

# REQUEST FOR PROPOSAL

RFP Number # 06.06.08 AEPSPC

## RFP NAME:

Arts Education Program Strategic Planning Consultant

The City of San Jose's Office of Cultural Affairs (OCA) seeks a consultant to lead the process of developing a five-year strategic plan for the City's engagement in arts education, and to facilitate the testing of key programmatic elements identified from the plan.

RFP release date:	June 6, 2008
Contact name: Address:  Phone: Fax:  E-mail address:	Lawrence Thoo 365 S. Market St. San Jose, CA 95113  408-277-5144 x28 408-277-3160  <a href="mailto:lawrence.thoo@sanjoseca.gov">lawrence.thoo@sanjoseca.gov</a>
Deadline for questions/clarifications:	June 15, 2008
RFP due date:  Time:  Location:	<b>June 23, 2008</b>  <b>8:00 a.m.</b>  All submissions must be sent in electronic form to <a href="mailto:arts.program@sanjoseca.gov">arts.program@sanjoseca.gov</a> <b>(PDF preferred)</b>

## **1 INTRODUCTION**

The City of San Jose is soliciting applications from qualified consultants to develop a strategic plan with a five-year horizon for the City's engagement in arts education, and to facilitate the planning and testing of key programmatic elements identified from the plan.

## **2 BACKGROUND**

The Office of Cultural Affairs (OCA), a division of the Office of Economic Development, supports, promotes and develops the arts in San Jose. OCA's current program portfolio includes public art, arts grants, arts community development, special-event permitting and support, and arts education.

In May 2007, the OCA completed a six-month assessment of its arts education programs conducted by an independent consultant. In addition to a number of program-specific recommendations, the assessment advised the OCA to "create an arts education mission and purpose statement, with goals and annual objectives" and to consider establishing a larger commitment to arts education leadership in the community, which may include strengthened versions of current activities "as well as new initiatives aimed at having greater community impact." (The assessment final report is available at the OCA website, on the page [www.sanjoseculture.org/?pid=1000](http://www.sanjoseculture.org/?pid=1000).)

In July 2007, the Santa Clara County Office of Education (SCCOE) began a process to develop a countywide arts education master plan (County Master Plan), which is scheduled for publication in September 2008. Key constituencies and stakeholders, including the OCA, have been working with SCCOE staff and consultants during the various phases of development.

Moved by the recommendations of the program assessment and in coordination with the County Master Plan, the OCA desires to develop a strategic plan that will:

- Articulate the City's vision for arts education and cultural learning in the context of the vision set forth in the County Master Plan, as well as the City's mission in pursuit of said vision.
- Identify and describe a set of strategies to guide implementation of the mission and develop fully a limited number of strategic initiatives for a five-year period beginning in 2009-2010.
- Place significant emphasis on supporting systemic change and improvement in the public education experience for San Jose's youth, while also seeking to advance lifelong learning opportunities provided or facilitated by the City for people of all ages.
- Address key parameters such as 1) equity in access to quality arts education, 2) youth safety, 3) workforce-of-the-future development, 4) cultural participation through lifelong learning, 5) partnerships for success, 6) alignment with the County Master Plan.
- Include a "test-of-concept" period within the strategic planning timeframe to facilitate the final design of model programs to implement the strategic initiatives.
- Identify a small number of school districts to participate in model programs over the five-year life of the strategic plan in an approach that encourages the dissemination of successful models to other districts.
- Include a process for continuous assessment of the strategic plan and its components.

### **3 SCOPE OF WORK**

The intent of this RFP is to select and contract with a professional consultant to develop a strategic plan with a five-year horizon for the City's engagement in arts education, and to facilitate the planning and testing of key programmatic elements identified from the plan. The scope of work includes, but is not limited to the following:

#### **3.1 Phase 1: Initial Strategic Plan Development (approx. July 2008 to January 2009)**

- Participate in the final development stages of the County Master Plan.
- Develop a process for identifying stakeholders and discerning strategies for stakeholder involvement of targeted sectors.
- In collaboration with OCA staff and key stakeholders from other City departments such as Parks, Recreation and Neighborhood Services (PRNS) and the Library, develop and implement a work plan for the strategic planning process, inclusive of stakeholder input; meeting design; facilitation and documentation of feedback regarding the City of San Jose's vision, mission, goals, challenges and plans to address those challenges; leadership team commitments; and implementation plan;
- Conceptualize model programs and develop an outline and timeline for test-of-concepts phase to begin January 2009.
- Write and present a Phase 1 report that describes the draft Arts Education Strategic Plan through the description of strategic initiatives and concepts for model programs, with input from staff and the Strategic Planning Leadership Team.

