



## Notice of Request for Bids (RFB) RFB 09-10-17

### AUTOMOTIVE TIRES AND ROAD SERVICES

Key Dates and Information Table	
Date of Issue:	October 7, 2009
Material or Service:	Automotive Tires and Road Services
Deadline for:	Date: October 14, 2009 Time: 12:00 Noon PST Submission must be in writing using the BidSync Question and Answer utility at <a href="http://www.bidsync.com">www.bidsync.com</a> .
Final Addendum in Response to Objections and Questions:	Date: October 16, 2009
Sealed Bid Due Date and Time:	Date: October 20 , 2009 Time: 3:00 PM PST
Bid Submittal Location:	Finance Department/Purchasing Division 200 East Santa Clara Street, 13 <sup>th</sup> Floor San Jose, CA 95113
Public Opening of Bids:	Immediately after bid due date and time at the same location.
Procurement Officer: Address:	Gen J. Ng City of San Jose 200 E. Santa Clara St, 13th Floor San Jose, CA 95113 Attn: Gen J. Ng
Telephone Number: Fax: E-mail address	408 535-7058 408-292-6480 <a href="mailto:gen.ng@sanjoseca.gov">gen.ng@sanjoseca.gov</a>

## **1 GENERAL INFORMATION**

**1.1** This bid package contains all of the information and documents necessary to prepare and submit a responsive bid. Bidders are cautioned to read all of the documentation provided. Bidder will be responsible for complying with all requirements identified herein.

**1.2** The City, in its sole discretion, may reject any or all bids received, including separately bid items where a partial bid award is possible under the terms of this RFB.

**1.3** The City expects to make awards based on the following options:

**1.3.1** Bid Option 1, Purchase of Tires only. The City intends to award a primary (80%) and a secondary (20%) order for the purchase of tires only.

**1.3.2** Bid Option 2, Tire and Road Services. The City intends to award a primary (80%) and a secondary (20%) order for tire and road service.

## **2 SCOPE**

**2.1** The City of San Jose (City) is seeking bids from qualified vendors to provide automotive tires and road services as per the Bid Pricing Form Attachment.

**2.2** The City reserves the option to renew the resulting Purchase Order for three (3) additional terms of 1 year, for a total of four (4) years, at the price(s) bid herein.

## **3 MINIMUM QUALIFICATIONS**

**3.1** Bidder must have three (3) years of experience providing replacement tires and roadside tire replacement services to customers with similar requirements as identified in the Statement of Work Attachment as demonstrated by providing:

**3.1.1** Three (3) previous customer references, using the Previous Customer Reference Worksheet, Attachment 5, as a part of the Bid package. One of which is preferred to be a Public Agency (City, County, State, Federal). **There is only one copy of the attachment in the bid package. Bidders are required to copy the form to meet this requirement.**

## **4 HOW TO OBTAIN THIS RFB**

**4.1** This RFB may be downloaded from the BidSync e-Procurement system located at [www.bidsync.com](http://www.bidsync.com). Suppliers may also navigate to the City of San Jose Bid-Line Web site at [www.sanjoseca.gov/purchasing/default.asp](http://www.sanjoseca.gov/purchasing/default.asp). At either Web site, follow the links to register for the on line service. You may register for free either on-line or by calling BidSync Vendor Support at **1-800-990-9339**, telling the support representative that you are registering for City of San José procurements.

**4.2** All addenda and notices related to this procurement will be posted by the City on BidSync. In the event that this RFB is obtained through any means other than BidSync, the City will not be responsible for the completeness, accuracy, or timeliness of the final RFB document.

## **5 COMPLETE RFB**

This document describes the Products or Services required by the City, The RFB process and RFB provisions. In addition, the following attachments, exhibits and/or appendices are included:

### **5.1 ATTACHMENTS**

The following Attachments are included in this bid package. Bidders are responsible for ensuring that they possess all of the documents identified below. If a document identified below is missing, contact the Procurement Officer identified on the cover page of this document.

Attachment Number	Title
1	Statement of Work
2	Bid Pricing Form
3	Bid Certification
4	Local/Small Business Enterprise Preference Request
5	Previous Customer Reference Worksheet
6	Approved Equals Form
7	Purchase Order and Service Order Terms and Conditions
8	Insurance Requirements

## **6 INSTRUCTIONS TO BIDDERS**

### **6.1 PREPARATION OF BID**

**6.1.1** All bids shall be on the forms provided in this Request for Bid (RFB) package. It is permissible to copy these forms, if required.

**6.1.2** Bidders are to submit **1 original and 1 copy** of their bid, all clearly marked as such, in a sealed envelope or package. An electronic copy of the complete bid in PDF format shall also be provided on a CD or DVD. Faxed submissions are not acceptable.

**6.1.3** The outside of the box or package and the cover or title page of each bid shall be marked as follows:

#### **RFB 09-10-17 AUTOMOTIVE TIRES AND ROAD SERVICES**

**6.1.4** The bidder's name and address shall appear on the outside of the envelope or shipping container.

**6.1.5** The authorized person signing the bid shall initial erasures, interlineations, or other modifications in the bid in original ink.

**6.1.6** In case of an error in the extension of prices in the bid, unit price shall govern. In the event of a calculation or math error on the Bid Pricing Form, the non-calculated values shall govern and the City will re-calculate a corrected total. For example, if a subtotal is incorrect because of an addition error, the numbers making up the subtotal shall prevail and the City will re-calculate and correct the subtotal.

**6.1.7** No bid shall be altered, amended, or withdrawn after the specified bid due time and date.

**6.1.8** Periods of time, stated as a number of days, shall be in calendar days (not working days).

**6.1.9** It is the responsibility of all bidders to examine the entire RFB package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after bid due time and date.

**6.1.10** No plea of ignorance of conditions that exist, or that may exist hereafter, or of conditions or difficulties encountered in execution of work under this contract will be accepted as an excuse for failure of, or omission on the part of contractors to fulfill in every detail all of the requirements of contract, nor will they be accepted as basis for any claims whatsoever for extra compensation.

