making will drive continuous improvement in how the City serves the community, and to promote concrete benefits in safety, sustainability, economic opportunity, and quality of life. Key goals of the City of San José’s Smart City Vision include:

- Inclusive City
- User Friendly City
- Safe City
- Sustainable City
- Demonstration City

The City of San Jose, City Manager’s Office of Civic Innovation and Digital Strategy (“Innovation team”), is co-hosting with Startup in Residence (STIR) which is a program that connects government partners with innovative technology startups to develop technology-based solutions that address challenges experienced by government and residents. The purpose of the Startup in Residence Program (“STIR” or “Program”) is to introduce government agencies to new innovation and technologies. These products will enhance government productivity, efficiencies and help improve the community member experience. As part of a competitive application process, each government agency will select startups to participate in the STIR Program who will get to work with the government agency on innovative solutions to actual address government needs.

The City is soliciting proposals from start-ups for technology-based solutions to address several specific “City of San Jose Challenge statements” facing several City departments (operational efficiencies) or Citywide needs (community benefit). (See Attachment B for a description of the Civic Challenge Areas.) “Technology based solutions” means on-premise or cloud-based software (licenses to software object code), mobile applications, hosted software or applications, information technology hardware, and/or any combination thereof.

This Request for Proposals is being sent out by the City of San Jose (“City”) for participants in the Startup in Residence (“STIR”) program for a potential contract in an amount not to exceed \$30,000. The term of the agreement will be a minimum of a year for the development and testing phase and shall include a license for the City to use the solution for a specified period. The licensing period may be extended for an addition option period.

The goal of the partnership with the selected tech company is to develop a service or product for the City of San Jose. During the term of the agreement, the major milestones that will incur during the first year are the following:

- Kickoff Event in March 2020
- 16 Week Program (“Residency” Period) March to July 2020
- City of San Jose Demo Day (Fall 2020)
- Smart Cities and Service Improvements Committee (Fall 2020)
- Optional STIR Demo Day (Fall 2020)

Project Description:

Startups and departments will agree to work together to conduct research, early product development, prototyping, and user testing. This also includes:

1. Discussing technical requirements on an ongoing basis.
2. Working together to conduct primary user feedback.
3. Deployment of pilot software for the products beta.

During the scoping period, Departments and startups will establish a project charter define their respective roles & responsibilities, objectives, metrics for user feedback, and deliverables.

The participating department within City of San Jose will determine the nature of the collaboration with the startup they select including, but not limited to, the number of meetings, expectations, appropriate deliverables and minimum viable product. These expectations will be discussed between City department team and startup and documented at the start of the 16-week program (“Residency”) with assistance from the STIR program manager.

Technical Requirements

Startups and departments will work together to identify and prioritize functionality that will enable City staff or local residents to gain access to the City Department and tech company co-created products. Technology-based solutions must be in compliance with the ITD technical architecture and environment.

User Feedback

The goal of obtaining user feedback is to gain a clear understanding of the user experience, outcomes from the proposed process objectives, and workflows of the product. User feedback of both City staff and community members and testing is a cyclical process that will guide iterative development throughout the 16-week engagement.

2 BACKGROUND

- 2.1 Governments are looking to identify more fluid pathways to work with smaller technology companies. This has typically left government with two options: (1) use technology intended for Fortune 500 companies and large enterprises, or (2) develop a collection of customized solutions that require significant investment of time and resources. The STIR Program aims to bridge this gap by connecting government agencies directly with technology entrepreneurs to seed product development in government. With thousands of policy challenges, government has the potential to support a large ecosystem of best-of-breed technology solutions helping catalyze public sector innovation and productivity.
- 2.2 The City of San Jose will designate a selection committee responsible for reviewing and evaluating each submission. The selection committee will independently and confidentially review the online applications created and managed by STIR based on pre-defined evaluation criteria established by the City of San Jose. The evaluation process may involve multiple stages, including interviews. Decisions will be

communicated to all applicants by March 2020. The highest scoring responsive proposals for each of the Challenge Areas will be selected to participate in the Residency period to work with the relevant City department to develop their proposed technology-based solution.

- 2.2.1 During the Residency period, the selected tech company will participate in the STIR Program on a volunteer, unpaid basis. This project period will include scope of work, a narrative description of the activities and deliverables to be accomplished during the 16 week period which will commence at the end of March 2020 to July 2020. During this project period, the participating startup will conduct user design and research to understand the challenge, design a solution, build or customize the solution, and test the solution in collaboration with City department teams and ultimately creating a minimum viable product. The use of City department staff time and resources is at the sole discretion of the participating City department in accordance with City department policies and the laws of the City.
- 2.3 At the end of the Residency period, the City Department and tech company will present their findings and demo the minimum viable product at various events such as the Smart Cities and Service Improvements Committee, City of San Jose Demo Day and potentially at STIR Demo Day in Fall 2020.
- 2.4 The contracting decision will depend on how well an applicant's minimum viable product solution performs in addressing the City of San Jose challenges. Contracting decisions will be made in Summer 2020. Upon the conclusion of the Residency period and the creation of a minimum viable product as defined by both parties, the City will have the option to license any technology-based solution developed during the Residency period as follows:
 - 2.4.1 On-Premise Software: In those cases where the participant develops custom software deployed on-premise, the City will have the option to license the software in perpetuity free of charge. If the option is exercised, the participant(s) will maintain the software and provide the City with free maintenance for twelve (12) months, during which time the City and participant(s) will negotiate an annual maintenance fee for future years.
 - 2.4.2 Hosted Software or SaaS Applications: In those cases where the software developed is hosted by a participant (i.e., "hosted software") and/or operated via software-as-a-service model, the City will have the option of a term license or subscription with the first twelve (12) months of access provided free of charge. If the option to extend the agreement is exercised, the City and Contractor will renegotiate an annual subscription fee for up to the maximum option period.
 - 2.4.3 Hardware: In those cases where the participant develops a hardware product, the City will have the option to lease or license the product for free for twelve (12) months (including free maintenance). If the option is exercised, the City may elect to purchase or continue leasing the product following the initial year of free use, and in such a scenario will negotiate a compensation charge and maintenance with the participant(s).
- 2.5 Selected tech companies ("Contractor") will be required to sign an agreement (see sample provided in Form 3) prior to commencing work with the assigned City department. The perpetual license, hosting, and/or purchase option agreement(s) will

be entered into following the residence period if a successful technology-based solution has been developed by participant(s).

- 2.6 In those cases where the Contractor develops a hosted software solution, special legal requirements would apply to the license, hosting, and/or purchase option agreement. Technology-based solutions must be in compliance with the City's ITD technical architecture and environment (See Attachment E for Infrastructure General and Cybersecurity Requirements) . City's data, and the Contractor's data center storing such data, must be located and remain within the United States. The Contractor shall ensure that all physical or electronic transmission or exchange of data with the City and/or any other parties expressly designated by the City shall take place via secure means (for electronic transmissions using HTTPS or SFTP or the most recent version used in the industry). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the City contract. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. The Contractor shall ensure that no City data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties. (See Attachment E for Infrastructure General and Cybersecurity Requirements)

3 MINIMUM QUALIFICATIONS

3.1 Proposers must meet the following minimum qualifications:

- (1) Three references are required and shall include a list of at least three separate clients with their contact information that would substantiate the Contractor's experience. Contacts should be individuals who can verify performance on projects of a similar scope and budget as this project.
- (2) Show proof of active business license through Articles of Incorporation and Operating Agreement.

Failure to meet the specified minimum qualifications will result in disqualification of your solicitation response without further consideration.

4 SCOPE OF WORK

4.1 See Attachment B, Scope of Services and Requirements, for further details.

5 TERM OF AGREEMENT

5.1 It is anticipated that the initial term of the agreement resulting from this solicitation will be for a minimum of one year which includes a Residency Period and Initial Term as follow:

- Residency Period: estimated March 2020 through July 2020
- Initial Term: estimated August 2020 through July 2021

After successful completion of both the "Residency" period and "Initial Term" of one-year contract, the Contractor will provide a Source Code Escrow Agreement that allows the City to obtain the source code in the event the Contractor is unwilling or unable to continue maintaining it. The Source Code Escrow Agreement is subject to the City's approval and is the responsibility of the Contractor to procure and include in the Form 7, Cost Proposal Form.

6 RFP DOCUMENTS

- 6.1 This document describes the goals and objectives of this procurement, the RFP process, and RFP provisions. In addition, the following attachments, exhibits and/or appendices are included:

Attachments	Title	Description
A	Submittal Checklist	This document details the layout and format for your proposal response.
B	Scope of Services and Requirements	This document provides details regarding the City's scope of work and specifications and requirements for this RFP.
B-1	Privacy & Disclosure Policy, if applicable	This document details the City's Privacy & Disclosure Policy which will apply to the work performed under the agreement awarded for this RFP.
B-2	Payment Card Industry (PCI) Requirements, if applicable	This document details the PCI Requirements that will apply to the work performed under the agreement awarded for this RFP.
C	City's Standard Terms and Conditions	City's Standard Terms and Conditions that will be the basis for any resulting agreement.
D	Insurance Requirements	The City's Insurance Requirements for which the successful vendor(s) will be required to provide proof of coverage prior to contract execution.
F	Exemplar Agreement	The Exemplar Agreement outlines the City's standard terms and conditions as part of the agreement between the City and the successful Proposer.

Forms	Title	Instructions
1	Response Certification Form	Complete, sign, and submit with response. This Certification Form must be submitted with your proposal response.
2	Request for Local and Small Business Enterprise Preference, if applicable	Complete and submit with response if requesting the preference. This form will not be accepted after the proposal submittal deadline.
3	Exemplar Agreement Acknowledgement Form	Complete, sign, and submit with proposal response.
4	Insurance Requirements Acknowledgement Form	Complete, sign, and submit with proposal response.
5	Customer Reference Form	Complete and submit 3 customer references (using this form) with your proposal response.
6	Proposer Questionnaire	Complete and submit with your proposal response.
7	Cost Proposal Form	Complete and submit with your proposal response.

7 HOW TO OBTAIN THIS RFP

- 7.1 The RFP may be obtained through the startupinresidence.org. Information regarding the RFP and where to submit will be available on the City's BidSync, e-procurement system, at www.bidsync.com, and on Biddingo, at www.biddingo.com. However, the City will not be accepting any RFP through BidSync or Biddingo. All interested proposers will be directed to the STIR on startupinresidence.org, provided above, to participate in the procurement process.
- 7.2 All addenda and notices related to this procurement will be posted by STIR on startupinresidence.org. In the event that this RFP is obtained through any means other than the STIR on startupinresidence.org, the City will not be responsible for the completeness, accuracy, or timeliness of the final RFP document.
- 7.3 The City shall not be responsible for nor be bound by an oral instruction, interpretations or explanations issued by the City or its representatives. Should discrepancies or omissions be found in this RFP or should there be a need to clarify the RFP, requests for clarification shall be sent via email to STIR@cityinnovate.org
- 7.4 Proposer requests for clarification shall be deliverable as stated in this section. Any City response to a request for clarification will be made in the form of an addendum to this RFP. All addenda shall become part of this RFP.

8 PROCEDURE FOR SUBMITTING QUESTIONS AND INQUIRIES

- 8.1 Questions pertaining to this RFP should be submitted via email to STIR program management. Please submit all questions by the deadline indicated in the procurement timeline, Section 5. STIR program management will provide a response to all pertinent questions.
- 8.2 The City shall not be responsible for nor be bound by any oral instructions, interpretations, or explanations issued by the City or its representatives. Should discrepancies or omissions be found in this RFP or should there be a need to clarify the RFP, requests for clarification should be submitted online through STIR program management at City Innovate at STIR@cityinnovate.org.

9 OBJECTIONS

- 9.1 Any objections as to the structure, content or distribution of this RFP must be submitted in writing to STIR program management at City Innovate identified in Section 6 prior to the submission deadline for Questions and Answers identified in Section 5. Objections must be as specific as possible, and identify the RFP section number and title, as well as a description and rationale for the objection.
- 9.2 All objections, questions, and inquiries pertaining to this RFP must be received by STIR program management at City Innovate at STIR@cityinnovate.org by January 17, 2020

10 PROPOSAL SUBMITTAL REQUIREMENTS

GENERAL REQUIREMENTS

- 10.1 Upon release of this RFP, Applicants should refer to the STIR program website (www.startupinresidence.org) for guidance on applying for STIR program with the City of San Jose."

- 10.2 To expedite the evaluation process, each proposal response should be organized in accordance with Attachment A, Submittal Checklist. Proposals that do not follow the specified format or fail to provide the required documentation will receive lower scores or, if found to be non-responsive, may be disqualified. In the event of a conflict between any of the proposal documents, resolution thereof shall be in the City's sole discretion.
- 10.3 Vendors shall submit all the forms shown on the STIR platform which is required by the City to include RFP responses in the areas indicated. Do not attempt to override or bypass spreadsheet functionality or modify City-provided forms in providing responses. Any responses not provided in applicable section(s) will be considered incomplete application.
- 10.4 Delivery: The City must receive your response to this RFP at the designated delivery location by the proposal due date and time stated on the cover sheet of this RFP for your proposal to be considered. Proposals must be submitted and addressed to the attention of the Procurement Contact listed on the cover sheet of this document. In addition, the outside of the box or package and the cover or title page of each proposal must be clearly labeled with the RFP Name and Number designated on the cover page. Include the following inside the box:
- 10.4.1 Submittal Checklist: See Attachment A, Submittal Checklist, for further information regarding submittal requirements and format.
 - 10.4.2 Cover Letter: Provide a cover letter (maximum of 2 pages) signed by the individual within your company who is authorized to contractually bind your firm that includes the following:
 - 10.4.2.1 A brief overview of your company's general expertise, experience, and approach to performing the Scope of Services and Requirements of this RFP;
 - 10.4.2.2 Company history, including years in business, disclosed investors and funding, mergers and acquisitions, names previously used, other company affiliations, etc.;
 - 10.4.2.3 Contact information, including name, title, address, phone number, and email, for the individual to whom questions regarding your proposal should be addressed.
 - 10.4.2.4 A statement affirming that you have read and are able to comply with the Attachment E Infrastructure General and Cybersecurity Requirements.
- 10.5 Attachments
- 10.5.1 Required Attachment Submittals – The following documents must be completed and submitted with your technical proposal:
 - 10.5.1.1 Form 1 Response Certification Form
 - 10.5.1.2 Form 2 Local/Small Business Enterprise Preference RequestNote this form is required to be submitted or else additional points for overall score for local and small business preference shall not be granted.