#### **3.2 Phase 2: "Test-of-Concept" & Plan Finalization (approx. January to August 2009)**

- Design model programs and facilitate implementation of key elements in selected "test-of-concept" projects.
- Complete written assessments of the test-of-concept projects, including feedback from various stakeholder groups.
- Develop and recommend final design of strategic model programs and facilitate implementation commitments from target school districts.
- Finalize the documentation of the Arts Education Strategic Plan, with input from key stakeholders, staff and the Leadership Team, and present to the Arts Commission, City Council and larger community forum.

### **4 DESIRED QUALIFICATIONS**

The consultant to be selected should have the following proven experience and abilities:

- 4.1** Experience with providing all aspects of strategic and program planning in the field of arts education.
- 4.2** Experience with facilitating a wide variety of meetings and working groups.
- 4.3** Ability to use innovative and creative thinking in facilitating both the plan and program model.

- 4.4 Ability to distill stakeholder input into strategic plan development.
- 4.5 Ability to successfully provide deliverables within given timelines.

## **5 TERM OF AGREEMENT**

It is anticipated that the term of this agreement will be effective through August 31, 2009, assuming a contract start date of June 30, 2008. Consultant's work should begin as soon as possible after the contract start date, but no later than August 2008.

## **6 COMPENSATION AND WORK HOURS**

Once you have reviewed the scope of services, include your compensation proposal according to Section 7.3 below.

## **7 SUBMITTAL REQUIREMENTS**

### **7.1 PROJECT APPROACH**

All information contained in responses should be clear, concise and responsive to the content of this request. Submitted proposals should address the elements identified in Section 3—Scope of Work, and include:

- Proposed approach to this project.
- Timeline, including completion dates for key milestones.
- Qualifications and staff resources to be used for the project, including clear identification of project lead and their credentials, as well as specific roles for all (consultant) project staff, if any.
- Previous experience with similar projects.

Any requests for questions/clarifications regarding any part of this RFP must be submitted in writing by e-mail to the contact person listed on the cover page by June 15, 2008. Responses will be compiled and posted as an addendum on the OCA Web site ([www.sanjoseculture.org](http://www.sanjoseculture.org)) as received and no later than June 19, 2008.

### **7.2 REFERENCES**

Provide references, including name, address, e-mail and telephone numbers of up to three recent clients (preferably at least one of similar scale and complexity of this project) who can verify the firm's ability to perform the required services.

### **7.3 FEE STRUCTURE**

Include in your proposal compensation amounts for the items below as applicable to your proposal:

**7.3.1** Base Cost (firm fixed price)

**7.3.2** Estimated reimbursable costs that you anticipate

### **7.4 ATTACHMENTS**

**7.4.1** Attachment A – Proposal Certification

**7.4.2** Attachment B – Request for Contracting Preference for Local and Small Businesses

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

**7.4.3 Attachment C – City’s Terms and Conditions; Attachment D, Insurance Provisions**

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

**7.4.4 Attachment E - Previous Customer Reference Worksheet**

**7.4.5 Attachment F – Conflict of Interest Form**

**8 SELECTION PROCESS AND EVALUATION CRITERIA**

**8.1 SELECTION PROCESS**

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

<b>Description</b>	<b>Weight</b>
Proposal Responsiveness	Pass/Fail
Qualifications & Experience of Proposer	60%
Project Approach	15%
Fee Structure (Cost)	15%
Local Business Enterprise	5%
Small Business Enterprise	5%

**9 PROCESS INTEGRITY GUIDELINES**

**9.1** In accordance with Procurement and Contract Process Integrity and Conflict of Interest Council policy adapted on 02/07/2007, proposers may be disqualified from the procurement without further consideration for any of the following:

- 9.1.1** Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.
- 9.1.2** Failure to direct all questions/inquiries through the contact listed in this document.
- 9.1.3** Offering gifts or souvenirs, even of minimal value, to City officers or employees.
- 9.1.4** Any attempt to improperly influence any member of the selection staff.
- 9.1.5** Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City.
- 9.1.6** Evidence of submitting incorrect information in the response to a solicitation or misrepresentation or failure to disclose material facts during the evaluation process.