**6.1.11** All costs associated with responding to this bid shall be at the bidder's sole expense. The City shall not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

**6.1.12** Submission of additional or conflicting terms, conditions or agreements with this bid document will result in the determination that the bid is non-responsive.

**6.1.13** The Bid documents are complementary, and what is called for by any one of the documents shall be as binding as if called for by all.

## **6.2 REQUIRED BID SUBMISSION DOCUMENTS**

<b>Document to Submit</b>	<b>Attachment #</b>	<b>When to Submit</b>	<b>Comments</b>
Bid Pricing Form	2	With Bid	
Bid Certification	3	With Bid	
Request for Local/Small Business Preference	4	With Bid	If applicable
Previous Customer Reference Worksheet	5	With Bid	3 Required
Request for Approved Equals Form	6	With Bid	If applicable

### **6.3      OBJECTIONS**

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

### **6.4      INQUIRIES**

Any questions related to the RFB shall be directed to the Procurement Officer identified on the Cover Page by the deadline specified. The bidder shall not contact or ask questions of any other City employee or person involved with the development of the specifications or any other information related to the RFB. All questions are to be submitted in writing through the BidSync Question and Answer utility. Oral interpretations or clarifications will be without legal effect. All responses to questions will be in writing in the form of an addendum.

### **6.5      SUBMITTAL OF REQUESTS FOR EQUIVALENT PRODUCTS**

**6.5.1** The specified products, as listed of this bid document have been determined to meet the specifications as listed in this document. All products not listed as “specified products” in this document must be submitted for approved equals, regardless of whether the manufacturer has been pre-approved.

**6.5.2** Bidders wishing to submit request for “approved equals” products must submit supporting documentation. Supporting documentation must demonstrate compliance with the specifications as listed in this document.

**6.5.3** When an “or equal” is offered, the City may test and evaluate the product prior to award of the contract. At Bidder’s expense, this full evaluation may require independent testing, including destructive testing, at qualified test facilities.

**6.5.4** Instructions for requesting approved equals as listed in the Attachment must be followed explicitly. Each and every product specification as listed must be identified with bidder acknowledging that the product meets or exceeds these specifications. Each product specification must be cross-referenced to the supporting documentation demonstrating that the product meets that specification. Supporting documentation such as data sheets, manufacturers’ specifications, etc. must be provided and cross-referenced back to the specification.

**6.5.5** Three references must be provided using the Attachment titled “Previous Customer Reference Worksheet”, demonstrating that the requested product or product line is deployed in an environment similar to that of the City. Any specification that cannot be demonstrated or verified to the satisfaction of the City shall result in the rejection of the request.

**6.5.6** The City, in its sole discretion, will accept or reject requests for approved equals. Bidders will be notified.

### **6.6      AMENDMENT OF BID**

The bidder shall acknowledge receipt of any RFB addenda by completing paragraph 5 in the Bid Certification Attachment. Failure to acknowledge receipt of addenda by completing this form may result in a determination that the bid is incomplete.

## **6.7 WITHDRAWAL OF BID**

At any time prior to a specified RFB due time and date, a bidder (or designated representative) may withdraw the bid.

## **6.8 BID OPENING**

All bids received by the closing date and time will be opened in public beginning immediately after the designated time. Bids will be made public and available for review from that time forward.

## **6.9 LATE BIDS**

Late bids shall be rejected and returned to the bidder unopened. **This deadline is absolute and bids received after the due date and time shall not be considered.** Bidders must select a method of delivery that ensures bids will be delivered to the correct location by the due date and time.

## **6.10 EVALUATION OF BIDS**

The City will evaluate bid submittals according to the following general criteria:

**6.10.1 Responsibility:** The bidder must be a person, firm, or corporation that has the capability to perform all of the requirements herein and who is a manufacturer, or who is representing manufacturers that have an operating manufacturing plant adequate to assure delivery of all product within the time specified under this Contract; has adequate engineering and service personnel to satisfy any engineering or service problems that may arise during the warranty period; and has the necessary facilities and financial resources to complete the contract within the required time.

**6.10.2 Responsiveness:** Bids will be examined to ensure that the bidder has submitted both the required documentation and is responsive to the technical specifications.

**6.10.3 Bid Sheets Preparation/Instructions for Bidders:** Bidders must submit bid pricing using Attachment, Bid Pricing Form. "Unit Price" is the bid price for each item. "Extended Price" is the extension of the estimated quantities multiplied by the "Unit Price." Each line item extended price is to be entered in the space provide. Bidders are cautioned to check bid price entries for correctness of unit prices, extended prices, and total prices.

## **6.11 DETERMINATION OF LOW BID**

**6.11.1** The award will be made to the lowest responsive, responsible overall bid total for Bid Option 1, Purchase of Tires and for Bid Option 2, Tire and Road Services.

**6.11.2** Pricing for add alternate items, if identified, is required, but will not be considered in the determination of the low bid, unless specified.

**6.11.3** Local/Small Business preference and acceptable cash discounts will be applied to the bid prices to determine the apparent low bidder.

## **6.12 REFERENCES**

**6.12.1** Bidders are to include three (3) previous customer references that demonstrate the bidder's ability to provide the products and/or services required by this RFB.

**6.12.2** References are to be submitted on Attachment titled "Previous Customer Reference Worksheet". Only 1 copy of the form is provided in the RFB package. Bidders are required to copy the form as needed to meet the reference submission requirements.

**6.12.3** References are to be submitted as a part of the bid package. Failure to provide required references will result in the bid being determined to be non-responsive, and will be removed from further consideration.

## **6.13 PROTESTS**

**6.13.1** If an unsuccessful Bidder wishes to protest the award recommendation, the unsuccessful bidder must submit the protest in writing to the Chief Purchasing Officer no later than ten calendar days after announcement of the apparent successful Bidder. Protest must detail the grounds, factual basis and provide all supporting information. Protests will not be considered for disputes of bid specifications, which must be addressed in accordance with Section 7.3.