10.5.1.3 Form 3, 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.

10.5.1.4 Form 4, Insurance Requirement Acknowledgement.

EXPERIENCE AND QUALIFICATIONS

10.5.2 Customer References: Complete Form 5, Customer Reference Form, for three (3) recent and different customers. Submitted Customer Reference Forms will be evaluated and scored as part of the Experience and Qualifications Evaluation Criteria and will initially be scored based solely on the information provided by the proposer in the submitted Customer Reference Forms. Therefore, it is important to provide complete, detailed, and descriptive information for each customer reference.

TECHNICAL CAPABILITIES

10.5.3 Provide a direct and thorough response to your ability to meet the City’s requirements as specified in Attachment B, Scope of Services and Requirements.

10.5.3.1 Complete Form 6, Proposer Questionnaire, in its entirety and return it with your proposal response.

COST PROPOSAL

10.5.4 To compare costs fairly and consistently, Cost Proposals shall be submitted on Form 7, Cost Proposal Form, pursuant to these submission instructions. Refer to Section 10.12.1.2 below or requirements with cost proposal. Pricing shall be evaluated and weighted in accordance with the table in Section 11.

10.5.5 Once minimum viable product is approved by the City of San Jose after Residency period is complete, professional services contract has a planned not-to-exceed budget of \$30,000 for any further work or maintenance of the delivered solution after the 16-week STIR residency. The City encourages the Contractor to bear this not-to-exceed budget in mind when forming and submitting their proposal to develop a technology solution for the City of San José and, if necessary, be specific about why their proposed work might exceed that amount in order to be successful.

10.6 Late Proposals

10.6.1 Late proposals shall be rejected and returned to the proposer. This deadline is absolute, and proposals received after the due date and time shall not be considered. Proposers must select a method of delivery that ensures proposals will be delivered to the correct location by the due date and time.

11 SELECTION PROCESS AND EVALUATION CRITERIA

11.1 SELECTION PROCESS

- 11.1.1 Proposal responses will be evaluated as outlined in this Section.
- 11.1.2 Proposal Responsiveness: Proposals will be examined to ensure that the proposer submitted all required elements and is responsive to any technical specifications and minimum qualifications.
- 11.1.3 Proposals that fail to contain the required documents with their technical and cost proposals will be disqualified from further consideration.
- 11.1.4 City staff will evaluate and score proposal submissions. Subject matter experts from outside the City may also be used to evaluate and score proposals. The City reserves the right to rely on information from sources other than the information provided by the respondents as well.
- 11.1.5 The City reserves the right to interview (oral interviews/system demonstrations) the top proposers based on the interim proposal scores (Total Score Without Oral Interview). If the City elects to conduct oral interviews, the final scoring and ranking will be based on the Total Score With Oral Interview. If the City elects not to conduct oral interviews, the final scoring and rankings will be based on the Total Score Without Oral Interview.
- 11.1.6 Technical proposals will be evaluated against the general criteria and weighted scores will be applied as described in Section 11.3.
- 11.1.7 The City may seek written clarification from any or all proposers 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.
- 11.1.8 Award will be made to the highest scoring/ranking responsive and responsible proposer(s) in accordance with this Section.
- 11.1.9 Final award shall be contingent upon the selected vendor(s) accepting the City's Standard Terms and Conditions and Insurance Requirements in substantial conformance to Attachments C and D of this RFP.
- 11.1.10 The selected vendor(s) shall provide proof of insurance (certificate of insurance) meeting the specified Insurance Requirements prior to contract execution.
- 11.1.11 Should the selected vendor(s) fail to execute the agreement or provide proof of insurance as required herein, the City shall have the right to seek legal remedies against the vendor, including forfeiture of any Proposal Bond, for damages. The City shall also have the right to terminate negotiations with the selected vendor(s) and commence negotiations with the next highest responsive and responsible proposer(s).
- 11.1.12 After acceptance of the successful proposal by the City, the successful Proposer(s) shall be obligated to enter into an agreement consistent with the proposal submitted.

11.2 EXAMINATION OF PROPOSED MATERIAL

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

11.3 EVALUATION CRITERIA

		Score Without Oral Interview	Score With Oral Interview
Proposal Responsiveness	Pass/Fail		
General Requirements		15%	10%
Experience and Qualifications		25%	10%
Technical Capabilities		40%	30%
Cost Proposal		10%	10%
Oral Interview / System Demonstration			30%
Local Business Enterprise		5%	5%
Small Business Enterprise		5%	5%
TOTAL SCORE		100%	100%

11.4 CODE ADHERENCE, PERMITS and FEES

11.4.1 Contractor shall agree to abide by all laws, rules and regulation of the United States, State of California, Santa Clara County, and the City of San Jose, securing all necessary licenses and permits in the connection with resulting contract at no additional cost to the City. Successful contractor must have or obtain a current City of San Jose business license.

11.5 TERMS AND CONDITIONS OF AGREEMENT

11.5.1 Upon conclusion of the RFP process, City Staff will make a recommendation to City Manager’s approval regarding the selection based upon the evaluation of the proposals. The City will enter into negotiations with one or more Proposer(s). Proposer(s) shall enter into a contract with the City in substantial conformity with the selected proposal and the form of the City’s Standard Terms and Conditions. The Exemplar Agreement outlines the City and its standard terms and conditions as part of the agreement between the City and the successful Proposer. The City reserves the right to negotiate project deliverables and associated costs.

11.5.2 All agreements will require the Proposer to adhere to the terms of their proposal and to act in accordance with all applicable laws and regulations.

11.5.3 An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City.

11.5.4 Insurance Requirements

- 11.5.4.1 The selected Proposer(s), at Proposer's sole cost and expense and for the full term of the Agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Attachment F.
- 11.5.4.2 Insurance Requirements are subject to change depending on the solution selected.
- 11.5.4.3 All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The selected Proposer agrees to provide the City with a copy of said policies, certificates and/or endorsements.
- 11.5.4.4 Certificate of Insurance, as required, shall be provided to City within 10 days of the notice of award. Failure to provide the required Certificate of Insurance may result in withdrawal of the Award, and award to the next highest ranked proposer.

12 **BEST AND FINAL OFFER (BAFO)**

- 12.1 A Best and Final Offer (BAFO) may be held with one or more finalist(s) if additional information or clarification is necessary to make a final decision. The BAFO may allow finalist(s) to revise their original Technical and/or Cost Proposals based on information provided by the City.
- 12.2 Award will be based on the overall highest ranked proposer score in accordance with Section 11.3. Award or Awards will be listed on the STIR program website (www.startupinresidence.org).
- 12.3 Should the City, in its sole discretion, determine that a secondary award is required, award will be to the second highest ranked proposer.
- 12.4 Should either of the selected proposers fail to provide post award documents as required, the City, in its sole discretion, may withdraw the award recommendation, and select the next highest ranked proposer for award.
- 12.5 The City reserves the right to accept an offer in- full, or in-part, or to reject all offers.
- 12.6 The City will send out the request for a BAFO with instructions addressing the areas to be covered and the date and time in which the BAFO is to be submitted. After receipt of BAFO responses, scores may be adjusted based on the new information received.
- 12.7 The City will request only one BAFO unless the City's Purchasing Officer determines that another BAFO is warranted.
- 12.8 Proposers are cautioned that the issuance of a BAFO is optional and at the sole discretion of the City. Therefore, Proposers should not assume that there will be an additional opportunity to amend their Technical or Cost Proposals after the original submission. Proposers may not request an opportunity to submit a BAFO.

13 **GROUNDS FOR DISQUALIFICATION**

- 13.1 All Proposers are expected to have read and understand the "Procurement and Contract Process Integrity and Conflict of Interest," Section 7 of the Consolidated

Open Government and Ethics Provisions adopted on August 26, 2014. A complete copy of the Resolution 77135 can be found at:

<http://www.sanjoseca.gov/DocumentCenter/View/35087>.

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

13.2.1 Contact regarding this procurement with any City official or employee or evaluation team member other than the Procurement Contact or Purchasing Officer from the time of issuance of this solicitation until the end of the protest period.

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

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

13.2.4 Evidence of submitting incorrect information in response to a solicitation or misrepresenting or failing to disclose material facts during the evaluation process.

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

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

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

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

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

13.3.5 Evidence of any wage theft judgements as described in Attachment A, Certification Form.

14 **CONFLICT OF INTEREST**

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

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

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

15 **GENERAL INFORMATION**

15.1 The City reserves the right to accept or reject any item or group(s) of items of a response. The City also reserves the right to waive any informality or irregularity in

- any proposal. Additionally, the City may, for any reason, decide not to award an agreement as a result of this RFP or to cancel the RFP altogether. The City shall not be obligated to respond to any proposal submitted nor be legally bound in any manner by submission of the proposal.
- 15.2 The City is not required to accept the lowest priced proposal. Responses will be evaluated to determine the most advantageous proposal on a variety of factors including, but not limited to, price, design, quality, features, and performance.
 - 15.3 The City reserves the right to accept or reject any item(s) or groups of items in a response, and may elect to award by line item(s) if it is found to be in the City's best interest to do so.
 - 15.4 The City also reserves the right, in its sole discretion, to make multiple awards. In the event the City elects to make multiple awards, awards will be made in the order of proposal final rankings.
 - 15.5 In the event any proposer to be awarded under this RFP cannot meet the City's budget requirements, the City reserves the right to award to the next highest ranked proposer.
 - 15.6 Vendors should not include sales tax in their price quotations. The City will work with the selected vendor to add sales tax as appropriate and will incorporate it into the final agreement.
 - 15.7 The City of San José is exempt from federal excise tax, including federal transportation tax. The City will provide an exemption certificate as appropriate.
 - 15.8 Statistical information contained in this RFP is for informational purposes only. The City shall not be responsible for the complete accuracy of said data.
 - 15.9 Any estimated quantities provided are for quoting purposes only and are not to be interpreted as a guarantee to purchase any amount. Any variations from the estimated quantities does not entitle the vendor an adjustment in unit pricing or rates.
 - 15.10 The City 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.
 - 15.11 The City may require financial statements as certified by an independent Certified Public Accountant. Do not submit these documents unless they are requested.
 - 15.12 The laws of the State of California shall govern this RFP process and any resulting agreements, including any required vendor agreements for subscriptions, licensing, maintenance, hosting, etc.
 - 15.13 All goods and services provided to the City by the successful vendor shall comply with all City policies, rules, and regulations which may be in effect during the term of the agreement, as well as all federal, state, and local statutes, ordinances, and regulations. The successful vendor is also required to comply with all applicable equal opportunity laws and regulations.
 - 15.14 The City shall not be liable for any pre-contractual expenses incurred by prospective vendors or selected contractors, including, but not limited to, costs incurred in the preparation or submission of proposals. The City shall be held harmless and free from any liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

- 15.15 Failure to carefully read and understand this RFP may cause the proposal to be out of compliance or rejected by the City or may legally obligate the proposer to more than it intends or realizes.
- 15.16 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.
- 15.17 Only the format described in this RFP and the attachments included with this RFP will be accepted as compliant for the submitted proposal. Failure to fully complete and submit all required attachments may result in disqualification.
- 16 NEXT GENERATION (if applicable, i.e. for products)**
- 16.1 For the term specified in this RFP (including option terms), the City reserves the right to make purchases from the awarded vendor(s) for the specified items, or their next generation equivalent, including warranty, support, and maintenance.
- 17 LOCAL AND SMALL BUSINESS ENTERPRISE PREFERENCE (LBE/SBE) (if applicable)**
- 17.1 Chapter 4.12 of the San José Municipal Code provides a preference for Local and Small Businesses in the procurement of goods and services that are not specifically precluded from these preferences.
- 17.2 If the basis of an award is price determinative (awarded to the low bidder), the amount for the preference shall be 2.5% of cost for local and an additional 2.5% of cost for small.
- 17.3 If the basis of an award is evaluative (awarded to the best value respondent), the amount of preference shall be 5% of total points for local and an additional 5% of total points for small.
- 17.4 To be considered for Local and Small Business Enterprise Preference, you must complete the Request for Local and Small Business Enterprise Preference Form and submit it with your solicitation response. Vendors who fail to complete and submit the Request for Local and Small Business Enterprise Preference Form with their solicitation response will not be considered for the preference. This information cannot be submitted after the RFP submittal deadline.
- 17.5 To receive the LBE preference, you must have both of the following:
- 17.5.1 *A valid San José Business Tax Certificate Number:* The business tax certificate number below should match to the address and business name for which the preference is being claimed and must be current as of the proposal due date. Proposers should verify their information through the City's Business Tax Lookup at <http://www.sanjoseca.gov/index.aspx?nid=5313> prior to submittal.
- 17.5.2 *A legitimate business presence in Santa Clara County with at least one full time employee:* The City has interpreted a legitimate business presence to require:
- the local address for which the preference is being requested is of a commercial nature and the primary purpose of the location is to serve as a principal, regional, branch, or satellite business office; or

- in the case of a business located in a residential dwelling, the business must either be a valid home occupation as an incidental use of the business owner's primary dwelling, or the residential dwelling is exclusively used for a commercial nature and the primary purpose of the location is to serve as a principal, regional, branch or satellite business office.

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

- 17.6 You must first qualify as an LBE to qualify for the SBE Preference. If you receive the LBE preference and the total number of employees for your firm (regardless of where they are located) is 35 or fewer, you also qualify to receive the SBE preference.
- 17.7 The preference shall only be considered for the prime proposer(s). However, in the event that the responding firm is a Joint Venture (JV) or Partnership as indicated on the Certification Form (Form A), the local preference shall apply if any one of the firms in the JV or Partnership meets the definition for a Local Business Enterprise. In order for a JV or Partnership to be considered for the Small Business Enterprise Preference, the aggregate of all of the employees that make up the JV or partnership must meet the definition for a small business.
- 17.8 Refer to the Request for Local and Small Business Enterprise Preference for additional details.