**10 CONFLICT OF INTEREST**

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

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

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

**10.4** In order to determine whether such interest may exist, all proposers must complete the attached Conflict of Interest Form (Attachment E).

## **11 GENERAL INFORMATION**

**11.1** Responses will be evaluated as outlined in Section 8.

**11.2** Final award shall be contingent upon selected firm (Contractor) negotiating Terms and Conditions in substantial conformity to the terms listed in Attachment C of this RFP.

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

**11.4** You must respond to this RFP by the due date and time as stated on the cover sheet of this document in order for your quotation to be considered. Quotations may be submitted via fax or e-mail, and must be addressed to the attention of the contact listed on the cover sheet of this document, clearly labeled RFQ-12.10.08 CHCS.

**11.5** The successful proposer will be required to demonstrate evidence of insurance in accordance with the insurance provisions listed in Attachment D.

**11.6** All questions/inquiries must be made through the contact listed on the cover sheet of this document, via e-mail. Contact with representative(s) other than name listed in this RFP is grounds for disqualification. The City will provide a written response to all questions in the form of an addendum on the OCA Web site, [www.sanjoseculture.org](http://www.sanjoseculture.org), by June 19, 2008.

**11.7** All costs associated with responding to this request are to be borne by the respondent.

**11.8** It is the City's policy that the selected firm shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San José contracts.

## **12 PUBLIC NATURE OF PROPOSAL MATERIAL**

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

**12.2** Therefore, any proposal which contains language purporting to render all or significant portions of their proposal "Confidential", "Trade Secret" or "Proprietary", or fails to provide the exemption information required as described below will be considered a public record in its entirety subject to the procedures in Section 12.5.

**12.3** Do not mark your entire proposal as "confidential".

**12.4** The City will not disclose any part of any proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to this RFP will be subject to public disclosure. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as “Trade Secret” and refer to the appropriate section of the Public records Act which provides the exemption as well as the factual basis for claiming the exemption.

**12.5** 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 Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. Public Document.

## **13 OBJECTIONS AND PROTESTS**

### **13.1 OBJECTIONS**

**13.1.1** Any objections as to the structure, content or distribution of this RFP must be submitted in writing to the purchasing contact listed below. 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.

### **13.2 PROTESTS**

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

**13.3** The address for submitting objections or protests is:

Attention: Paul Krutko, Chief Development Officer  
200 East Santa Clara Street, 17th Floor  
San Jose, CA 95113

## ATTACHMENT A

### Certification

Proposing Firm Name:		
Address:		
Telephone:		
Facsimile:		
Contact person name and title:		

### PROPOSER REPRESENTATIONS

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

If the proposal is submitted by a joint venture, the full names and addresses of all members of the joint venture shall be stated and it shall be signed by each individual.