**6.13.2** The address for submitting protests is:

City of San Jose  
200 East Santa Clara Street, 13th Floor  
San Jose, CA 95113  
Attn: Purchasing Officer

## **6.14 GROUNDS FOR DISQUALIFICATION**

**6.14.1** All Bidders are expected to have read and understood Council Policy 0-35 on Procurement and Contract Process Integrity and Conflict of Interest adopted on February 6, 2007. A complete copy of the policy can be found at: <http://www.csj.gov/clerk/> (Select Council Policy Manual in navigation bar on left side). Any bidder who violates the Policy will be subject to disqualification. Generally, the grounds for disqualification include:

**6.14.1.1** Contact regarding this procurement with any City official or employee or Evaluation team other than the Procurement Contact from the time of issuance of this solicitation until the end of the protest period.

**6.14.1.2** Evidence of collusion, directly or indirectly, among Bidders in regard to the amount, terms, or conditions of this bid.

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

**6.14.1.4** Evidence of submitting incorrect information in the response to a solicitation or misrepresent or fail to disclose material facts during the evaluation process.

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

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

**6.14.2.2** Existence of any lawsuit, unresolved contractual claim or dispute between Bidder and the City.

**6.14.2.3** Evidence of Bidder's inability to successfully complete the responsibilities and obligations of the bid.

**6.14.2.4** Bidder's default under any City agreement, resulting in termination of such Agreement

#### **6.15 TERMS AND CONDITIONS**

Attachment titled "Terms and Conditions" outlines the City's standard terms and conditions as part of the agreement between the City and successful bidder. Questions regarding these terms should be submitted by the final date to submit questions listed under "Key Dates and Information" table on the cover page of this document.

#### **6.16 WAIVER OF BID DEFECTS**

Notwithstanding any other provision of the RFB, the City shall have the right to waive any informalities or minor irregularities in bids or bidding.

#### **6.17 PUBLIC RECORD**

All bids opened in response to this invitation shall become the property of the City and shall become a matter of public record available for review.

#### **6.18 PAYMENT TERMS**

**6.18.1** Payment terms are thirty calendar days after acceptance of materials or services and a correct invoice.

**6.18.2** Payment discount periods shall be computed from the date of receipt of the material/service or correct invoice, whichever is later, to the date City's payment is mailed. Payment discounts of twenty-one days shall be deducted from the bid price in determining the low bid. However, the City shall be entitled to take advantage of any payment discount offered by vendor provided payment is made within the offered discount period.

#### **6.19 PRICING**

**6.19.1** Pricing shall be firm fixed for the term of the contract. During this period the price may not change.

**6.19.2** Pricing for option years, if applicable, will be reviewed on the anniversary date of the contract and will be governed by a percentage of increase "up to" the percentage posted on the Consumer Price Index (CPI) for the San Francisco, Oakland, San Jose region, published by U.S. Department of Labor Bureau Statistics; or based on documented Manufacturer's Price Increases submitted to the City of San Jose/Purchasing Department within thirty (30) days of each option year to be valid.

#### **6.20 TAXES**

**6.20.1** Do not include California retail sales tax in your bid price. All such taxes will be included in the Purchase Order.

**6.20.2** The City of San Jose is exempt from federal excise tax, including federal transportation tax. The City will provide an exemption certificate as appropriate.

**6.20.3** Vendors conducting business in the City of San Jose or using their own trucks to deliver merchandise must pay a City of San Jose Business Tax (Business License).

## 6.21 LOCAL AND SMALL BUSINESS ENTERPRISE

Chapter 4.12 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise or Small Business Enterprise and whether price has been chosen as the determinative factor in the selection of the vendor. In order for the bidder to be eligible for local and/or small business preference, the bidder must complete Attachment titled "Request for Contracting Preference for Local and Small Businesses". If the bidder fails to complete this form and submit it with the bid, the bidder will be denied consideration for local/small business preference. This information cannot be submitted later.

## 6.22 INSURANCE

**6.22.1** Contractors are required to maintain the insurance coverage as specified in Attachment titled "Insurance Requirements".

**6.22.2** Contractor is required to submit a "Certificate of Insurance" in accordance with the requirements outlined in Attachment within 10 days from the final date in the protest period as identified in Section 6.10.2. Failure to do so may result in withdrawal of the award and award to the next lowest bidder.

## 7 DEFINITIONS

Term	Definition
City	City of San Jose
Contractor Vendor Supplier	Dealership and/or vendor and their representatives providing equipment, furnishings and related interior items, and installation services for the project.
Approved equals	Any manufacturer or product line that has been submitted for consideration as being functionally and technically "equivalent" to specified products. In order to submit a responsive bid, all such requests must be pre-approved by the City.
Bidder	Any person or company submitting a bid in response to this RFB document.
Responsive Bidder	Any person or company who has submitted a bid which conforms in all material respects to the Invitation for Bids.
Responsible Bidder	"Responsible" means a Bidder's quality, fitness and capacity to perform the particular requirements of the proposed work.
Add Alternate	Add-Alternate items are options that must be priced where indicated on the Pricing Bid form, but will not be included in the low bid determination.
Shall	When the word "shall" is used with respect to a requirement, bidders may not take an exception.

## **8 LOCATION AND DELIVERY**

**8.1** The Contractor agrees to make deliveries to City location(s) only upon receipt of a duly signed and approved purchase order/release issued by the City. Delivery made without such documentation shall be at the contractor's risk.

**8.2** The Contractor will be responsible for all costs associated with shipping, and delivery. All items delivered shall be Free On Board (F.O.B.) Destination, full freight prepaid except for special or expedited orders. In the event of special or expedited orders where incremental transportation or shipping fees are incurred by Bidder, those incremental freight charges shall be added as a separate line item to the invoice submitted.

**8.3** The successful Bidder shall authorize immediate replacement of any item that has been damaged in transit.

## **9 OTHER PUBLIC AGENCY PURCHASES**

**9.1** It is intended that any other public agency be permitted to purchase under the terms submitted in response to this procurement. Any participating public agency shall accept sole responsibility for the placing of orders, arranging for delivery and/or services, and making payments to the Contractor. The City of San Jose will not be liable or responsible for any obligations, including but not limited to financial responsibility, in connection with participation by other public agencies.