18 PUBLIC NATURE OF PROPOSAL MATERIAL

- 18.1 Do NOT mark your proposal as "confidential" or "proprietary."
- 18.2 All correspondence with the City including responses to this RFP will become the exclusive property of the City and will become public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) All documents that you send to the City will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.
- 18.3 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 described below.
- 18.4 The City will not disclose any part of any proposal before it announces a Recommendation of Award on the grounds that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a Recommendation of Award, all proposals received in response to this RFP will be subject to public disclosure. If you believe that there are portions of your proposal which are exempt from disclosure under the Public Records Act, you must mark them 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.

- 18.5 Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of San José may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the City will provide the Proposer who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

19 **PROTESTS**

- 19.1 If an interested party wants to dispute the award recommendation, they must submit their protest in writing to the City’s Procurement Officer no later than ten (10) calendar days after announcement of the successful Proposer(s), detailing the grounds, factual basis, and providing all supporting information. Protests will not be considered for disputes of proposal requirements and specifications, which must be addressed in accordance with Section 9, Objections. Failure to submit a timely written Protest to the contact listed below will bar consideration of the Protest.

- 19.2 Protests must be addressed to the following:

City of San José
Attention: Civic Innovation
200 East Santa Clara Street, 17th Floor
San José, CA 95113
Attention: Office of Civic Innovation and Digital Services

Protests may be submitted by email to STIR@cityinnovate.org, with a copy to the RFP Procurement Contact.

20 **CITY BUSINESS TAX**

- 20.1 Awarded Proposer(s) must comply with the San José Municipal Code Chapter 4.76 with respect to payment of any applicable City Business Tax prior to the commencement of work. Contact Finance/Revenue Management at (408) 535-7055 or BusinessTax@sanjoseca.gov to determine the applicable tax costs. Information about the business tax and registration can be found on the City’s website at <http://www.sanjoseca.gov/businessstax>.

21 **ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES**

- 21.1 The City has adopted an “Environmentally Preferable Procurement” (EPP) policy. The goal is to encourage the procurement of products and services that help to minimize the environmental impact resulting from the use and disposal of these products. The EPP policy may be found on the City’s website at <http://www.sanjoseca.gov/DocumentCenter/View/3862>.
- 21.2 In accordance with the EPP policy, vendors are encouraged to offer Energy Star, Green Seal, EcoLogo, or EPEAT certified products as applicable. The City also suggests that proposers offer products and services that are produced or delivered with minimal use of virgin materials, maximum use of recycled materials, and reduced waste, energy usage, water utilization, and toxicity in the manufacture and use of products.

- 21.3 Vendors are encouraged to offer Energy Star certified products, products that meet FEMP (Federal Energy Management Program) standards for energy consumption, and products that are produced with recycled materials, where appropriate, unless otherwise specified in this solicitation.

22 OTHER PUBLIC AGENCY PURCHASES

This RFP and resulting agreement(s) (“Master Agreement”) are intended and anticipated for use by other government agencies (“Participating Entities”).

By submitting a proposal, the proposer(s) agrees to make the same proposal terms and price, exclusive of any possible rebates, incentives, freight and transportation fees, available to other Participating Entities. The City of San José will not incur any direct liability with respect to specifications, delivery, payment, or any other aspect of purchases by such Participating Entities.

The successful proposer must work directly with the Participating Entities concerning the placement of orders, disputes, invoicing and payment. The City of San José shall not be held liable for any costs or damages incurred by or as a result of the actions of the successful proposer or any Participating Entity. Successful proposers must comply with the state and local laws, rules and regulations in each state and locality where the product or service is provided.

While the terms of the Master Agreement shall govern the general pricing terms, each Participating Entity may request modification of the Master Agreement in accordance with each Participating Entity’s state and/or local purchasing laws, rules, regulations and procedures, provided said modifications are not material changes. Each Participating Entity may, at its discretion, and upon written agreement by the Participating Entity and successful proposer, request additional legal and procedural provisions not included herein that the successful proposer must adhere to if it wishes to conduct business with said Participating Entity using the Master Agreement. Notwithstanding the foregoing, any successful proposer or participating vendor may, at its discretion, reject orders placed by a Participating Entity if the vendor determines that it may be unable to satisfy such order.

CONTRACT USAGE

It is the intent of this Request for Proposal and resulting Master Agreement that Participating Entities may buy directly from successful proposers without the need for further solicitation. However, Participating Entities are urged to seek independent review by their legal counsel to ensure compliance with all local and state solicitation requirements as well as the need of further notice prior to utilizing the Master Agreement.

ATTACHMENT A SUBMITTAL CHECKLIST

Proposal responses should be organized and tabbed as specified below:

<input type="checkbox"/>	1. Cover Letter	See Main RFP Document @ Section 10.4.2.
<input type="checkbox"/>	2. Table of Contents	Organize as specified below and include page numbers.
<input type="checkbox"/>	3. <u>Form 1</u> : Response Certification	Must be submitted with proposal response.
<input type="checkbox"/>	4. <u>Form 2</u> : Local/Small Business Enterprise Preference Request	See Main RFP Document @ Section 10.5.1.2.
<input type="checkbox"/>	5. <u>Form 3</u> : Exemplar Agreement Acknowledgement	See Main RFP Document @ Section 10.5.1.3.
<input type="checkbox"/>	6. <u>Form 4</u> : Insurance Requirements Acknowledgement	See Main RFP Document @ Section 10.5.1.4.
<input type="checkbox"/>	7. Provide Expertise, Key Personnel, and Organizational Chart.	Must be submitted with proposal response.
<input type="checkbox"/>	8. <u>Form 5</u> : Customer References Provide three (3) Customer Reference Forms.	See Main RFP Document @ Section 10.5.2.
<input type="checkbox"/>	9. Respond to each element of Attachment B, Scope of Services and Requirements.	See Main RFP Document @ Section 10.5.3
<input type="checkbox"/>	10. <u>Form 6</u> , Proposer Questionnaire	See Main RFP Document @ Section 10.5.3.1.
<input type="checkbox"/>	11. <u>Form 7</u> : Cost Proposal All lines on Cost Proposal Form must be completed. Lines may be adapted per requirements.	See Main RFP Document @ Section 10.5.4.

ATTACHMENT B - SCOPE OF SERVICES AND REQUIREMENTS

1. Challenge Statement

The City of San José Office of Immigrant Affairs is seeking a reliable and accessible solution to improve civic participation and engagement in community meetings for our limited and non-English residents by Dec 2020.

Note: As San José works to become the most inclusive and most successful multi-cultural city in the US, we want to ensure that every resident, regardless of the language they speak, feel like they can participate in public meetings in way that is efficient and friendly.

2. Background

Currently, the City needs to anticipate specific language needs for community meetings to ensure appropriate interpreters are contracted ahead of time (what languages, how many, what time, cost). It takes time to coordinate and schedule, becomes expensive, and leaves out certain groups (minority languages). Non-profit organizations may bring interpreters or residents may bring family and friends to act as interpreters. In any case, these are not reliable mechanisms to bring their voice to public forums.

This results in:

- Lost opportunity for expanded community voice
- Loss of interest in local issues
- Residents feeling excluded

If we are not actively including, we are inactively excluding.

3. Challenge Goals

- Increase and expand the community voice
- Make civic engagement inclusive of limited and non-English speakers
- Help the City develop metrics around language access

4. Product / Service Requirements & Specifications

- Real-time interpretation functionality for priority languages (Vietnamese, Spanish)
- Mobile device enabled
- Increased attendance by limited and non-English speakers
- Help adapt to future City departments that have applicability
- Compliance with the City of San José Privacy Principles
- Training and Documentation
- Maintenance & Support (SLAs, response times, hours, etc.)

5. Warranty Requirements

Applicable hardware and software in the Proposed Solution will be in accordance with the warranty requirements in Section 11.

ATTACHMENT B-1 - PRIVACY AND DISCLOSURE POLICY

The purpose of this statement is to define the City of San José's policy with regard to the collection and use of personally identifiable information (PII). PII is any information relating to an identified or identifiable individual who is the subject of the information. Users of the City Web Site should be informed of the following:

The City of San José collects two kinds of customer information: (1) anonymous and (2) personally identifiable information (PII).

1 Anonymous Information

This type of information does not identify specific individuals and is automatically transmitted by City browser. This information consists of:

The URL (Uniform Resource Locator or address) of the web page user previously visited.

The domain names and/or IP addresses which are numbers that are automatically assigned to City computer whenever user are connected to the Internet or World Wide Web.

The browser version user are using to access the site.

This information is used to help improve the City's Web Site. None of the information can be linked to an individual.

2 Personally Identifiable Information (PII)

This type of information could include name, address, email address, telephone number, credit/debit card information. The City will make every reasonable effort to protect City privacy. It restricts access to City personal identifiable information to those employees who will respond to City request. The City does not intentionally disclose any personal information about Contractor customers to any third parties or outside the City except as required by law or by the consent of the person providing the information.

The City only collects personally identifiable information that is required to provide service. User can decline to provide us with any personal information. However, if user should choose to withhold requested information, the City may not be able to provide user with the online services dependent upon the collection of that information.

3 Access to Personally Identifiable Information

Access to personally identifiable information in public records at local levels of government in San José is controlled primarily by the California Public Records Act (Government Code Section 6250, et. seq.). Information that is generally available under the Public Records Act may be posted for electronic access through the City's Web Site. While the Public Records Act sets the general policies for access to City records, other sections of the California code as well as federal laws also deal with confidentiality issues.

4 Email addresses

Email addresses obtained through the City's Web Site will not be sold or given to other private companies for marketing purposes. The information collected is subject to the access and confidentiality provisions of the Public Records Act, other applicable sections of the California code as well as Federal laws. Email or other information requests sent to the City Web Site may be maintained in order to respond to the request, forward that request to the appropriate City

within the City, communicate updates to the City page that may be of interest to citizens, or to provide the City web designer with valuable customer feedback to assist in improving the site. Individuals can cancel any communications regarding new service updates at any time.

5 Use of “Cookies”

Some City applications use “cookies”. A cookie is a small data file that certain web sites write to City hard drive when user visit them. A cookie file can contain information such as a user id that the site uses to track the pages user have visited. But the only personal information a cookie can contain is information supplied by user. A cookie is only a test file and cannot read data off user’s hard disk or read cookie files created by other sites. Cookies can track user traffic patterns, recognize users computer’s browser when user return, and could provide personalized content without requiring sign-in.

User can refuse cookies by turning them off in user browser. However, they may be required to use some of the web applications on the City’s Web Site.

6 Security

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by the City’s Web Site and has taken reasonable precautions to protect such information from loss, misuse, or alteration.

7 Contractual Services for the City’s Web Site and On-Line Services

To insure that contractors who have access to or provide contractual services for the City’s On-Line (e-government) Services are not allowed to re-sell or in any way share or convey to another party or use it for another purpose any information that they may have access to in the course of doing business for the City; all city contracts regarding such services should contain a requirement that the contractor must comply with the City’s Web Site and e-Government policies.

8 Electronic Signatures and Payments

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by Contractor web site and has taken reasonable precautions to protect such information from loss, misuse, or alteration. When a City application accepts credit cards or any other particularly sensitive information for any of its services, it encrypts all ordering information, such as the customer's name and credit card number, in order to protect its confidentiality.

9 Disclaimer

The City Web Site should contain a disclaimer substantially containing the following information:

6.1 The City of San José is neither responsible nor liable for any delays, inaccuracies, errors, or omissions arising out of user’s use of the City's Web Site or with respect to the material contained on the Site, including without limitation, any material posted on the Site nor for any viruses or other contamination of user’s system. The City Web Site and all materials contained on it are distributed and transmitted “as is” without warranties of any kind, either express or implied, including without limitations, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The City of San José is not

responsible for any special, indirect, incidental, or consequential damages that may arise from the use of, or the inability to use, the Web Site and/or the materials contained on the Web Site whether the materials contained on the Web Site are provided by the City of San José or a third party. The City of San José is neither responsible nor liable for any viruses or other contamination of user's system.

6.2 Access to Information

Unless otherwise prohibited by state or federal law, rule or regulation, user will be granted the ability to access and correct any personally identifiable information. The City will take reasonable steps to verify user's identity before granting such access. Each City service that collects personally identifiable information will allow or review and update of that information.

6.3 Non-City Web Sites

Non-City web sites may be linked through the City's Web Site. Many non-city sites may or may not be subject to the Public Records Act and may or may not be subject to other sections of the California code or federal law. Visitors to such sites are advised to check the privacy statements of such sites and to be cautious about providing personally identifiable information without a clear understanding of how the information will be used.

6.4 The City is not responsible for, and accepts no liability for, the availability of these outside resources. Linked Web sites are not under the control of, nor maintained by, the City and the City is not responsible for the content of these Web sites, which can and do change frequently; nor for any internal links the displayed Web sites may contain. In addition, inclusion of the linked Web sites does not constitute an endorsement or promotion by the City of any persons or organizations sponsoring the displayed Web sites.

10 Digital Privacy Principles

The following privacy principles were approved by the San José City Council on September 17, 2019 and reflect the input of stakeholders. The principles ensure the privacy of residents is protected. Proposers agree to following these principles:

- **WE VALUE PRIVACY:** We affirm that privacy is an inherent human right. San José commits to fully evaluating risks to resident privacy before collecting, using, or sharing resident information.
- **WE COLLECT ONLY WHAT WE NEED:** We collect only what is required to provide and improve city services and comply with the law. We seek community input about what information is used and collected.
- **WE ARE OPEN AND TRANSPARENT:** We are transparent about what information we collect, why we collect it, and how it is used. We commit to being open about our actions, policies, and procedures related to resident data. We make our policy documents publicly available and easy to understand.
- **WE WILL GIVE YOU CONTROL OVER YOUR DATA:** We will provide residents with the information to make an informed decision about sharing resident data. We have clear processes that ensure data accuracy and provide residents visibility into what data the city has collected from residents.
- **WE SHARE ONLY WHAT WE NEED:** We anonymize resident information before we share it outside the city, except in very limited circumstances. Business partners and contracted vendors who receive or collect personal information from

us or for us to deliver city services must agree to our privacy requirements.