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

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

## ATTACHMENT B – LOCAL AND SMALL BUSINESS PREFERENCE

<b>City of San Jose</b> <b>Request for Contracting Preference for Local and Small Businesses</b>			
<p>Chapter 4.06 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.</p> <p>In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (<i>regardless of where they are located</i>) of your firm is 35 or fewer.</p> <p>There are two ways in which the preference can be applied. In procurements where price is the determinative factor (<i>i.e. there are not a variety of other factors being considered in the selection process</i>) the preference is in the form of a credit applied to the dollar value of the bid or quote. For example, a non-local vendor submits a quote of \$200 per item and a LBE submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199.</p> <p>In procurements where price is not the determinative factor such, as an RFP, typically a variety of factors are evaluated to determine which proposal best meets the City's needs. In procurements such as these, a qualified LBE will be given 5% and a qualified SBE will be given an additional 5% of the total <b>points</b> in the <b>scoring</b>.</p>			
The following determinations have been made with respect to this procurement: (for official use only)			
Type of Procurement	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote	<input checked="" type="checkbox"/> Request for Proposal
Type of Preference	<input type="checkbox"/> Price is Determinative	<input checked="" type="checkbox"/> Price is Not Determinative	
Amount of Preference	LBE preference = 2.5% of Cost SBE preference = 2.5% of Cost	LBE preference = 5% of Points SBE preference = 5% of Points	
In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.			
Business Name			
Business Address			
Telephone No.			
Type of Business	<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)
<b>*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE</b> In order to qualify as an LBE you must provide the following information: Current San Jose Business Tax Certificate Number <span style="float: right; border: 1px solid black; width: 150px; height: 20px;"></span> Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County: <span style="float: right; border: 1px solid black; width: 200px; height: 40px;"></span>			
<b>**SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE</b> In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your entire business --NOT just local employees, or employees working in the office address given above. Please state the number of employees that your Business has: <span style="float: right; border: 1px solid black; width: 50px; height: 20px;"></span>			
Based upon the forgoing information I am requesting that the Business named above be given the following preferences ( <i>please check</i> ): <input type="checkbox"/> Local Business Enterprise <input type="checkbox"/> Small Business Enterprise			
I declare under penalty of perjury that the information supplied by me in this form is true and correct.			
Executed at:	_____ , California		
Date:	_____		
Signature	_____		
Print name	_____		

**ATTACHMENT C**

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN  
THE CITY OF SAN JOSE  
AND**

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THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter "CONSULTANT").

**RECITALS**

The purpose for which this AGREEMENT is made and all pertinent recitals are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

**SECTION 1. SCOPE OF SERVICES.**

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

**SECTION 2. TERM OF AGREEMENT.**

The term of this AGREEMENT shall be from \_\_\_\_\_ to \_\_\_\_\_, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

**SECTION 3. SCHEDULE OF PERFORMANCE.**

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

**SECTION 4. COMPENSATION.**

The compensation to be paid to CONSULTANT for professional services shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

**SECTION 5. METHOD OF PAYMENT.**

CONSULTANT shall furnish to the CITY a statement of the work performed for compensation in accordance with the provisions of EXHIBIT D.

**SECTION 6. INDEPENDENT CONTRACTOR.**

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not

an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

**SECTION 7. ASSIGNABILITY.**

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

**SECTION 8. INDEMNIFICATION.**

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

**SECTION 9. INSURANCE REQUIREMENTS.**

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

**SECTION 10. NONDISCRIMINATION.**

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

**SECTION 11. TERMINATION.**

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

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

C. CITY's Chief Development Officer is empowered to terminate this AGREEMENT on behalf of CITY.

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

**SECTION 12. GOVERNING LAW.**

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

**SECTION 13. COMPLIANCE WITH LAWS.**

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

**SECTION 14. CONFIDENTIAL INFORMATION.**

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

**SECTION 15. OWNERSHIP OF MATERIALS.**

All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

**SECTION 16. WAIVER.**

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

**SECTION 17. CONSULTANT'S BOOKS AND RECORDS.**

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

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

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

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given

to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

**SECTION 18. CONFLICT OF INTEREST.**

CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

**SECTION 19. GIFTS.**

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

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

C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by CONSULTANT. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

**SECTION 20. DISQUALIFICATION OF FORMER EMPLOYEES.**

CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

**SECTION 21. SPECIAL PROVISIONS.**

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

**SECTION 22. NOTICES.**

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

To CITY:

Lawrence Thoo  
Office of Cultural Affairs  
365 S. Market Street  
San José, CA 95113

To CONSULTANT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**SECTION 23. VENUE.**

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

**SECTION 24. PRIOR AGREEMENTS AND AMENDMENTS.**

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

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

<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>BARBARA JORDAN Senior Deputy City Attorney</p>	<p>“CITY”</p> <p>CITY OF SAN JOSE, a municipal corporation</p> <p>By _____</p> <p>Name: _____</p> <p>Title: _____</p>
	<p>“CONSULTANT”</p> <p>_____,</p> <p>a _____</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>