**9.2** If other agencies participate, the Vendor shall furnish the City of San Jose an annual report showing the name of the agencies, contact person, and phone number for each agency, and details of items supplied, including quantities. This report shall be furnished to the City on the anniversary date of the commencement of the contract.

## **10 ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY**

**10.1** 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. These products include, but are not limited to, those that contain recycled content, conserve energy or water, minimize waste or reduce the amount of toxic material used and disposed.

## **ATTACHMENT 1**

### **Statement of Work**

#### **GENERAL**

1. Road services must be available 24hours, 7 days a week
2. Road services to include tire mounting/dismounting and flat tire repairs.
3. Service calls to be provided within 1 hour of notification from the City.
4. All passenger and light truck tires to be patched internally (no plugs).
5. All repairs and services shown to be defective due to poor workmanship should be covered at the contractor's expense.
6. All workmanship to be warranted for one (1) year separate from parts/materials manufacturer warranty. Parts/materials warranties shall be handled by installing contractor.
7. The City to have the option to supply contractor with the tires.

## **ATTACHMENT 2**

### **Bid Pricing Form**

1. The quantity shown on the Bid Pricing Form represents the City's estimated annual usage per 12 month period.
2. The initial term of the contract shall be from the date of award of contract thru 08/31/10 with 3 additional one-year options to renew the service order.
3. Only prices that appear on City Contract Bid sheets will be considered. No other pages with prices, no attached price lists (except those requested) and no catalogue prices will be considered.
4. In the event the approved model is no longer available, a comparable model from the same manufacturer, meeting or exceeding all specifications shall be provided at the same price.
5. Do not include sales tax in the bid price. The City of San Jose is exempt from federal excise tax, including federal transportation tax.
6. FOB DESTINATION ONLY. All shipping and handling charges shall be included in the bid price. Service calls to all City Maintenance Yards shall be at no charge.
7. Consideration for local and small business preference and prompt payment discounts will be applied by the City as applicable to determine the overall low bid for award purposes.

**ATTACHMENT 2**  
**Bid Pricing Form: Tires**

**Bid for Bid Option 1, Tires Only**

**Bid for Bid Option 2, Tires and Road Services**

	<b>DESCRIPTION</b>	<b>MANUF.</b>	<b>PART #</b>	<b>QUAN.</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
<b>PURSUIT TIRES</b>						
1	P225/70R15 100V S2 GOODYEAR EAGLE RS-A VSRPTL	_____	_____	15	\$_____	\$_____
2	P235/70R15 102V S2 GOODYEAR EAGLE RS-A VSRPTL	_____	_____	20	\$_____	\$_____
3	P225/60R16 97V S2 GOODYEAR EAGLE RS-A VSRPTL	_____	_____	700	\$_____	\$_____
4	P235/55R17 98W S2 GOODYEAR EAGLE RS-A VSRPTL	_____	_____	800	\$_____	\$_____
<b>FIRE TRUCK SPEED RATED TIRES</b>						
5	315/80R225 L GOODYEAR G287 HSS TL	_____	_____	40	\$_____	\$_____
6	11R225 H GOODYEAR G287 MSA TL	_____	_____	150	\$_____	\$_____
7	12R225 H GOODYEAR G287 MSA TL	_____	_____	30	\$_____	\$_____
<b>PASSENGER CAR</b>						
8	P185/65R14 GOODYEAR COMFORT TREAD 680/A/B	_____	_____	45	\$_____	\$_____
9	P185/75R14 GOODYEAR COMFORT TREAD 680/A/B	_____	_____	10	\$_____	\$_____
10	P215/65R15 GOODYEAR COMFORT TREAD 680/A/B	_____	_____	60	\$_____	\$_____
11	P325/75R15 GOODYEAR WRANGLER 680/A/B	_____	_____	30	\$_____	\$_____
12	P235/75R15 GOODYEAR WRANGLER RTS 680/A/B	_____	_____	25	\$_____	\$_____

**ATTACHMENT 1**  
**Bid Pricing Form A: Tires**

	DESCRIPTION	MANUF.	PART #	QUAN.	UNIT PRICE	EXTENDED PRICE
	<b>LIGHT TRUCK TIRES</b>					
13	215/85R16 G00DYEAR WRANGLER HT E	_____	_____	300	\$_____	\$_____
14	225/75R16 GOODYEAR WRANGLER HT E	_____	_____	350	\$_____	\$_____
15	235/85R16 GOODYEAR WRANGLER HT E	_____	_____	120	\$_____	\$_____
16	245/75R16 GOODYEAR WRANGLER HT E	_____	_____	135	\$_____	\$_____
17	SUBTOTAL:					\$_____
18	CASH DISCOUNT FOR EARLY PAYMENT (WITHIN 21 DAYS)				_____ %	<\$_____>
19	<b>TOTAL FOR BID PRICING FORM A, OPTION 1 TIRES ONLY (LINE 17 &amp; 18):</b>					\$_____

The **TOTAL FOR BID PRICING FORM A, Option 1** is indicated in words:

\_\_\_\_\_ Dollars and  
Cents. (\$ )