- **WE DESIGN FOR PRIVACY AND SECURITY:** We integrate privacy and security into every aspect of our designs, systems, and processes. We commit to updating our technology and processes to effectively protect resident information while under our care. We follow strict protocols in the event resident information is compromised.

ATTACHMENT B-2 - PAYMENT CARD INDUSTRY (PCI) REQUIREMENTS

Contractor represents and warrants that any system used by the Contractor and the software applications it provides for the purpose of performing services related to storing, processing or transmitting payment cardholder data, at any point during the term of this contract shall be secured and certified to meet Payment Card Industry Data Security Standard (“PCI-DSS”) and Payment Application Data Security Standard (“PA-DSS”) established by the Payment Card Industry Security Standards Council as set forth online at <https://www.pcisecuritystandards.org>, as may be amended by the PCI Security Standards Council from time to time.

1. **Performance Standards:** PCI-DSS is a multifaceted security standard comprised of twelve (12) general requirements including requirements for security management, policies, procedures, network architecture, software design and other critical protective measures. The following requirements are designed to build and maintain a secure network; protect cardholder data; ensure the maintenance of vulnerability management programs; implement strong access control measures; regularly monitor and test networks; and ensure the maintenance of information security policies:
 - 1.1. Build and Maintain a Secure Network
 - 1.1.1. Install and maintain a firewall configuration to protect cardholder data.
 - 1.1.2. Do not use vendor-supplied defaults for system passwords and other security parameters.
 - 1.2. Protect Cardholder Data
 - 1.2.1. Protect stored cardholder data using methods such as encryption, truncation, masking, hashing, and any other effective methods of protecting stored data to mitigate potential risks.
 - 1.2.2. Encrypt transmission of cardholder data over open, public networks.
 - 1.3. Maintain a Vulnerability Management Program
 - 1.3.1. Use and regularly update anti-virus software or programs.
 - 1.3.2. Develop and maintain secure systems and applications.
 - 1.4. Implement Strong Access Control Measures
 - 1.4.1. Restrict access to cardholder data to ensure critical data can only be accessed by authorized personnel, systems and processes based on the least amount of data and privileges needed to perform a job.
 - 1.4.2. Assign a unique identification (“ID”) to each person with computer access to maintain accountability and traced actions taken on critical data and systems to known and authorized users.
 - 1.4.3. Restrict physical access to cardholder data.
 - 1.5. Regularly Monitor and Test Networks
 - 1.5.1. Track and monitor all access to network resources and cardholder data.
 - 1.5.2. Regularly test security systems and processes.
 - 1.6. Maintain an Information Security Policy

1.6.1. Maintain a policy that addresses information security for all personnel

2. **Certification:** Contractor agrees to promptly provide, from time to time at the request of the City, current evidence, in form and substance reasonably satisfactory to City, of compliance with PCI-DSS and PA-DSS, which has been properly certified by an authority recognized by the payment card industry for that purpose. If during the term of this Agreement, Contractor undergoes, or has reason to believe that it will undergo, and adverse change in its certification or compliance status with the PCI-DSS or PA-DSS or other material payment card industry standards, it will promptly notify the City of such circumstances.
3. **Audit:** Contractor agrees to, at Contractor's own expense, perform an independent audit of any system used to store, process, or transmit payment cardholder data by an independent third party on a quarterly basis to ensure the System is and continues to satisfy PCI-DSS. At a minimum, the audit shall scan for all known methods used by hackers to access private information, vulnerabilities that would allow malicious software (i.e. viruses and worms) to gain access to or disrupt the network devices.
4. **Material Breach:** Failure by Contractor to comply with any provision of this Exhibit shall constitute a material breach of this Agreement.
5. **Notifications:** Should the contractor have a failure of security protocols such that customer data is compromised, the Contractor shall immediately notify the City.

ATTACHMENT C - CITY OF SAN JOSE PURCHASE ORDER STANDARD TERMS AND CONDITIONS

- 1. DEFINITIONS:** “City” shall mean the City of San José. “Vendor” shall mean the provider of goods and/or services which are the subject of this purchase order. “Director” shall mean the Director of Finance or Director’s authorized designee.
- 2. CONTRACT:** This purchase order, which consists of these standard terms and conditions, and any attachments hereto, evidences City’s acceptance of Vendor’s offer to provide to City the goods and/or services which are the subject of this purchase order and constitutes a binding contract therefore upon the terms and conditions set forth herein without further action or agreement of Vendor. In the event of conflict between these standard terms and conditions and the provisions of any attachment hereto these standard terms and conditions shall control.
- 3. SCHEDULE OF GOODS AND/OR SERVICES; TIME OF PERFORMANCE:** Vendor shall supply those goods and/or services which are specified herein, in accordance with the schedule and during the term which are specified herein. Time is of the essence in this purchase order.
- 4. COMPENSATION; SCHEDULE OF PAYMENT:** The compensation to be paid and the method of payment to Vendor for goods and services shall be as set forth herein. Unless otherwise provided herein, payment shall not be due until thirty (30) calendar days after the later to occur of the date performance under this purchase order is completed to the satisfaction of City and the date City receives an acceptable invoice. No payment shall represent a waiver of City’s right to inspect for defects. Unless otherwise provided herein, Vendor shall be responsible for all costs and expenses incident to the performance of this purchase order, including without limitation all costs of equipment provided by Vendor, all fees, fines, licenses, bonds, or taxes required of or imposed against Vendor, and all other of Vendor’s costs of doing business.
- 5. CURRENT PRICES OF GOODS:** Vendor represents that prices to be paid by City for goods shall not exceed current prices charged to any other customer of Vendor for items which are the same or substantially similar to the goods, taking into account the quality of the goods, and Vendor will forthwith refund any amounts paid by City in excess of such prices.
- 6. DISCOUNT PERIODS:** Payment discount periods shall be calculated from the later of the date this purchase order is completed or the date City receives an acceptable invoice, to the date City’s payment is sent.
- 7. SALES TAXES:** Vendor shall separately state on all invoices any sales, use or similar taxes imposed by federal or state government applicable to furnishing of the goods and/or services; provided, however where a tax exemption is available, such tax shall be subtracted from the total compensation and identified. Municipalities are exempt from federal excise and transportation taxes, except for the excise tax on gasoline. Exemption certificates will be furnished upon request.

8. PACKING AND SHIPPING OF GOODS; TITLE AND RISK OF LOSS: All goods shall be delivered “free on board destination” to the location specified herein, full freight prepaid except for special or expedited orders. Deliveries of goods shall be made without charge for boxing, crating, carting or storage unless otherwise specified, and goods shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and in such a manner as to assure against damage from weather or transportation. City’s order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. City’s count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by City shall be shipped in separate boxes or containers for each destination at no extra charge.

Title to and risk of loss on all goods shall pass to City only upon delivery by Vendor in the manner specified herein and City’s acceptance of such goods.

9. WARRANTIES: Vendor warrants that all goods and services shall be delivered or performed free of all liens, claims, security interest or encumbrances, will conform to applicable specifications, drawings, descriptions and samples, and will be merchantable, of good workmanship and material, and free from defect. Unless manufactured or performed pursuant to detailed design furnished by City, Vendor assumes design responsibility, and warrants that all goods and services shall be delivered or performed free of design defect and suitable for the purposes intended by City, and that neither purchase, use or resale, nor delivery or performance thereof shall violate any patent, copyright or similar rights. Vendor’s warranties shall run to City and shall not be deemed to be exclusive. City’s inspections, approval, acceptance, use of or payment for all or any part of the goods or services shall in no way affect its warranty rights whether or not a breach of warranty had become or should have become evident at the time.

10. CHANGES: City shall have the right by written notice to change the extent of the work covered by this purchase order, the time or place of delivery, the method of shipment or packaging, or to suspend work. The only valid change is a change order signed by the Director. Upon receipt of any such notice, Vendor shall promptly make the changes in accordance with the terms of the notice. If any such changes cause an increase or decrease in the cost of or time for performance, an equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly. Vendor shall promptly deliver to City, and in any event within ten (10) calendar days after receipt of such notice, a statement showing the effect of any such changes in the cost of or time for performance. Failure of Vendor to submit the statement within the above time limit shall constitute its consent to perform the change without increase in compensation or time for performance.

11. TERMINATION FOR DEFAULT OR CONVENIENCE: City may, by written notice to Vendor, terminate this purchase order in whole or from time to time in part for default: (i) if Vendor fails to deliver the goods or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the goods delivered or services performed do not conform to the requirements of this

purchase order or if Vendor fails to perform any of the other provisions of this purchase order, or so fails to make progress as to endanger performance of this purchase order in accordance with its terms; or (iii) if the Vendor becomes insolvent. If this purchase order is terminated for default, City, in addition to all other rights afforded by law for Vendor's default, shall have the right to charge Vendor the amount by which the costs of fabricating or procuring the goods or services cancelled from another source exceed the compensation specified herein, and City may set off any such charge against any amounts which may become payable to Vendor under this purchase order or otherwise. City may, by not less than thirty (30) days written notice to Vendor, terminate this purchase order for convenience and without cause. In the event of such termination for convenience, Vendor will be paid for those goods delivered and services performed pursuant to this purchase order to the satisfaction of City up to the date of termination. The Director is empowered to terminate this purchase order on behalf of City.

12. INDEMNITY: To the fullest extent permitted by law, Vendor agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, against any claim, loss or liability (collectively, "Claims"), including without limitation Claims for injuries or death to persons or damage to or destruction of property, caused by or resulting from the acts or omissions of Vendor, its officers, agents, employees or subcontractors, in the performance of this purchase order, or the breach by Vendor of any of its obligations under this purchase order.

13. INSURANCE REQUIREMENTS: If applicable, Vendor agrees to have and maintain the insurance policies specified herein. All policies, endorsements, certificates, and/or binders shall be subject to review and approval by the Risk Manager of the City of San José as to form and content. These insurance requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Vendor agrees to provide City with a copy of applicable certificates and/or endorsements before work commences under this purchase order.

14. COMPLIANCE WITH THE LAW: Vendor shall in the performance of this purchase order comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

15. GOVERNING LAW: City and Vendor agree that the law governing this purchase order shall be that of the State of California.

16. VENUE: In the event that suit shall be brought by either party to this purchase order, 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.

17. ASSIGNMENT OF CONTRACT: Vendor shall not assign any of the work to be performed under this purchase order nor shall Vendor subcontract for complete or substantially completed goods or major components thereof without the Director's prior written consent. Vendor may assign monies due under this purchase order. City will recognize such assignment, to the extent permitted by law, if City is given proper notice

thereof. Any assignment shall be subject to set-off or recoupment for any present or future claim which City may have against Vendor.

18. WAIVER: Vendor agrees that City's waiver of any breach or violation of any provision of this purchase order shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Vendor's performance will not be a waiver of any provision of this purchase order.

19. INDEPENDENT CONTRACTOR: It is understood and agreed that Vendor shall act as and be an independent contractor and not an employee, agent, joint venture, or partner of City. As an independent contractor, Vendor shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Vendor hereby expressly waives any claim it may have to any such rights. Both parties acknowledge that Vendor is not an employee for state or federal tax purposes. Vendor shall retain the right to perform services for others during the term of this purchase order.

20. CONFIDENTIAL INFORMATION: All data, documents, discussions or other information developed or received by or for Vendor in performance of this purchase order are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

21. OWNERSHIP OF MATERIALS: All reports, documents or other materials developed or discovered by Vendor or any other person engaged directly or indirectly by Vendor in performance of this purchase order shall be and remain the property of City without restriction or limitation upon their use.

22. VENDOR'S BOOKS AND RECORDS: Vendor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, 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, for the date of final payment to Vendor pursuant to this purchase order. Vendor shall maintain all documents and records which demonstrate performance under this purchase order for a minimum of three (3) years, or for any period longer required by law, from the date of termination or completion of this purchase order. Any records or documents required to be maintained pursuant to this purchase order shall be made available for inspection or audit, at any time during regular business hours, upon written request by 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 Vendor'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 Vendor, Vendor's representatives, or Vendor's successor-in-interest.

23. NON-DISCRIMINATION:

a. Prohibition on Discrimination and Preferential Treatment.

Vendor shall fully comply with Chapter 4.08 of the San José Municipal Code and agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of City contracts.

b. Compliance Reports.

If directed by the Director of Office of Equality Assurance of the City, Vendor shall file, and cause any subcontractor to file, compliance reports with the Director of Office of Equality Assurance. Compliance reports shall be in the form and field at such times as may be designated by the Director of Office Equality Assurance. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Director of Office of Equality Assurance to determine whether Vendor or its subcontractor is complying with the nondiscrimination and non-preference provisions of this Agreement and Chapter 4.08 of the Municipal Code.

c. Failure to Comply with Nondiscrimination Provisions.

If the Director of Office of Equality Assurance determines that the Vendor has not complied with the nondiscrimination or non-preference provisions of this Agreement, the CITY may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject Vendor and/or subcontractor to debarment proceedings pursuant to provisions of the San José Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San José Municipal Code and is a misdemeanor.

d. Subcontracts.

Vendor shall include provisions a through c above, inclusive, in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

e. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this Agreement may be waived by the Director of Office of Equality Assurance, if the Director of Office of Equality Assurance determines that the Vendor has its own nondiscrimination requirements or is bound in the performance of this Agreement by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the Vendor or other governmental agency are substantially the same as those imposed by the City.

24. GIFTS: Vendor represents that it is familiar with the City's prohibition against the acceptance for any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code. Vendor agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this purchase order by vendor. In addition to any other remedies City may have in law or equity, City may terminate this purchase order for such breach.

25. CONFLICT OF INTEREST: Vendor shall avoid all conflict of interest or appearance of conflict of interest in performance of this purchase order.

26. DISQUALIFICATION OF FORMER EMPLOYEES: Vendor 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"). Vendor shall not utilize either directly or indirectly any officer, employee, or agent who would be in violation of the Revolving Door Ordinance.

ATTACHMENT D

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest agrees as follows:

Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

Non-discrimination: The Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a Contractor’s noncompliance with the Non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

Withholding payments to the Contractor under the Agreement until the Contractor complies;
and/or

Cancelling, terminating, or suspending the contract, in whole or in part.

Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six of this Attachment D in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the City to enter into any litigation to protect the interests of the City. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

FEDERAL FAIR LABOR STANDARDS ACT (MINIMUM WAGE)

This Agreement and any subcontracts of this Agreement incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

This Agreement and any subcontracts of this Agreement incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

ATTACHMENT E

Infrastructure General and Cybersecurity Requirements

Solution with hardware appliance shall be able to rack on a Standardized, 42U 19" server cabinet. Power requirements shall not exceed a standard 120-125 or 240-250 Volt power receptacle.

Solution with network connectivity requirements must be industry standard IEEE and shall be interoperable with the City's network. The City's network supports both wired and wireless connectivity. The City's network infrastructure is a highly available IPv4 based routed network, but can support limited IPv6 requirements. The network backbone supports the 802.3 standards up to speeds of 40 Gbps over Fiber. The main routing protocols used are Static routes, OSPF and BGP.

The City's server infrastructure consists of primarily Microsoft Windows Server Operating System platforms and VMWare ESXi. Solution hosted on the City's data centers shall be compatible with the City's server infrastructure if the solution requires physical or virtual servers. Solution shall be running on current supported versions of operating systems. Any platforms other than Microsoft Server OS shall be evaluated on a case by case basis.

The City's desktops are running on Microsoft Windows Operating System platforms. Software hosted on the City's desktops shall be able to install on City's desktops running current supported versions of the Microsoft Windows Operating System.

Software hosted on City's mobile devices shall be able to install on current supported versions of IOS or Android. Software shall be able to register with City's MDM platforms: VMWare Workspace One or Microsoft Intune.

Software solution shall have no conflict with anti-virus, anti-malware installed on City's servers, desktops, or mobile devices.

Software shall be able to run on current supported version of Internet browsers: Microsoft Internet Explorer, Microsoft Edge, or Google Chrome.

Software requiring network identity authentication for City's employees shall be compatible on City's network running current supported version of Microsoft Active Directory. Software requiring single sign-on shall be compatible with Microsoft Active Directory Federation Services, SAML 2.0 or later.

Software hosted in public or private cloud shall be able to connect to City's network via an encrypted connection for network connectivity if solution requires accessing internal City's network resource.

Software shall be compatible with Microsoft Office 365 if solution requires to interface with City's email system, or office productivity and collaboration tools.

Cybersecurity

Contractor shall adhere to the City's *Information and System Security Policy* and *Information*

Security Standard Handbook or any other similar standard such as NIST SP800-53, ISO 27005, CIS, or COBIT, in providing the services.

Contractor shall implement security controls in accordance with the City's Security Policy and Standards or any other acceptable standard to assess any solution prior to first release or release of any major improvement or enhancement.

If the solution contains Sensitive or Confidential information and it is a SaaS solution, it must be audited by a third party at least once a year. Results shall be shared with the City along with regular updates on risk mitigation.

If a system does not contain Sensitive or Confidential information, security controls may be fully implemented after completion of the pilot but before the wide deployment of the solution. Systems processing or storing Sensitive or Confidential information will need to comply with security standards as part of the normal Systems Development Lifecycle.

FORM 1 - RESPONSE CERTIFICATION FORM

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

RESPONDENT REPRESENTATIONS

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

All Respondents are expected to have read and understand the “Wage Theft Prevention Policy” adopted on May 24, 2016. A complete copy of Resolution No. 77755 can be found at: <https://www.sanjoseca.gov/DocumentCenter/View/62047>.

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

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

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

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

FORM 2 - CITY OF SAN JOSE
REQUEST FOR LOCAL AND SMALL BUSINESS ENTERPRISE PREFERENCE

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

Preference Calculations

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

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

Qualifying for the Local Business Enterprise (LBE) Preference

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

- (1) **A valid San José Business Tax Certificate Number:** The business tax certificate number below should match to the address and business name for which the preference is being claimed and must be current as of the solicitation due date. Proposers/bidders should verify their information through the City’s Business Tax Lookup at <http://www.sanjoseca.gov/index.aspx?nid=5313> prior to submittal.
- (2) **A legitimate business presence in Santa Clara County with at least one full time employee:** The City has interpreted a legitimate business presence to require:
 - the local address for which the preference is being requested is of a **commercial nature** and the primary purpose of the location is to serve as a principal, regional, branch, or satellite business office; or
 - in the case of a business located in a residential dwelling, the business must either be a valid home occupation as an incidental use of the business owner’s primary dwelling, or the residential dwelling is exclusively used for a commercial nature and the primary purpose of the location is to serve as a principal, regional, branch or satellite business office.

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

Qualifying for the Small Business Enterprise (SBE) Preference

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

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

Business/Proposer/Bidder Name (should match name on Business Tax Certificate):	
Current San José Business Tax Certificate Number:	
Address of Principal Business Office or Regional, Branch, or Satellite Office with at least one employee located in Santa Clara County:	
Type of Business:	<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)
TOTAL number of employees in your Business:	

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

Executed at: _____ on Date: _____
 Signature: _____ Printed Name: _____

FORM 3 – EXEMPLAR AGREEMENT ACKNOWLEDGEMENT FORM

Respondent Company Name: _____

Authorized Representative Name: _____

Authorized Representative Title: _____

Authorized Representative Signature: _____

Date Signed: _____

Please check the appropriate box below:

We take NO EXCEPTIONS to the City's Standard Terms and Conditions included in Attachment C.

or

We take exception(s) to the City's Standard Terms and Conditions included in Attachment C as outlined below. Note: Any exceptions to the City's Standard Terms and Conditions may result in immediate disqualification of your solicitation response without further review.

**ATTACHMENT F
EXEMPLAR**

**AGREEMENT FOR A REAL-TIME INTERPRETATION SYSTEM
BETWEEN
THE CITY OF SAN JOSÉ
AND**

This Agreement is entered into as of the City’s execution date (“Effective Date”) between the City of San José, a municipal corporation (hereinafter “City”), and _____, a _____ corporation registered to conduct business in the State of California, (hereinafter “Contractor”). Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, City wishes to acquire a Real-Time Interpretation System, including all software and related services; and

WHEREAS, Contractor has a good understanding of City’s requirements through Contractor’s examination of City’s existing systems which are to be replaced by the System, product demonstrations, the exchange of information, and the Request for Proposal documents; and

WHEREAS, Contractor has the necessary expertise and skill to provide a Real-Time Interpretation System and related services; and

WHEREAS, Based on this in-depth understanding and combining it with Contractor’s knowledge and experience with other municipal organizations, Contractor warrants that the proposed System will meet the City’s specifications and requirements as described in the Scope of Services; and

WHEREAS, the Recitals are true and correct and are incorporated into this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1 AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

- EXHIBIT A-1 - Scope of Services
- A-2 - Cost Proposal
- A-3 - Performance Schedule
- A-4 - Final System Acceptance
- A-5 - Payment Card Industry (PCI) Requirements
- EXHIBIT B - Compensation and Payment Schedule
- EXHIBIT C - Insurance Requirements
- EXHIBIT D - Change Order Form

- EXHIBIT E - Notice of Option to Extend Agreement
- EXHIBIT F - Software License/Subscription Agreement (including Service Level Agreement as applicable)
- EXHIBIT G - Software Maintenance & Support
- EXHIBIT H - Privacy and Disclosure Policy

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents, the provisions of this Agreement will prevail. The provisions in the Exhibits shall prevail over conflicting terms in any Attachments to the Exhibits. Contractor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly and that the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning. Notwithstanding the foregoing, the terms of the Software License and Maintenance Agreements (EXHIBITS F and G respectively) shall be as provided in the respective agreements.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any shrink-wrap or boot-screen license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.

2 TERM OF AGREEMENT

2.1 Term

The term of this Agreement is from March 2020 through July 2021 and includes a Residency Period and Initial Term as follows:

- Residency Period: estimated March 2020 through July 2020
- Initial Term: estimated August 2020 through July 2021

The Residency Period and Initial Term are subject to the provisions of Section 14 TERMINATION. Notwithstanding the foregoing, the term of the Software Subscription/License Agreement and the Maintenance Agreement shall be as provided in those respective Agreements.

2.2 Option to Extend

After the Initial Term, the City, at its sole discretion, reserves the right to extend the term of this Agreement for two (2) additional one-year terms through July 2021, subject to City Council appropriation of funds (“Option Periods”). City shall provide Contractor prior written notice in the form of EXHIBIT E of its intention to exercise its option 90 days prior to the end of the then current term.

2.3 No Waiver

City’s agreement to extend the term of this Agreement is not a waiver of the “time is of the essence” provision in Section 4.

3 SCOPE OF SERVICES

3.1 Scope of Work

Contractor agrees to procure and install the System and perform the Services set forth in the Scope of Services and the Software License Agreement which are attached as EXHIBITS A-1 through A-5 and EXHIBIT F hereto and incorporated as though fully set forth herein (the “Scope of Services”).

3.2 Equipment (if applicable)

Any additional equipment, parts, or services required for final acceptance as detailed in Scope of Services (EXHIBITS A-1 through A-5 and EXHIBIT F) but not reflected in the Contractor’s proposal such pricing shall be the sole responsibility of the Contractor and at no cost to the City.

3.3 Notification

Contractor agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor’s ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

3.4 Contractor’s Software

The terms of the licensing of the Software, including subsequent releases is licensed to City and shall be as set forth in the Software License Agreement (EXHIBIT F).

3.4.1 Continuity Protection

After successful completion of both the “Residency” period and “Initial Term” for one-year contract, the Contractor will provide a Source Code Escrow Agreement that allows the City to obtain the source code in the event the Contractor is unwilling or unable to continue maintaining it. The Source Code Escrow Agreement is subject to the City’s approval and is the responsibility of the Contractor to procure and include in the Form 7, Cost Proposal Form.

3.5 Non-Contractor Software (if applicable)

Contractor shall procure, on City’s behalf, the third party software, pursuant to and in accordance with the license and maintenance agreements attached hereto as EXHIBITS F and G. City shall execute and deliver the license and maintenance agreements for the Third Party Software. City shall comply with the terms and conditions of such agreements, provided that Contractor may serve as City’s agent for purposes of obtaining and implementing the items and services contemplated by such agreements. Contractor shall obtain from all suppliers of the equipment and the Third Party Software, all standard guarantees and warranties normally provided on all machinery, equipment, services, materials, supplies and other items used in connection with the performance of the Services, including all such machinery, equipment, materials and other items which are incorporated into the System. Contractor shall obtain from each such supplier guarantees and warranties which are assignable to City and which cover the Warranty Period and shall, upon request of City, obtain an option for City to purchase a guarantee or warranty from such suppliers covering a longer period than the Warranty Period if commercially available at City’s expense. Contractor shall enforce all guarantees and warranties until such time as such

guarantees or warranties expire or are, if applicable, transferred to City as contemplated by this Section 3. Such guarantees and warranties shall, to the extent they have been made assignable, be transferred to City upon expiration or termination of this Agreement. Such guarantees and warranties shall, to the extent they have been extended, be transferred to City upon the earlier to occur of (1) the expiration of the Warranty Period, and (2) termination of this Agreement. Contractor shall, to the extent that a warranty or guarantee has been extended or made assignable to City pursuant to this Section 3, deliver to City copies of all such guarantees and warranties and relevant extracts from all related technical specifications. Nothing in this Section 3 shall derogate from the obligations of Contractor to provide the guarantees and warranties described in, and to comply with the provisions of this Agreement.

3.6 Privacy and Disclosure (optional for web application hosting, delete if not applicable)

Contractor agrees in the performance of services to comply with City's Privacy and Disclosure Policy set forth in EXHIBIT H entitled "Privacy and Disclosure Policy", which is attached hereto and incorporated herein. Contractor shall ensure that all webpages that it creates are consistent with the Policy. Contractor further agrees that it shall treat all information received through the performance of this Agreement in strict accordance with the Policy.

3.7 Maintenance Service

After the initial warranty period of one (1) year which shall commence upon Final System Acceptance as specified in EXHIBIT A-4, the terms of maintenance of the System shall be as set forth in the Maintenance Agreement (EXHIBIT G).

4 EXTENSION OF CONTRACT TERMS TO PARTICIPATING ENTITIES

Contractor agrees to extend the same terms, covenants, and conditions available to City under this Agreement to other government agencies ("Participating Entities"). Notwithstanding the foregoing sentence, any Contractor, at its discretion, may reject orders placed by a Participating Entity if the Contractor determines that it may be unable to satisfy such order. Each Participating Entity will be exclusively responsible for and deal directly with Contractor on matters relating to ordering, delivery, inspection, acceptance, invoicing, and payment for Products and Services in accordance with the terms and conditions of this Agreement as if it were "City" hereunder. Any disputes between a Participating Entity and Contractor will be resolved directly between them under and in accordance with the laws of the State in which the Participating Entity exists. The City shall not incur any liability as a result of the access and utilization of this Agreement by other Participating Entities.

This solicitation meets the public contracting requirements of the City and may not be appropriate under or meet Participating Entities' procurement laws. Participating Entities are urged to seek independent review by their legal counsel to ensure compliance with all local and state solicitation requirements.

5 SCHEDULE OF PERFORMANCE

Contractor shall perform the Services according to the terms and provisions of the Performance Schedule (EXHIBIT A-3). Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

6 DATA AND FACILITIES

Contractor acknowledges that it has in its possession all applicable specifications and drawings, and all other documents to which reference is made herein and/or which are matched hereto, and all such data are adequate to enable Contractor to fairly determine its ability to perform the work called for herein at the price and in accordance with the schedule set forth herein. Contractor represents that it now has or can readily procure without assistance of City all facilities, machinery and equipment necessary for the performance of this Agreement.

7 STANDARDS OF SERVICE

In connection with the performance of any Services pursuant to this Agreement:

7.1 Number of Employees

Contractor warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement. Furthermore, Contractor shall, at its expense, supply all tools, equipment and other materials necessary to perform the Services contemplated in this Agreement.

7.2 Skill of Employees

Contractor warrants that employees shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

7.3 Duty of Confidentiality

All data, documents, discussions or other information developed or received by or for one Party in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by the other Party, or as required by law. The receiving Party warrants that all employees utilized by it in performing Services are under a written obligation to the receiving Party requiring the employee to maintain the confidentiality of information of the other Party to the extent permitted by law.