**ATTACHMENT C: EXHIBIT A**

**RECITALS**

WHEREAS, the CITY OF SAN JOSE desires to obtain consultant services to lead the process of developing a five-year strategic plan for the City's engagement in arts education, and to facilitate the testing of key programmatic elements identified from the plan; and

WHEREAS, \_\_\_\_\_ has the necessary professional resources, expertise and skill to provide such services;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain \_\_\_\_\_ as CONSULTANT to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

**ATTACHMENT C: EXHIBIT B**

**SCOPE OF SERVICES**

The intent of this RFP is to select and contract with a professional consultant to develop a strategic plan with a five-year horizon for the City's engagement in arts education, and to facilitate the planning and testing of key programmatic elements identified from the plan

The scope of work includes, but is not limited to the following, CONSULTANT shall:

XXXXXXXXXXXXXXXXXXXXXXXXXX

**ATTACHMENT C: EXHIBIT C**  
**SCHEDULE OF PERFORMANCE**

Regardless of the date of execution of this Agreement, work shall commence on \_\_\_\_\_, 2008.

CONSULTANT's work shall be performed according to the following schedule:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

**ATTACHMENT C: EXHIBIT D**

**COMPENSATION**

The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Any work performed or costs incurred by CONSULTANT for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

CITY agrees to compensate CONSULTANT according to the following schedule for professional services performed in accordance with the terms and conditions of this AGREEMENT:

A payment of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) upon execution of this AGREEMENT

\_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) upon \_\_\_\_\_.

\_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) upon \_\_\_\_\_.

CITY agrees to pay the following reimbursable expenses up to the total limit of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) upon receipt of itemized invoices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ATTACHMENT D

### **INSURANCE**

VENDOR, at VENDOR'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 VENDOR, its agents, representatives, employees or subcontractors.

#### **A. Minimum Scope of Insurance**

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

#### **B. Minimum Limits of Insurance**

VENDOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 Aggregate Limit.

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

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and contractors; or VENDOR 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, VENDOR; products and completed operations of VENDOR; premises owned, leased or used by VENDOR; and automobiles owned, leased, hired or borrowed by VENDOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

b. VENDOR'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 VENDOR's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by VENDOR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that VENDOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2 All Coverages

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

E. **Acceptability of Insurers**

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

F. **Verification of Coverage**

VENDOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for

each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

CITY OF SAN JOSE  
Risk Manager  
200 East Santa Clara St, 2<sup>nd</sup> Floor Wing  
San Jose, California 95113

G. **Subcontractors**

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

ATTACHMENT E

PREVIOUS CUSTOMER REFERENCE WORKSHEET

Provide reference information for the product you are quoting and used in a manner and environment similar in size and scope to the requirements of this project. Copy this form as appropriate.

Name of Customer:	
Customer Address	
Customer Contact Name(s)	
Customer Contact Phone Number(s)	
Brief description of work performed for this client (use additional sheets if necessary):	

**ATTACHMENT F**

**CONFLICT OF INTEREST FORM**

To be completed by consultants making proposals.

**NAME**

**DATE**

**PROPOSED ASSIGNMENT:**

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

Questions	Yes (Provide Details)	No
1. Do you have any official, professional, financial or personal relationships with any person or firm that might affect your judgment or your ability to provide services to the City that are fair and impartial?		
2. Stock and Investments (a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment? (b) Does your spouse or a dependent own any stock in company likely to be affected by or involved in the Proposed Assignment? (c) Do you hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment? (d) Does your spouse or a dependent hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment? If the answer is <b>yes</b> to any of the above questions, please provide the name of the company and the amount of the stock or investment.		
3. Employment & Consulting (a) Is your spouse or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? (b) Has your spouse or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? (c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment? If the answer is <b>yes</b> to any of the above questions, please provide name of employer, nature of services provided and if the dates employed or retained.		

<p>4. Payments or Gifts</p> <p>(d) Within the past 12 months, have you received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(e) Within the past 12 months, has your spouse or a dependent received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the amount the payment or value of the gift, the name and position of the payor/donor and the date of receipt.</p>		
<p>5. Real Estate</p> <p>(a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the location of the property.</p>		
<p>6. Positions</p> <p>(a) Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the name of the entity, and the title of the position held.</p>		

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