**ATTACHMENT 2**  
**Bid Pricing Form B: Services**

	<b>DESCRIPTION</b>	<b>QUAN.</b>	<b>UNIT PRICE</b>	<b>EXTENDED PRICE</b>
	<b>TIRE MOUNTING/DISMOUNTING (NEW AND USED)</b>			
1	SIZES (ALL PLYS) UP TO - 16.5" DIAMETER	200	\$ _____	\$ _____
2	SIZES (ALL PLYS) 17.0" - 22.0" DIAMETER	100	\$ _____	\$ _____
3	SIZES (ALL PLYS) 22.5" - 24.5" DIAMETER	100	\$ _____	\$ _____
4	SIZES (ALL PLYS) 25.0" - AND UP	100	\$ _____	\$ _____
5	WHEEL SPIN BALANCING (PASSENGER/LT TRUCK)	500	\$ _____	\$ _____
	<b>FLAT REPAIR</b>			
8	PASSENGER CAR TIRES	50	\$ _____	\$ _____
9	LT TRUCK TIRES (ALL PLYS)	100	\$ _____	\$ _____
10	MED/HEAVY TRUCK TIRES (ALL PLYS)	200	\$ _____	\$ _____
11	OFF ROAD TIRES	50	\$ _____	\$ _____
12	OFF ROAD LOADER TIRES	30	\$ _____	\$ _____
	<b>PASSENGER CARS AND LIGHT TRUCKS</b>			
13	TIRE DISPOSAL FEE	1000	\$ _____	\$ _____
14	TRUCK TIRE CASINGS: (AMOUNT CREDITED PER CASING)	500	<\$ _____ >	<\$ _____ >
	<b>HEAVY TRUCKS</b>			
15	TIRE DISPOSAL FEE	150	\$ _____	\$ _____
16	TRUCK TIRE CASINGS: (AMOUNT CREDITED PER CASING)	100	<\$ _____ >	<\$ _____ >
17	SUBTOTAL:			\$ _____
18	CASH DISCOUNT FOR EARLY PAYMENT (WITHIN 21 DAYS)		_____ %	<\$ _____ >
19	<b>TOTAL FOR BID PRICING FORM B SERVICES (LINE 17 &amp; 18):</b>			\$ _____
20	<b>TOTAL FOR BID PRICING FORM A &amp; B, OPTION 2 TIRES AND SERVICES:</b>			\$ _____
	<b>ADDITIONAL INFORMATION</b>			
1	<b>MINIMUM SERVICE CHARGE PER CALL</b>			\$ _____

The **TOTAL FOR BID PRICING FORM A & B, OPTION 2 TIRES AND SERVICES** is indicated in words:

\_\_\_\_\_ Dollars and

\_\_\_\_\_ Cents. (\$ \_\_\_\_\_ )

**ATTACHMENT 3**

**Bid Certification**

**NO BID SHALL BE ACCEPTED WHICH HAS NOT BEEN SIGNED IN INK IN THE APPROPRIATE SPACE BELOW**

<b>Bidding Firm Name:</b>	
<b>Address (incl. Zip Code):</b>	
<b>Telephone:</b>	
<b>Facsimile:</b>	
<b>E-Mail:</b>	
<b>Contact person name and title:</b>	<b>Name:</b>
	<b>Title:</b>

**BIDDER REPRESENTATIONS**

1. Bidder did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Bidder in regard to the amount, terms, or conditions of this bid.
2. Bidder additionally certifies that neither bidder 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. Bidder 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 RFB document or permitted by formal addenda are accepted by the City.
4. Bidder did not receive unauthorized information from any City staff member or City Consultant during the Bidding period except as provided for in the Request for Bid package, formal addenda issued by the City, or the pre-bid conference.
5. Bidder certifies that this submission includes full consideration of the information and/or requirements identified in Addenda \_\_\_\_ through \_\_\_\_.
6. Bidder certifies that they have been in business providing products and services as described in Attachment 1 for the period of 3 years prior to the closing date of this RFB. License #: \_\_\_\_\_

7. Bidder hereby certifies that the information contained in the bid and all accompanying documents is true and correct.

8. Please check the appropriate box below:

- If the bid 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 bidder shall so state.
- If the bid is made 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 bid is made by a corporation, it shall be signed in the corporate name by an authorized officer or officers.
- If the bid is made by a limited liability company, it shall be signed in the corporate name by an authorized officer or officers.
- If the bid is made by a joint venture, the full names and addresses of all members of the joint venture shall be stated and the bid shall be signed by each individual.

**By signing below, the submission of a bid shall be deemed a representation and certification by the Bidder that they have investigated all aspects of the RFB, that they are aware of the applicable facts pertaining to the RFB process, its procedures and requirements, and that they have read and understand the RFB.**

Authorized Representative Name (sign name):	
Authorized Representative Signature (print name):	
Authorized Representative Title (print title):+	
<b>Complete additional signatures below as required per # 8 above</b>	
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):+	

**NO PROPOSAL SHALL BE ACCEPTED WHICH HAS NOT BEEN SIGNED IN INK IN THE APPROPRIATE SPACE**

## ATTACHMENT 4

City of San Jose

## Request for Contracting Preference for Local and Small Businesses

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.

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

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

In procurements such as RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an **additional 5% to 10% points** in the **scoring** of their proposal.

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

Type of Procurement	<input checked="" type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote	<input type="checkbox"/> Request for Proposal
Type of Preference	<input checked="" type="checkbox"/> Price is Determinative	<input type="checkbox"/> Price is Not Determinative	
Amount of Preference	LBE preference = 2.5% of <b>Cost</b> SBE preference = 2.5% of <b>Cost</b>	LBE preference = 5% of <b>Points</b> SBE preference = 5% of <b>Points</b>	

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) _____

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

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

Current San Jose Business Tax Certificate Number \_\_\_\_\_

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

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

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

Please state the number of employees that your Business has: \_\_\_\_\_

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

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

Executed at: \_\_\_\_\_, California

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

## ATTACHMENT 5

## Previous Customer Reference Worksheet

**ATTACHMENT 6**  
**REQUEST FOR APPROVED EQUALS FORM**

<b>Bidder:</b>	
<b>Bid Number and Title:</b>	
<b>Bid Item Identification Information</b>	
<b>Specified Item #:</b>	
<b>Description:</b>	
<b>Specification Section #:</b>	
<b>Proposed Alternate Information</b>	
<b>Manufacturer:</b>	
<b>Make/Model:</b>	
<b>Description:</b>	
<b>Additional Information:</b>	
<b>Signature:</b>	
<b>Title:</b>	
<b>Name:</b>	
<b>Date:</b>	
<b>Telephone:</b>	
<b>E-Mail:</b>	

**REQUIRED ATTACHMENTS:**

1. Attach manufacturers data sheets, catalogues, product literature, etc. in sufficient detail to allow verification that requested product meets or exceeds all specifications as listed in this bid document. List each product specification (Part II, Section \_\_\_\_) and provide a cross-reference showing where each specification can be verified with the information provided.
2. Provide three (3) references, Attachment titled "Previous Customer Reference Worksheet".
3. The City retains the right to contact the bidder to seek clarification as may be required.