7.4 Security and Safety

Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies. City may require each employee providing Services to undergo a background investigation, including, but not limited to a criminal records and fingerprint check. Contractor shall promptly replace any employee found to be unacceptable to City, in its sole discretion, on the basis of a significant infraction found in the background investigation.

7.5 Contractor's obligations to employees

Contractor shall provide for and pay the compensation of its employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend and hold City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

7.6 Replacement of Employees

During the course of performance of Services, City may request replacement of an employee or a proposed employee, provided that there is reasonable cause. In such event, Contractor shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. If, within the first thirty (30) days after an employee's commencement of Services, City notifies Contractor (1) such employee's level of performance is unacceptable, (2) such employee has failed to perform as required, or (3) such employee, in City's sole opinion, lacks the skill, knowledge or training to perform at the required level, then Contractor will be required to review the work performed by said employee, confirm the quality of work, and correct any items the Contractor deems incorrect. If City requests replacement of an employee for the above-referenced reasons after such thirty (30) day time period, or at any time for a reason other than the reasons indicated above. City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Contractor for such employee's Services after the date of City's requested replacement of such employee.

8 CHANGE ORDER PROCEDURE AND AUTHORIZATION

8.1 Changes

Any changes to this Agreement that relate to (i) the deletion of Products or Services, (ii) adding additional Products or Services, (iii) changing or modifying Products or Services, or (iv) making other changes that materially alter the scope of this Agreement or the Deliverables required under this Agreement, including approval of all performance and/or payment schedules shall be made by the Director of Finance in accordance with the procedures set forth below.

8.2 Contract Change Requests

Either Party hereto may, from time to time, and at any time during the term hereof request a change, as defined in the above section. The Party requesting the change is hereinafter referred to as the "Requesting Party." Requests for changes shall be in writing and shall be addressed and delivered to the other Party as provided herein. Such writing shall be identified as a "Contract Change Request," shall carry a sequential number for ease of tracking, shall set forth in detail the nature of the change requested and the costs associated therewith, and shall identify the Products, Services, Deliverables or Schedules to be changed.

8.3 Procedures

As soon as practical after receipt by the notified Party of copies of the Request, the Parties shall as necessary meet to discuss the change and to ascertain its cost and schedule impacts, if any.

8.4 Change Orders

If the Parties decide to implement a change request, a standard form Change Order ("CO") shall be prepared in a form substantially similar to the form attached hereto as EXHIBIT D, which CO shall describe the change, delineate the cost, schedule, and other impacts of the change and the payment terms for any price increase. Only City's Director of Finance and Contractor's Authorized Representative shall have authority to execute CO's to this Agreement. Execution of a CO by City's Director of Finance and Contractor's Authorized Representative shall constitute a modification hereof and shall be binding on both Parties hereto.

9 COMPENSATION

9.1 Contract Price

The total contract price in U.S. dollars shall not exceed \$30,000 during the Initial Term (“Maximum Compensation”). The terms, rate and schedule of payment are set forth in the attached EXHIBIT B, entitled “Compensation and Payment Schedule.” Contractor shall submit to City invoices on a yearly basis that include a breakdown of Services as provided in attached EXHIBIT B, entitled “Compensation and Payment Schedule.” City will make payments to Contractor within thirty (30) days after the date of approval of each invoice. City will make payments when due in the form of a check, cashier’s check, or wire transfer drawn on a U.S. financial institution.

9.2 Freight, Title and Risk of Loss

All freight charges will be pre-paid by Contractor and added to the invoices. Title in the Equipment shall remain with the Contractor until such goods have been paid in full. However, such goods shall be entirely at Contractor’s risk from the time they are placed in the possession of the carrier for shipment to City and received by the City. Contractor shall ensure that the goods are insured against “all risks” from the time the goods are placed in the possession of the carrier for shipment to City. Contractor will pack and ship all Equipment in accordance with good commercial practices.

9.3 Non-Funding: Each payment obligation of City is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by Contractor, the product or service directly or indirectly involved in the performance of that function may be terminated by City at the end of the period for which funds are available. City shall notify Contractor at the earliest possible time of any products or services which will or may be affected by a shortage of funds. If the shortage of funds relates to ongoing payments such as subscription services or support, Contractor reserves the right to terminate the Agreement with 30 days’ notice as payment of subscription services and support is a requirement of being able to use the system.

9.4 No penalty shall accrue for City in the event this provision is exercised, and City shall not be liable for any future payments due or for any damages as a result of termination under this Section. Contractor agrees to render any assistance which City may seek in affecting a transfer of any right of City in this Agreement, or any part hereof, that is required of City pursuant to the securing of financing hereunder. Despite the foregoing, the City shall pay Contractor for any Services performed in accordance with this Agreement up to the date of termination.

10 TAXES AND CHARGES

Contractor shall be responsible for payment of all taxes, fees contributions or charges applicable to the conduct of Contractor's business.

11 FINAL SYSTEM ACCEPTANCE

Upon final completion of each component of the System, City and Contractor shall conduct an Acceptance Test. The criteria for the Acceptance Tests shall be as set forth in the Scope of Services (EXHIBITS A-1 through A-5 and EXHIBIT F). System Acceptance will occur upon

successful completion of the Acceptance Tests. When System Acceptance occurs, the Parties will memorialize this event by promptly executing a Final System Acceptance Certificate (EXHIBIT A-4).

If, in the discretion of City, the System does not meet the requirements of the Acceptance Test specifications, City may (1) permit Contractor to repair or replace the System so that the same meets the Acceptance Test specifications in all material respects, all at no additional expense to City, or (2) return the System to Contractor, at Contractor's expense and without liability to City, and any amounts paid by City for the System shall be promptly refunded by Contractor to City. All warranties shall become effective and begin to run upon the successful completion of the Acceptance Tests and the date of Final System Acceptance.

Payment for any part or parts of the System or Services provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect the components of the System when delivered and reject upon notification to Contractor any and all of the System which does not conform to the Specifications or other requirements of this Agreement. Components of the System which are rejected shall be promptly corrected, repaired, or replaced by Contractor in accordance with Contractor's warranty obligations under this Agreement, such that the System conforms to the warranties, Specifications and the other requirements of this Agreement. If City receives components of the System with defects or nonconformities not reasonably apparent on inspection, then City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations under this Agreement following the discovery of such defect or nonconformity.

12 REPRESENTATIONS AND WARRANTIES

12.1 Equipment Warranty

Contractor warrants that equipment under normal use and service will be free from defects in material and workmanship for the applicable warranty period. The warranty period shall be one year from the date Final System Acceptance. If City claims that equipment is nonconforming, City shall (1) promptly notify Contractor in writing of the basis of such nonconformity; (2) follow Contractor's instructions for return of the equipment; and (3) return the equipment freight prepaid to Contractor's designated location. Contractor shall at its own expense, repair or replace all defective the equipment.

12.2 Contractor Software Warranty

Unless otherwise stated in the Software License Agreement, Contractor warrants the Contractor Software for one year from the date of Final System Acceptance in accordance with the terms of the Software License Agreement and the provisions of this Section 12 applicable to the Contractor Software.

12.3 Warranty Against Infringement

12.3.1 Contractor agrees to defend and indemnify City of all direct losses, costs and damages resulting from a determination that the Software as supplied to City infringes any Canadian or United States patent rights, copyrights or trademarks provided that: City promptly notifies Contractor in writing upon City becoming aware of the existence of any such suit, action, proceeding or threat; allows Contractor sole control of the defense and/or settlement thereof; and provides such reasonable cooperation as Contractor may require. In no event shall City consent to any judgment or decree or do any other act in compromise of any such claim without Contractor's express prior written consent. In no event will Contractor be liable for the payment of any amount agreed to in settlement without its express consent. In the event that City is enjoined from use of the Software due to a proceeding based upon the infringement of patent, copyright or trademark in the United States or Canada, Contractor shall, at its option, either:

- 12.3.1.1 Modify the Software, at Contractor's expense, so it becomes non-infringing; or
- 12.3.1.2 Replace the infringing Software with equal non-infringing Software, at Contractor's expense; or
- 12.3.1.3 Procure, at Contractor's expense, the necessary licenses for the City to continue using the Software; or
- 12.3.1.4 Remove the Equipment and refund the purchase price and transportation costs thereof, less a reasonable amount for depreciation.

12.3.2 Contractor shall have no liability in respect of any claim based upon:

- 12.3.2.1 Use, operation or combination of the Equipment with software, hardware, data, or other equipment not supplied by Contractor if such infringement would have been avoided but for such use, operation or combination; or
- 12.3.2.2 Use of the Equipment other than in accordance with Contractor's specifications if such infringement would have been avoided but for use of the Equipment not in accordance with Contractor's specifications; or
- 12.3.2.3 Equipment that has been modified by any party other than Contractor if such infringement would have been avoided but for such modification.

12.4 Operability

Contractor warrants that the Software will be delivered to the City malware free and does not contain any timers, counters, or preprogrammed devices that will cause the Software to become erased, inoperable, or incapable of processing in the manner as documented in the contract documents specified.

12.5 Upgrades

Contractor agrees to maintain the Software to operate on all compatible upgrades of the hardware product line and operations system used by City and specified in the License Agreement.

12.6 Warranty Claims

Before the expiration of the warranty period, City must notify Contractor in writing if Equipment or Contractor Software does not conform to these warranties. Upon receipt of such notice, Contractor will investigate the warranty claim. If this investigation confirms a valid warranty claim in accordance with Section 13, Contractor will (at its option and at no additional charge to City) repair the defective Equipment or Contractor Software or replace it with the same or equivalent product. Such action will be the full extent of Contractor's liability hereunder. Repaired or replaced product is warranted for one year warranty period of the unit to which they are attached. All replaced products or parts will become the property of Contractor.

13 WARRANTIES

13.1 Contractor Responsibility

Contractor understands and accepts full responsibility for all requirements and deliverables defined in this Agreement. Contractor warrants it:

- 13.1.1 Has read and agrees with the specifications contained in the Scope of Services (EXHIBITS A-1 through A-5 and EXHIBIT F);
- 13.1.2 Fully understands the facilities, difficulties, and restrictions attending performance of the services; and
- 13.1.3 Contractor agrees to inform City of any unforeseen conditions which will materially affect performance of the work within 45 days of the execution of this Agreement and shall not proceed until written instructions are received from City.

13.2 Authority to Make Agreement

Contractor represents and warrants that Contractor has full right and authority to perform its obligations under this Agreement. City shall be entitled to use the System without disturbance.

13.3 Contractor Agreements with City Employees

Contractor agrees to not enter into a relationship that may result in a financial conflict of interest with any employee or agent of the City who participated in the making of governmental decisions related to this Agreement.

13.4 Disabling Devices

The application software and custom software shall be delivered under this Agreement malware free, but cannot warrant the software will remain that way due to City accidentally inserting or injecting malware into the software or System after installation

13.5 Warranty Conformance to Specifications

The application software and custom software shall, during the Warranty Period, function per the approved business requirements and design, under ordinary use and operate in conformance with its Specifications and Documentation. During the Warranty Period, Contractor will provide warranty Service to City at no additional cost and will include all Services necessary to enable Contractor to comply with the foregoing warranty. Contractor shall pass through to City any manufacturers' warranties which Contractor receives on the System and, at City's request, Contractor shall enforce such warranties on City's behalf.

13.6 New Media

Media upon which the Software is delivered to City:

13.6.1 Shall be new and shall be free from defects in manufacture and materials.

13.6.2 Shall be manufactured in a good and workmanlike manner using a skilled staff fully qualified to perform their respective duties.

13.6.3 Shall, during any Warranty Period, function properly under ordinary use and operate in conformance with the Specifications.

13.6.4 In the event that media on which any software application, custom software, or third party application software is delivered is defective and cannot be read or utilized for its intended purpose by Contractor supplied or approved equipment, Contractor shall replace the defective media as soon as possible. Any delays occasioned by the failure of new media shall not be considered excusable delay.

13.7 Warranty Period and Enforcement

The application and custom software shall, during any Warranty Period, function properly under ordinary use and operate in conformance with its Specifications and Documentation. During the Warranty Period, Contractor shall provide warranty service to City at no additional cost in accordance and will include all Services or replacement products or product media necessary to enable Contractor to comply with the foregoing warranty. Contractor shall pass through to City any manufacturers' warranties which Contractor receives on the System and, at City's request, Contractor shall enforce such warranties on City's behalf.

14 TERMINATION

14.1 Termination for Convenience

City shall have the right to terminate this Agreement, with or without cause, by giving not less than thirty (30) days' written notice of termination.

14.2 Termination for Default

If Contractor fails to perform any of its material obligations under this Agreement, the City may notify the Contractor in writing of such purported breach. If so notified, Contractor shall be given a seven (7) day cure period in which to correct this breach. If after this period Contractor is unable to provide an acceptable remedy, City, in addition to other remedies provided by law, may terminate this Agreement immediately.

14.3 Termination Authority

The Director of Finance ("Director") is empowered to terminate this Agreement on behalf of City.

14.4 Consequences of Termination

In the event of termination, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement, and upon receipt thereof, City shall pay Contractor for services performed and reimbursable expenses incurred to the date of termination. In addition, in the event of termination, City will relinquish all software licenses owned by Contractor and discontinue use of Contractor's network.

15 INDEMNIFICATION

Contractor 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 willful or negligent acts (active or passive) or omissions by Contractor'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. This provision shall survive the termination of this Agreement.

16 INSURANCE REQUIREMENTS

Contractor agrees to have and maintain the policies set forth in EXHIBIT C, entitled "Insurance Requirements," which is attached hereto and incorporated herein. 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. Contractor agrees to provide City with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

17 WAIVER

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

18 INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

19 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws, ordinances, codes and regulations (collectively, "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

20 CONFLICT OF INTEREST

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

21 NONDISCRIMINATION

Contractor 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 this Agreement.

22 GIFTS

22.1 Prohibition on Gifts

Contractor acknowledges that Chapter 12.08 of the San José Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

22.2 No Offer

Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

22.3 Breach of Agreement

Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. 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 13 of this Agreement.