**ATTACHMENT 7**

**CITY OF SAN JOSE**  
**PURCHASE ORDER TERMS AND CONDITIONS**

**NOTICE: The Terms and Conditions listed below are the Terms and Conditions on the back of the City's Purchase Order. These are the only Terms and Conditions the City will agree to. The City has NO intention of negotiating these. If your company is not able to agree to these Terms and Conditions please do NOT respond to any Request for Bid (RFB). If your company has any question about these, you should ask the Buyer responsible for the RFB at least two (2) business days prior to the RFB due date.**

1. **DEFINITIONS:** The words "Buyer" and "City" shall mean the City of San Jose or any department thereof.
2. **DATA AND FACILITIES:** Seller 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 that such data are adequate to enable Seller fairly to determine its ability to perform work called herein at the price and in accordance with the schedule set forth. Seller represents that it now has or can readily procure without assistance of Buyer all facilities, machinery and equipment necessary for the performance of this purchase order.
3. **PACKING AND SHIPPING:** Deliveries shall be made as specified without charge for boxing, crating, carting or storage unless otherwise specified, and articles 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. Articles shall be described on bills of lading in accordance with current Motor Freight or Uniform Freight Classification, whichever is applicable. Buyer'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. Buyer'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 Buyer shall be shipped in separate boxes or containers for each destination at no extra charge.
4. **CONTRACT:** This purchase order constitutes Buyer's offer to Seller and shall become a binding contract upon the terms and conditions set forth herein upon acceptance by Seller either by acknowledgement or commencement or performance. Any terms or conditions (including price and delivery dates) proposed by Seller in accepting Buyer's offer, which are inconsistent with or in addition to the terms and conditions set forth, shall be void and no effect unless and to the extent expressly accepted by Buyer in writing.
5. **TAXES:** Seller shall separately state on all invoices any taxes imposed by federal or state government applicable to furnishing of the articles; provided, however, where a tax exemption is available, such tax shall be subtracted from the total price and identified. Municipalities are exempt from federal excise and transportation taxes, except for the excise tax on gasoline. Total prices quoted are to exclude federal taxes. Exemption certificates will be furnished upon request. Unless otherwise indicated, prices quoted will be considered to exclude state and city sales or use tax, which is payable by Buyer.
6. **PRICES:** Seller represents that prices quoted to or paid by Buyer shall not exceed current prices charged to any other customer of Seller for items which are the same or substantially similar to the articles, taking into account the quality of the articles, and Seller will forthwith refund any amounts paid by Buyer in excess of such price.

7. PAYMENT: Payment shall not be due until completion of order unless City agrees in writing to other terms and conditions. No payment shall represent a waiver of City's right to inspect for defects.
8. CASH DISCOUNT: THE DATE USED AS THE BASIS FOR CASH DISCOUNT CALCULATION IS THE DATE THE ORDER IS COMPLETED OR THE DATE AN ACCEPTABLE INVOICE IS RECEIVED, WHICHEVER IS LATER.
9. WARRANTY: Seller warrants that all articles will conform to applicable specifications, drawings, descriptions, and samples, and will be merchantable, of good workmanship and material, and free from defect. Unless manufactured pursuant to detailed design furnished by Buyer, Seller assumes design responsibility and warrants the articles to be free from design defect and suitable for the purposes intended by Buyer. Seller's warranties, together with its service guarantees, shall run to Buyer and its users of the articles and shall not be deemed to be exclusive. Buyer's inspections, approval, acceptance, use of payment for all or any part of the articles 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. DEFAULT: Buyer may, by written notice to Seller, cancel for default this purchase order, in whole or from time to time in part: (I) if the Seller fails to deliver the articles or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the articles delivered do not conform to contractual requirements or if Seller 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 Seller becomes insolvent or commits an act of bankruptcy. If this purchase order is cancelled for default, Buyer, in addition to all other rights afforded by law for Seller's breach of contract, shall have the right to charge Seller the amount by which the costs of fabricating or procuring the articles cancelled from another source exceed the price specified herein, and Buyer may set off any such charge against any amounts which may become payable to Seller under this purchase order or otherwise. Upon such cancellation Seller will deliver to Buyer any of the articles, parts or materials, for which Buyer shall make written request at or after cancellation and Buyer will pay Seller the fair value of any such property so requested and delivered. Notwithstanding Buyer's right to cancel this purchase order for delay in delivery, Seller shall not be liable to Buyer for any damages therefore: (I) Seller's delay is due to causes beyond its control, and without its fault or negligence, provided Seller promptly notifies Buyer of the conditions causing delay or, (ii) Seller's delay is caused by the default of a subcontractor or supplier, but only if such default arises out of causes beyond the control of both Seller and subcontractor or supplier and without the fault or negligence of either of them, and the articles or services to be furnished by the were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.
11. CHANGES: Buyer shall have the right by written notice to change the extent of the work covered by the 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 of Finance or director's authorized designee. Upon receipt of any such notice, Seller shall promptly make the changes in accordance with the terms of the notice. If any such change causes an increase or decrease in the cost or performance or in the time required for performance, an equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly. Seller shall promptly deliver to Buyer, and in any event within (30) days after receipt of such notice, a statement showing the effect of any such changes in the delivery dates and prices, such statement to be supplemented within thirty (30) days from the date thereof by detailed specification of the amount of the price adjustment and supporting cost figures. Failure of Seller to submit the statements within the above time limits shall constitute its consent to perform the change without increase in price, without claim for material rendered obsolete and without change in delivery schedule.