23 DISQUALIFICATION OF FORMER EMPLOYEES

Contractor is familiar with Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor 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.

24 CONFIDENTIAL AND PROPRIETARY INFORMATION

24.1 Confidentiality

All data and information generated, collected, developed, discovered or otherwise saved in the System exclusively for the City (collectively the "Data") by the Contractor in the performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

24.2 Ownership of Materials

City and Contractor agree that Contractor shall own the entire right, title, and interest, including patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived or developed by Contractor in the performance of the project, and developed using Contractor's facilities or personnel. City and Contractor agree that City shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived or developed by City's facilities or personnel. Technology that is jointly developed using both City and Contractor personnel and facilities shall be jointly owned.

24.3 Ownership of Data

The City shall maintain ownership and control of the Data throughout the Agreement period and in perpetuity. Contractor shall have the right to use the Data solely to perform Services under the Agreement with the City. Contractor may not use the Data, a subset of the Data, and/or a summary of the Data, or, cause or permit the Data, a subset and/or a summary thereof, to be used by any third party, outside the scope of the Agreement without the

express written consent of the City. Contractor shall provide City with a copy of the Data in a mutually agreed upon format at regular intervals and at such additional times as the City deems appropriate. Contractor warrants that throughout all operational and maintenance activities the accuracy of the Data will be preserved.

24.4 Enforcement

The City and Contractor agree that damages are not adequate, and no adequate remedy at law exists for any threatened or actual disclosure or use of information by Contractor in violation of the provisions of this Agreement. Accordingly, Contractor consents to the entry of an injunction against threatened or actual disclosure or use of the information in violation of any provision of this Agreement.

25 CONTRACTOR'S BOOKS AND RECORDS

25.1 Maintenance during Term

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other 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 Contractor pursuant to this Agreement.

25.2 Maintenance after Term

Contractor shall maintain all documents, 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.

25.3 Inspection

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit at no cost to the City and 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. Contractor shall provide copies of such documents 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 Contractor's address indicated for receipt of notices in this Agreement.

25.4 Custody of Records

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

26 ASSIGNABILITY

The Parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City which consent will not unreasonably be withheld. Any attempt by Contractor to assign this Agreement, in violation of this Section, will be voidable at City's sole option.

31 MISCELLANEOUS

31.1 Survival of Provisions

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

31.2 Assignment

Subject to the provisions of Section 26 (Assignability), this Agreement binds and inures to the benefit of the Parties and their respective successors and assigns.

31.3 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.

31.4 Authority of City Manager

Where this Agreement requires or permits City to act and no officer of the City is specified, City’s Manager or the designated representative of City’s Manager has the authority to act on City’s behalf.

City of San José
a municipal corporation

{Name of Company}
a _____ corporation
authorized to conduct business in California

By _____
Name: _____
Title: _____
Date: _____

By _____
First Authorized Signature
Name: _____
Title: _____
Date: _____

By _____
Second Authorized Signature
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

Name
Title

EXHIBIT A-1

SCOPE OF SERVICES

The following Scope of Services defines the principal activities and responsibilities of Contractor and the City of San José (hereinafter “City”) for the implementation of the Real-Time Interpretation System.

{insert}

**EXHIBIT A-2
COST PROPOSAL**

	Year 1	Year 2 (Option Term)	Year 3 (Option Term)
PRODUCT FEES			
Annual Subscription (12 month Contract)			
Hardware Components			
Product Subtotal			
SERVICES FEES			
Software Maintenance & Basic Support			
System Implementation			
Business Requirements Definition			
System Configuration			
Testing & Final Acceptance			
Training			
Travel-related Expenses (approved expenses reimbursed at cost)			
Services Subtotal			
MAXIMUM COMPENSATION			

EXHIBIT A-3

PERFORMANCE SCHEDULE

1 Performance Schedule

- 1.1 Implementation of this project will proceed in accordance with the Performance Schedule set forth below, except as may be modified by a finalized project schedule that is approved by the City during the project initiation phase.
- 1.2 The final project schedule will become the governing project schedule incorporated into the agreement and into the Performance and Payment Schedule.
- 1.3 The project schedule is based upon work being accomplished Monday through Friday during normal business hours (defined as 8:00am to 5:00pm), with the exception of City holidays
- 1.4 The Performance Schedule shall be based on Project Plan approved by City.

2 Project Meetings and Reviews

- 2.1 Contractor shall conduct regular reviews of project performance in respect of implementation, technical, cost, and contractual objectives against the Project Plan. Contractor shall host weekly project team meetings via telephone conference-bridge or pre-scheduled site-visit unless project requirements deem more frequent meetings are necessary.
- 2.2 Meeting attendees will be limited to the City Project Manager or designee and the Contractor Project Manager, with accompanying subject matter/technical experts as required.

3 Preliminary Project/Task Schedule

Project migration and implementation is expected to begin on or around March 23, 2020 and is estimated to take approximately 16 weeks from kickoff to design, testing, configuration, deployment, Go-Live, and Final System Acceptance. Some of the tasks listed below will be performed in parallel.

Task	Estimated Duration

EXHIBIT A-4
FINAL SYSTEM ACCEPTANCE

After the City is satisfied with all test results and resolutions, the City will initiate execution of the Final System Acceptance Certificate.

FINAL SYSTEMS ACCEPTANCE CERTIFICATE

Customer Name: City of San José (“City”)

Project Name: Real-Time Interpretation Tools for Limited- and non-English Speaking Residents

This Final System Acceptance Certificate memorializes the occurrence of System Acceptance.

Contractor and the City acknowledge that:

- 1 Contractor has delivered all System or product documentation promised under this Agreement.
- 2 The System is accepted, and all punch list items generated during Testing have been completed.
- 3 By acknowledging the Final Acceptance of the System, the City agrees to pay any remaining and approved outstanding invoices to Contractor, including previously withheld retainage.

City of San José (“City”)

{Company Name}

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A-5

PAYMENT CARD INDUSTRY (PCI) REQUIREMENTS

(Delete if not applicable)

Contractor represents and warrants that any System used by the Contractor and the software applications it provides for the purpose of performing services related to storing, processing or transmitting payment cardholder data, at any point during the term of this contract shall be secured and certified to meet Payment Card Industry Data Security Standard (“PCI-DSS”) and Payment Application Data Security Standard (“PA-DSS”) established by the Payment Card Industry Security Standards Council as set forth online at <https://www.pcisecuritystandards.org>, as may be amended by the PCI Security Standards Council from time to time.

I. Performance Standards: PCI-DSS is a multifaceted security standard comprised of twelve (12) general requirements including requirements for security management, policies, procedures, network architecture, software design and other critical protective measures. The following requirements are designed to build and maintain a secure network; protect cardholder data; ensure the maintenance of vulnerability management programs; implement strong access control measures; regularly monitor and test networks; and ensure the maintenance of information security policies:

A. Build and Maintain a Secure Network

1. Install and maintain a firewall configuration to protect cardholder data
2. Do not use vendor-supplied defaults for system passwords and other security parameters

B. Protect Cardholder Data

1. Protect stored cardholder data using methods such as encryption, truncation, masking, hashing, and any other effective methods of protecting stored data to mitigate potential risks.
2. Encrypt transmission of cardholder data over open, public networks

C. Maintain a Vulnerability Management Program

1. Use and regularly update anti-virus software or programs
2. Develop and maintain secure systems and applications

D. Implement Strong Access Control Measures

1. Restrict access to cardholder data to ensure critical data can only be accessed by authorized personnel, systems and processes based on the least amount of data and privileges needed to perform a job
2. Assign a unique identification (“ID”) to each person with computer access to maintain accountability and traced actions taken on critical data and systems to known and authorized users
3. Restrict physical access to cardholder data

E. Regularly Monitor and Test Networks

1. Track and monitor all access to network resources and cardholder data
2. Regularly test security systems and processes

F. Maintain an Information Security Policy

1. Maintain a policy that addresses information security for all personnel

- II. **Certification:** Contractor agrees to promptly provide, from time to time at the request of the CITY, current evidence, in form and substance reasonably satisfactory to CITY, of compliance with PCI-DSS and PA-DSS, which has been properly certified by an authority recognized by the payment card industry for that purpose. If during the term of this Agreement, Contractor undergoes, or has reason to believe that it will undergo, and adverse change in its certification or compliance status with the PCI-DSS or PA-DSS or other material payment card industry standards, it will promptly notify the CITY of such circumstances.
- III. **Audit:** Contractor agrees to, at contractors own expense, perform an independent audit of any System used to store, process, or transmit payment cardholder data by an independent third party on a quarterly basis to ensure the System is and continues to satisfy PCI-DSS. At a minimum, the audit shall scan for all known methods used by hackers to access private information, vulnerabilities that would allow malicious software (i.e. viruses and worms) to gain access to or disrupt the network devices.
- IV. **Material Breach:** Failure by Contractor to comply with any provision of this Exhibit shall constitute a material breach of this Agreement.
- V. **Notifications:** Should the contractor have a failure of security protocols such that customer data is compromised, the contractor shall immediately notify the City.

EXHIBIT B

COMPENSATION AND PAYMENT SCHEDULE

1 Compensation and Payment Terms

- 1.1 The maximum amount payable for all products and services provided under this Agreement shall not exceed \$30,000 during the initial one year term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.
- 1.2 Progress payments shall be made to Contractor by City based on net thirty (30) days payment terms, following acceptance of designated milestones as shown below in Table B1-Payment Schedule. All payments are based upon City's acceptance of Contractor's performance as evidenced by successful completion of all of the deliverables as set forth for each milestone. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the Milestone for which payment is due.
- 1.3 Payment for any part or parts of the System provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect the components of the System when delivered and reject upon notification to Contractor any and all the System, which does not conform to the Specifications or other requirements of this Agreement. Components of the System, which are rejected shall be promptly corrected, repaired, or replaced by Contractor. If City receives components of the System with defects or nonconformities not reasonably apparent on inspection, then City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations.

2 Project Performance & Payment Schedule

- 2.1 Work shall commence immediately upon execution of the Agreement. All timeline dates are understood to be close of business, 5:00 p.m. Pacific Time. If timeline dates fall on a weekend or City holiday, the date is understood to be the next business day.
- 2.2 Compensation and payments shall be made to Contractor by City based on Net Thirty (30) days payment terms.
- 2.3 Invoicing procedure: Contractor will invoice the City annually at the start of each year under the Agreement. City shall prepay a year in advance for the Services provided under this Agreement at the start of each year. In the event of early termination of the Agreement, Contractor shall refund the City any fees not expended and paid in advance on a prorated basis.

Additional Service

Hourly Rate

- 4.3 The City reserves the right to request a fixed priced quote in lieu of time and materials. Any fixed price quotes shall be consistent with the agreed-upon supplemental service rates in Section 4.2 above and must be good for at least 90 days.
- 4.4 Quotes must be approved by the City through an executed Change Order prior to any work being performed.

EXHIBIT C INSURANCE REQUIREMENTS

Contractor, at Contractor’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 the Contractor, its agents, representatives, employees or subcontractors or suppliers. The cost of such insurance shall be included in the Contractor’s bid.

1 Minimum Scope and Limit of Insurance

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

Type of Insurance	Minimum Limit
<p>1. Commercial General Liability</p> <p>The coverage provided by Insurance Services Office “occurrence” form CG 0001, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations.</p>	<p>\$1,000,000 per occurrence for bodily injury, personal injury and property damage or \$2,000,000 annual aggregate</p>
<p>2. Automobile Liability</p> <p>The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.</p>	<p>\$1,000,000 combined single limit per accident for bodily injury and property damage or waiver of Automobile Liability coverage is permitted if Contractor is not performing services on City Property and signs written waiver</p>
<p>3. Workers’ Compensation and Employer Liability</p> <p>As required by the Labor Code of the State of California.</p>	<p>Not less than \$1,000,000 each claim and annual aggregate</p>

2. Other (as checked below)

	Type of Insurance	Minimum Limit
<input type="checkbox"/>	<p>4a. Professional Liability/Errors and Omissions</p>	<p>Not less than \$1,000,000 each</p>

	Including coverages for negligent acts, errors or omissions arising from professional services provided under this contract, with any deductible not to exceed \$25,000 each claim.	claim and annual aggregate
<input type="checkbox"/>	4b. Environmental & Pollution Liability Including coverages for sudden and accidental pollution, gradual pollution, transportation and disposal of hazardous materials and cleanup costs, with any deductible not to exceed \$25,000 each occurrence, add City as additional insured.	Not less than \$1,000,000 each occurrence
<input type="checkbox"/>	4c. Aircraft Liability Including passenger liability, add City as additional insured.	Not less than \$2,000,000 each occurrence
<input type="checkbox"/>	4d. Crime/Custodial/Security – Commercial Crime Insurance, Including coverages for loss sustained by a client as a result of employee dishonesty.	Not less than \$500,000 each loss
<input type="checkbox"/>	4e. Garagekeepers Legal Liability Including coverages for all risks of loss or physical damage to vehicles in care, custody or control, and any deductible not to exceed \$5,000 each occurrence	Not less than \$500,000 each occurrence
<input type="checkbox"/>	4f. Inland Marine For property of others in transit or storage, and any deductible not to exceed \$5,000 each loss, including City as Loss Payee as its interests may appear.	Not less than the replacement value of property in care, custody or control
<input checked="" type="checkbox"/>	4g. Cyber & Technology Errors & Omissions Technology/professional liability insurance and data protection liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering services provided and network security liability under this agreement as well as all Vendor costs, including damages it is obligated to pay Client or any third party, which are associated with any Security Breach (as hereafter defined) or loss of Personal Data or Protected Data, regardless of cause (including, without limitation, Vendor negligence or gross negligence and unlawful third party acts). Costs to be covered by this insurance policy shall include without limitation: (a) costs to notify individuals whose Personal Data was lost or compromised; (b) costs to provide credit monitoring and credit restoration services to individuals whose Personal Data was lost or compromised; (c) costs associated with third party claims arising from the Security Breach or loss of Personal Data, including litigation costs and settlement costs; and (d) any investigation, enforcement or similar miscellaneous costs. For the purposes	Not less than \$1,000,000 each occurrence

	<p>of this Section, " Security Breach" means (1) the failure by the Vendor to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by the Vendor of: (a) Personal Data in any format or (b) third party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of the Vendor's privacy policy or misappropriation that results in the violation of any applicable data privacy laws or regulations; or (3) any other act, error, or omission by Vendor in its capacity as such which is reasonably likely to result in the unauthorized disclosure of Personal Data.</p>	
--	---	--

2 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City’s Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor 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.