12. TERMINATION: The performance of work under this purchase order may be terminated in whole or from time to time in part by Buyer. City's Director of Finance is empowered to terminate this purchase order on behalf of City.
13. COMPLIANCE WITH LAW: Seller shall in performance of this purchase order comply with all applicable laws and regulation of the City and of the State of California.
14. GOVERNING LAW: City and Seller agree that the law governing this Agreement shall be that of the State of California.
15. VENUE: In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.
16. ASSIGNMENT OF CONTRACT: Seller shall not assign any of the work to be performed under this purchase order nor shall Seller subcontract for completed or substantially completed articles or major components thereof without Buyer's prior written consent. Seller may assign monies due under this purchase order. Buyer will recognize such assignment, to the extent permitted by law, if Buyer is given proper notice thereof. Any assignment shall be subject to set-off or recoupment for any present or future claim which Buyer may have against Seller.
17. WAIVERS: Failure by Buyer to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this purchase order, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such item, covenant or condition or the future performance shall continue in full force and effect.
18. NON-DISCRIMINATION:
  - a. Prohibition on Discrimination and Preferential Treatment.  
Contractor shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity or national origin.  
This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, condition, or privileges of employment, subcontracting and purchasing.  
Noting herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.
  - b. Compliance Reports.  
If directed by the Director of Equality Assurance of the City, Contractor shall file, and cause any subcontractor to file, compliance reports with the Director of Office of Equality Assurance. Compliance reports shall be in the forms and filed at such times as may be designated by the Director of Office of 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 Contractor or its subcontractor is complying with the nondiscrimination and non-preference provision 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 Contractor 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 Contractor and/or subcontractor to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor.

- d. Subcontracts.  
Contractor shall include provisions 1 through 3, 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 Non-discrimination Provisions.  
The non-discrimination provisions of this agreement may be waived by the Director of Office of Equality Assurance, if Director of Office of Equality Assurance determines that the Contractor has its own non-discrimination requirements or is bound in the performance of this agreement by the non-discrimination requirements of another government agency, and the non-discrimination provisions of the Contractor or other government agency are substantially the same as those imposed by the City.

19. GIFTS: Contractor 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 Jose Municipal Code. Contractor 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 service order by Contractor. In addition to any other remedies City may have in law or equity, City may terminate this service order for such breach.

20. WARRANTY AGAINST INFRINGEMENT: If any article sold hereunder is covered, or is purported to be covered, by any patent or copyright, Seller agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from and against it by any and all suits, claims, judgments and costs instituted or recovered against it by any person or persons whomsoever, on account of the purchase, use or resale of such article by City in violation or claimed violation of any rights under patent or copyright.

21. INDEMNITY: Seller agrees to defend, indemnify and hold harmless the City. Its officers, agents, and employees, from any and all claims and liability, including expenses, for injuries or death to persons or damage to or destruction of property caused by or resulting from the acts or omissions of Seller, its agents, suppliers or employees, in the performance of this purchase order.

**CITY OF SAN JOSE**  
**SERVICE ORDER TERMS AND CONDITIONS**

9. **DEFINITIONS:** City shall mean the City of San Jose or any department thereof, Service Order means that certain contract for services which includes these terms and conditions as well as the information contained on the completed form appearing on the reverse of these Terms and Conditions. References in quotes refer to the designation on the reverse. Contractor shall mean the business as designated under "Vendor".
2. **SCOPE OF SERVICES:** Contractor shall perform those services specified in detail in "Description of Services". Contractor will supply all tools and instrumentalities required to perform this Service Order.
3. **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 attached hereto, and that such data are adequate to enable Contractor fairly to determine its ability to perform work called herein at the price and in accordance with the schedule set forth. Contractor represents that it now has or can readily procure without assistance of City all personnel, facilities, machinery and equipment necessary for the performance of this Service Order.
4. **CONTRACT:** This purchase order constitutes City's offer to Contractor and shall become a binding contract upon the terms and conditions set forth herein upon acceptance by Contractor either by acknowledgement or commencement of performance. Any terms or Conditions by Contractor in accepting City's offer, which are inconsistent with or in addition to the terms and conditions set forth, shall be void and no effect unless and to the extent expressly accepted by City in writing.
5. **SCHEDULE OF PERFORMANCE:** Contractor's services shall be completed according to the schedule set forth in "Description of Services". Time is of the essence in this Service Order.
6. **TERM:** The term of this Service Order shall be as set forth in "Description of Services."
7. **COMPENSATION:** The compensation to be paid and the method of payment for Contractor for services provided shall be set forth in the "Description of Services", Contractor shall be responsible for all costs and expenses incident to the performance of this Service Order, including all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor, and all other of Contractor's costs of doing business.
8. **INDEPENDENT CONTRACTOR:** It is understood and agreed that Contractor shall act as and be an independent Contractor and not an employee, agent, joint venturer, or partner of City. As an independent Contractor, Contractor shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Contractor hereby expressly waives any claim it may have to any such rights. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Service Order.
9. **INSURANCE REQUIREMENTS:** Contractor agrees to have and maintain the policies set forth in "Insurance", 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 Jose 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 Service Order.

10. **CONTRACTOR'S DEFAULT:** City's Director of Finance or the director's authorized designee may, by written notice to Contractor, cancel this Service Order, in whole or from time to time in part: (I) if the Contractor fails to perform this services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the Services performed do not conform to contractual requirements or if Contractor fails to perform any of the other provisions of this Service Order, or fails to make progress so as to endanger performance of this Service Order, in accordance with its terms; or (iii) if the Contractor becomes insolvent or commits an act of bankruptcy. If this Service Order is canceled, City, in addition to all other rights afforded by law for Contractor's breach of contract, shall have the right to charge Contractor the amount by which the costs of obtaining the services canceled from another source exceed the prices specified herein, and City may set off any such charge against any amounts which may become payable to Contractor under this Service Order or otherwise. Notwithstanding City's right to cancel this Service Order for delay, Contractor shall not be liable to City for any damages therefore if: (I) Contractor's delay is due to causes beyond its control, and without its fault or negligence, provided Contractor promptly notifies City of the conditions causing the delay or, (ii) Contractor's delay is caused by the default of a subcontractor or supplier, but only if such default arises out of beyond the control of both Contractor and subcontractor or supplier and without the fault or negligence of either of them, and the articles or services to be furnished by them were not obtainable from other sources in sufficient time to permit Contractor to meet the required schedule.
11. **NON-FUNDING:** Each payment obligation 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. 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. This provision shall not be construed so as to permit City to terminate this Service Order or any products or services in order to acquire similar equipment or service from another party. Contractor agrees to render any assistance which City may seek in effecting a transfer of any right of City in this Service Order, or any part hereof, that is required of City pursuant to the securing of financing hereunder.
12. **COMPLIANCE WITH LAW:** Contractor shall in the performance of this Service Order comply with all applicable Federal, State and local laws and regulations.
13. **GOVERNING LAW:** City and Contractor agree that the law governing this Agreement shall be that of the State of California.
14. **VENUE:** In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.
15. **ASSIGNMENT OF CONTRACT:** Contractor shall not assign any of the work to be performed under this Service Order nor shall Contractor subcontract for work without City's prior written consent.
16. **WAIVERS:** Failure by City to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Service Order, or to exercise any right hereunder, shall not be