3 Other Insurance Provisions

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

3.1. Commercial General Liability and Automobile Liability Coverages

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

3.2. Workers’ Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

3.3. **All Coverages**

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

4 Acceptability of Insurance

4.1. Insurance is to be placed with insurers acceptable to the City's Risk Manager.

5 Verification of Coverage

5.1. Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. 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.

5.2. Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages.

5.3. Proof of insurance shall be emailed in pdf format to: riskmgmt@sanjoseca.gov

6 Subcontractors

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

EXHIBIT D CHANGE ORDER FORM

CHANGE ORDER # __

Pursuant to Section 7 of the Agreement for the Real-Time Interpretation System between _____ and the City of San José, the Agreement is hereby amended as follows:

(The following language is provided as an example of how to complete this form.)

1. Contractor shall provide the following additional services at the costs indicated below:

TOTAL	

2. The following services, products or deliverables are hereby deleted and the associated costs in amounts set forth below are also deleted.

TOTAL	

3. Exhibit __ is hereby amended to read as set forth in the Revised Exhibit __ which is attached hereto.

4. All of the terms and conditions of the Agreement not modified by Change Order shall remain in full force and effect.

	Total Cost of Change	
	Total Credit of Change	
	Previous Amendments and/or Change Orders	
	Original Contract	

ACCEPTANCE

Contractor hereby agrees to accept the amount set forth herein as payment in full of the work described and further agrees that Contractor is entitled to no additional time or compensation for such work other than as set forth herein.

Contractor

APPROVED AS TO FORM

{Name}
Title

City of San José

Date _____

Name _____ Date _____
Title _____

EXHIBIT E

NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONTRACTOR Name and Address:	
DATE:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section 2.2 of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
-------------------	--

NEW OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
---	--

Pursuant to Section ___ of the Agreement the Rates of Compensation are hereby adjusted as follows:

(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
--	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor’s services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<p>CITY OF SAN JOSÉ a municipal corporation</p> <p>By _____ Name: Title: Date:</p>
--

EXHIBIT F
SOFTWARE LICENSE/SUBSCRIPTION AGREEMENT

EXHIBIT G
SOFTWARE MAINTENANCE & SUPPORT

EXHIBIT H

PRIVACY AND DISCLOSURE POLICY

(optional, delete if Not Applicable)

The purpose of this statement is to define the City of San José's policy with regard to the collection and use of personally identifiable information (PII). PII is any information relating to an identified or identifiable individual who is the subject of the information. Users of the City Web Site should be informed of the following:

The City of San José collects two kinds of customer information: (1) anonymous; (2) personally identifiable information (PII).

1 Anonymous information

This type of information does not identify specific individuals and is automatically transmitted by City browser. This information consists of:

- The URL (Uniform Resource Locator or address) of the web page user previously visited;
- The domain names and/or IP addresses which are numbers that are automatically assigned to City computer whenever user are connected to the Internet or World Wide Web.
- The browser version user are using to access the site.

This information is used to help improve the City's Web Site. None of the information can be linked to an individual.

2 Personally Identifiable Information (PII)

This type of information could include name, address, email address, telephone number, credit/debit card information. The City will make every reasonable effort to protect City privacy. It restricts access to City personal identifiable information to those employees who will respond to City request. The City does not intentionally disclose any personal information about Contractor customers to any third parties or outside the City except as required by law or by the consent of the person providing the information.

The City only collects personally identifiable information that is required to provide service. User can decline to provide us with any personal information. However, if user should choose to withhold requested information, the City may not be able to provide user with the online services dependent upon the collection of that information.

3 Access to Personally Identifiable Information

Access to personally identifiable information in public records at local levels of government in San José is controlled primarily by the California Public Records Act (Government Code Section 6250, et. seq.). Information that is generally available under the Public Records Act may be posted for electronic access through the City's Web Site. While the Public Records Act sets the general policies for access to City records, other sections of the California code as well as federal laws also deal with confidentiality issues.

4 Email addresses

Email addresses obtained through the City's Web Site will not be sold or given to other private companies for marketing purposes. The information collected is subject to the access and confidentiality provisions of the Public Records Act, other applicable sections of the California code as well as Federal laws. Email or other information requests sent to the City Web Site may be maintained in order to respond to the request, forward that request to the appropriate City within the City, communicate updates to the City page that may be of interest to citizens, or to provide the City web designer with valuable customer feedback to assist in improving the site. Individuals can cancel any communications regarding new service updates at any time.

5 Use of "Cookies"

Some City applications use "cookies". A cookie is a small data file that certain web sites write to City hard drive when user visit them. A cookie file can contain information such as a user id that the site uses to track the pages user have visited. But the only personal information a cookie can contain is information supplied by user. A cookie is only a text file and cannot read data off user's hard disk or read cookie files created by other sites. Cookies can track user traffic patterns, recognize users computer's browser when user return, and could provide personalized content without requiring sign-in.

User can refuse cookies by turning them off in user browser. However, they may be required to use some of the web applications on the City's Web Site.

6 Security

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by the City's Web Site and has taken reasonable precautions to protect such information from loss, misuse, or alteration.

7 Contractual Services for the City's Web Site and On-Line Services

To insure that contractors who have access to or provide contractual services for the City's On-Line (e-government) Services are not allowed to re-sell or in any way share or convey to another party or use it for another purpose any information that they may have access to in the course of doing business for the City; all city contracts regarding such services should contain a requirement that the contractor must comply with the City's Web Site and e-Government policies.

8 Electronic Signatures and Payments

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by Contractor web site and has taken reasonable precautions to protect such information from loss, misuse, or alteration. When a City application accepts credit cards or any other particularly sensitive information for any of its services, it encrypts all ordering information, such as the customer's name and credit card number, in order to protect its confidentiality.

9 Disclaimer

The City Web Site should contain a disclaimer substantially containing the following information:

9.1 The City of San José is neither responsible nor liable for any delays, inaccuracies, errors or omissions arising out of user's use of the City's Web Site or with respect to the material contained on the Site, including without limitation, any material posted on the Site nor for any viruses or other contamination of user's system. The City Web Site and all materials contained on it are distributed and transmitted "as is" without warranties of any kind, either express or implied, including without limitations, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The City of San José is not responsible for any special, indirect, incidental or consequential damages that may arise from the use of, or the inability to use, the Web Site and/or the materials contained on the Web Site whether the materials contained on the Web Site are provided by the City of San José or a third party. The City of San José is neither responsible nor liable for any viruses or other contamination of user's system.

9.2 *Access to Information*

Unless otherwise prohibited by state or federal law, rule or regulation, user will be granted the ability to access and correct any personally identifiable information. The City will take reasonable steps to verify user's identity before granting such access. Each City service that collects personally identifiable information will allow or review and update of that information.

9.3 *Non-City Web Sites*

Non-city web sites may be linked through the City's Web Site. Many non-city sites may or may not be subject to the Public Records Act and may or may not be subject to other sections of the California code or federal law. Visitors to such sites are advised to check the privacy statements of such sites and to be cautious about providing personally identifiable information without a clear understanding of how the information will be used.

9.4 The City is not responsible for, and accepts no liability for, the availability of these outside resources. Linked Web sites are not under the control of, nor maintained by, the City and the City is not responsible for the content of these Web sites, which can and do change frequently; nor for any internal links the displayed Web sites may contain. In addition, inclusion of the linked Web sites does not constitute an endorsement or promotion by the City of any persons or organizations sponsoring the displayed Web sites.

10 Digital Privacy Principles

The following privacy principles were approved by the San José City Council on September 17, 2019 and reflect the input of stakeholders. The principles ensure the privacy of residents is protected. Proposers agree to following these principles:

- **WE VALUE PRIVACY:** We affirm that privacy is an inherent human right. San José commits to fully evaluating risks to resident privacy before collecting, using, or sharing resident information.
- **WE COLLECT ONLY WHAT WE NEED:** We collect only what is required to provide and improve city services and comply with the law. We seek community input about what information is used and collected.
- **WE ARE OPEN AND TRANSPARENT:** We are transparent about what information we collect, why we collect it, and how it is used. We commit to being

open about our actions, policies, and procedures related to resident data. We make our policy documents publicly available and easy to understand.

- **WE WILL GIVE YOU CONTROL OVER YOUR DATA:** We will provide residents with the information to make an informed decision about sharing resident data. We have clear processes that ensure data accuracy and provide residents visibility into what data the city has collected from residents.
- **WE SHARE ONLY WHAT WE NEED:** We anonymize resident information before we share it outside the city, except in very limited circumstances. Business partners and contracted vendors who receive or collect personal information from us or for us to deliver city services must agree to our privacy requirements.
- **WE DESIGN FOR PRIVACY AND SECURITY:** We integrate privacy and security into every aspect of our designs, systems, and processes. We commit to updating our technology and processes to effectively protect resident information while under our care. We follow strict protocols in the event resident information is compromised.

FORM 4 – INSURANCE REQUIREMENTS ACKNOWLEDGEMENT FORM

Respondent Company Name: _____

Authorized Representative Name: _____

Authorized Representative Title: _____

Authorized Representative Signature: _____

Date Signed: _____

Please check the appropriate box below:

We agree to provide the City with proof of insurance in accordance with Attachment D – Insurance Requirements prior to contract execution in the event we are awarded a contract under this solicitation.

or

We take exception(s) to Attachment D – Insurance Requirements as outlined below. Note: Any exceptions may result in immediate disqualification of your solicitation response without further review.

FORM 4 - 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. Cyber & Technology Errors & Omission. Technology/professional liability insurance and data protection liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering services provided under this Agreement.

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
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. Cyber & Technology Errors & Omissions \$1,000,000 per claim/ 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 officers, employees, agents and contractors; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverages

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

2. Workers' Compensation and Employers' Liability

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

3. All Coverages

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

been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for 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 City with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov

G. Subcontractors

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

FORM 5 - CUSTOMER REFERENCE FORM

Name of Respondent:	
---------------------	--

Please submit three (3) different customer references using this form. Respondents should copy this form as required to meet the reference submission requirements (one form per customer). References should demonstrate a combined total of at least three (3) years’ experience providing, implementing, supporting, and maintaining Data and Transparency Portal Software the same as or similar to the Proposed Solution. The provided customer contact should have been in a leadership role in the project at the functional and technical levels. References should be recent, i.e. for projects implemented within the last five (5) years.

Note: References will be evaluated and scored as part of the “Experience and Qualifications” evaluation criteria. Responses should be detailed and are not limited in size. Use additional pages if necessary to provide a complete and detailed response.

SECTION I: CUSTOMER INFORMATION

Company/Organization Name:	
Customer Address:	
Contact Name and Title:	
Contact Phone Number:	
Contact Email Address:	

SECTION II: PROJECT/CONTRACT DETAILS

Value of Contract (please breakout by annual recurring cost and implementation costs if applicable):	
Term of Contract:	
Date Implementation Began (i.e. Date of Project Kickoff):	
Date of Go-Live:	
Date of Final System Acceptance:	
Is customer still using your products/services? If no, please explain.	

<p>Does/did this contract include ongoing Subscription, Support, and/or Maintenance? Please explain.</p>	
<p>If contract was terminated, please indicate the circumstances.</p>	
<p>Did the implementation and go-live stay on schedule? If not, what was the nature and cause of the delay(s)?</p>	
<p>Was the solution implemented within budget? If not, please explain.</p>	
<p>Was training provided? If yes, please describe the length, type, and format.</p>	
<p>List all subcontractors, if any, who participated in the project, including the extent of their participation.</p>	
<p>Please provide a <u>detailed</u> description of the implemented solution, including all hardware, software, and services.</p>	

<p>Is this the same solution you are proposing to implement in the solicitation response? If no, please explain the difference and why.</p>	
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FORM 6 – PROPOSER QUESTIONNAIRE

Provide responses to the following questions and include with your Technical Proposal response.

1 Design and Product

1.1 Describe your Proposed Solution including, where applicable:

1.1.1 List all involved technologies and product functionality.

1.1.2 Makes, models, and versions of all proposed products (hardware and components).

1.1.3 Types of software (including purpose and versions) and licenses (e.g., standard, enterprise, etc.)

1.2 Describe how your Proposed Solution demonstrates high availability, automated failover, and redundancy of design.

1.3 Describe how your Proposed Solution will allow the City to increase capacity (CPU, Memory, Storage) without interruption to environment.

1.4 Describe the Software-Defined Network capabilities of your Proposed Solution, including details regarding the handling of North-South and East-West traffic.

2 Project Approach / Schedule

2.1 Describe how your Proposed Solution addresses the challenge statement, goals, and requirements as listed in Attachment B.

2.2 Provide a schedule over which the Proposed Solution will be implemented.

3 Backups and Disaster Recovery

3.1 Describe your proposed backup and disaster recovery solution and provide a topology drawing.

4 Management Tools

4.1 Describe management tools and features provided with your Proposed Solution.

4.2 Describe any built-in tools for performance monitoring, capacity planning, and phone home capability.

5 Support Model

5.1 Describe your escalation management process, including methods of communication and reporting relationships, to ensure that response time requirements specified in Section 14.9 of Attachment B - Scope of Services and Requirements are met.

6 Product Roadmap

6.1 Describe the product roadmap of your Proposed Solution, including version cycles and end of life expectations for the equipment being proposed.

7 Training

7.1 Describe your options for providing administration training, including methods, time requirements, recommended training content, and provided training materials.

FORM 7 – COST PROPOSAL FORM

	Year 1	Year 2 (Option Term)	Year 3 (Option Term)
PRODUCT FEES			
Annual Subscription (12 month Contract)			
Hardware Components			
Product Subtotal			
SERVICES FEES			
Software Maintenance & Basic Support			
System Implementation			
Business Requirements Definition			
System Configuration			
Testing & Final Acceptance			
Training			
Travel-related Expenses (approved expenses reimbursed at cost)			
Services Subtotal			
MAXIMUM COMPENSATION			