construed as a waiver or relinquishment of the future performance of any such item, covenant or condition or the future exercise of such right, but obligation of Contractor with respect to such future performance shall continue in full force and effect.

17. **CONFIDENTIAL INFORMATION:** All data, documents, discussions or other information developed or received by or for Contractor in performance of this Service Order are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.
18. **OWNERSHIP OF MATERIALS:** All reports, documents or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform the services required hereunder shall be and remain the property of City without restriction or limitation upon their use.
19. **CHANGES:** Buyer shall have the right by written notice to change the extent of the work covered by the Service 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 of Finance or director's authorized designee. Upon receipt of any such notice, Contractor shall promptly make the changes in accordance with the terms of the notice. If any such change causes an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment shall be negotiated promptly and the Service Order modified in writing accordingly. Contractor shall promptly deliver to Buyer, and in any event within (30) days after receipt of such notice, a statement showing the effect of any such changes in the delivery dates and prices, such statement to be supplemented within thirty (30) days from the date thereof by detailed specification of the amount of the price adjustment and supporting cost figures. Failure of Contractor to submit the statements within the above time limits shall constitute its consent to perform the change without increase in price, without claim for material rendered obsolete and without change in delivery schedule.
20. **TERMINATION:** The performance of work under this Service Order may be terminated in whole or from time to time in part by Buyer. City's Director of General Services is empowered to terminate this purchase order on behalf of City.
21. **CONTRACTOR'S BOOKS AND RECORDS:** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled 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 Contractor pursuant to this Service Order. Contractor shall maintain all documents and records which demonstrate performance under this Service Order for a minimum period of three (3) years, or for any period longer required by law, from the date of termination or completion of this service order. Any records or documents required to be maintained pursuant to this Service 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 Contractor'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 Contractor, Contractor's representatives, or Contractor's successor-in-interest.
22. **NON-DISCRIMINATION:**
  - a. Prohibition on Discrimination and Preferential Treatment.

Contractor shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, condition, or privileges of employment, subcontracting and purchasing.

Noting herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

b. **Compliance Reports.**

If directed by the Director of Equality Assurance of the City, Contractor shall file, and cause any subcontractor to file, compliance reports with the Director of Office of Equality Assurance. Compliance reports shall be in the forms and filed 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 Contractor or its subcontractor is complying with the nondiscrimination and non-preference provision 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 Contractor 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 Contractor and/or subcontractor to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor.

d. **Subcontracts.**

Contractor shall include provisions 1 through 3, 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 Non-discrimination Provisions.**

The non-discrimination provisions of this agreement may be waived by the Director of Office of Equality Assurance, if Director of Office of Equality Assurance determines that the Contractor has its own non-discrimination requirements or is bound in the performance of this agreement by the non-discrimination requirements of another government agency, and the non-discrimination provisions of the Contractor or other government agency are substantially the same as those imposed by the City.

23. **GIFTS:** Contractor 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 Jose Municipal Code. Contractor 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 Service Order by Contractor. In addition to any other remedies City may have in law or equity, City may terminate this Service Order for such breach.

24. **CONFLICT OF INTEREST:** Contractor shall avoid all conflict of interest or appearance of conflict of interest of this Service Order.

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

26. **WARRANTY AGAINST INFRINGEMENT:** If any article or service provided to City hereunder is covered, or is purported to be covered, by any patent or copyright, Contractor agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from and against any and all suits, claims, judgments and costs instituted or recovered against it by any person or persons whomsoever, on account of the purchase, use or resale of such article by City in violation or claimed violation of any rights under patent or copyright.
27. **INDEMNITY:** Contractor agrees to defend, indemnify and hold harmless the City, its officers, agents, and employees, from any and all claims and liability, including expenses, for injuries to persons or damage to persons or damage to or destruction of property caused by or resulting from the acts or omissions of Seller, its agents, suppliers or employees, in the performance of this purchase order.

## ATTACHMENT 8

### **INSURANCE REQUIREMENTS FOR VENDORS** (Garagekeeper's With Auto)

Vendor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from, or in connection with, the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the vendor's bid.

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

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Commercial General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001), including X, C, U where applicable.
2. Insurance Services Office form number CA 0001 (ED. 12/90) covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage also to include code 8 "hired autos" and code 9 "non-owned" autos.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

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

Vendor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$100,000 per accident.
4. A Garagekeeper's Legal Liability policy with a minimum limit of not less than \$100,000 per occurrence, providing at least coverage for repair shop operations.

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

Any deductibles or self-insured retentions must be declared to, and approved by the City. 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 vendor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

**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, its officials, employees, agents and contractors are to be covered as an additional insured 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, agents and contractors.
- b. The vendor's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be in 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, agents, or contractors.
- d. Coverage shall state that the 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 clause 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 the City.

**E. Acceptability of Insurers**

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

**F. Verification of Coverage**

Vendor shall furnish the City with certificates of insurance and with original endorsements 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.

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 Management Department  
200 E. Santa Clara St., Wing 2<sup>nd</sup> Floor  
San Jose, CA 95113

Attention: Andrea Cervantez

Direct: (408) 535-7063

Main: (408) 535-7000

Fax: (408) 286-6492

[andrea.cervantez@sanjoseca.gov](mailto:andrea.cervantez@sanjoseca.gov)

**G. Subcontractors**

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