



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Mayor Chuck Reed

SUBJECT: APPROVAL OF AGREEMENT FOR AUDITOR SEARCH SERVICES
DATE: October 24, 2007

Approved

Chuck Reed

Date

10/26/07

The purpose of this memorandum is to present the City Council with An agreement for a search firm for the City Council's recruitment of a new City Auditor.

RECOMMENDATION

Approve the attached agreement with Alliance Resource Consulting LLC.

BACKGROUND

The Office of the City Auditor plays an integral role in the oversight process. Findings and recommendations developed through the audit process help save tax dollars, increase revenue, and improve the management of City and Redevelopment Agency programs. Additionally, independent reviews provide the City Council, City management, the Redevelopment Agency, and the general public with important, objective information.

This is a critically important personnel appointment for the City Council, and we need to begin the national recruitment process. On September 11, 2007 the City Council approved the executive search plan for the recruitment of a new City Auditor as outlined in my August 30, 2007 memorandum.

Requests for proposals were solicited from three search firms from the City's pre-qualified vendor list for executive search services: Alliance Resource Consulting LLC, Avery Associates, and Bob Murray and Associates. Alliance Resource Consulting LLC was selected because of its success with similar searches: County Auditor, Broward County, FL (2003), General Auditor for the Metropolitan Water District (2002), Independent Commission Auditor for Miami, Dade County (2004), and the City Auditor, City of San Diego, CA (2005).

Honorable Mayor and City Council
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COST IMPLICATIONS

It is anticipated that professional fees and reimbursable expenses for the recruitment will cost approximately \$26,500. Additional costs may be incurred for candidate travel dependent upon locations of qualified candidates.

Attachment: Agreement for Consultant Services with Alliance Resource Consulting LLC.

**AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
ALLIANCE RESOURCE CONSULTING LLC**

THIS AGREEMENT is made and entered into this ____ day of _____, 2007, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and ALLIANCE RESOURCE CONSULTING LLC, a California limited liability company (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 retroactive from September 26, 2007 and shall extend through September 30, 2008, 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, including both payment for professional services and reimbursable expenses, shall not exceed Twenty-Six Thousand Five Hundred Dollars (\$26,500). 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.

Upon completion of all services as specified in EXHIBIT B, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation. Each month, CONSULTANT shall furnish to the CITY a statement that includes a detailed record of the month's actual reimbursable expenditures, along with supporting documentation for the expenditures.

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 Director of Human Resources ("Director") 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 and reimbursable expenses incurred 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: City of San José-- Human Resources
Attn: Mark, Danaj, Director
200 East Santa Clara Street, 2nd Floor Wing
San José, CA 95113

To CONSULTANT: Eric Middleton, Managing Partner
Alliance Resource Consulting LLC
One World Trade Center Suite 420
Long Beach, CA 90025

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.

APPROVED AS TO FORM:

NORMAN SATO
Chief Deputy City Attorney

"CITY"

CITY OF SAN JOSE, a municipal corporation

By _____

DEANNA SANTANA
Deputy City Manager

"CONSULTANT"

ALLIANCE RESOURCE CONSULTING
LLC, a California limited liability company

ERIC MIDDLETON
Managing Partner

EXHIBIT A

RECITALS

WHEREAS, the CITY OF SAN JOSE desires to obtain consultant services to perform an executive recruitment for the position of City Auditor ; and

WHEREAS, ALLIANCE RESOURCE CONSULTING LLC has the necessary professional expertise and skill to perform such services;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain ALLIANCE RESOURCE CONSULTING LLC as CONSULTANT to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

EXHIBIT B
SCOPE OF SERVICES

CONSULTANT shall perform the following services relating to the executive recruitment for the position of City Auditor:

Development of Recruitment Profile

CONSULTANT shall coordinate input (derived from CONSULTANT conducting and/or facilitating individual meetings with the Mayor or City Council and from all stakeholders and stakeholder groups as identified by the CITY to develop a profile for the position including:

- Issues and challenges facing the City and the office of the City Auditor.
- Desired training, experience, leadership style and other personal characteristics of candidates.
- Relevant information about the Auditor's office such as budgets, organization charts, etc.

CONSULTANT will submit the position profile in draft form to the Deputy Director of Human Resources for approval and/or modification. After approval by CITY, the position profile will be used to provide information about the position to candidates.

Preparation of Recruitment Brochure and Placement of Advertisements

CONSULTANT shall:

1. Prepare a recruitment brochure and present it to the CITY for review and approval prior to printing.
2. Develop advertisements and place them for publication in appropriate magazines, journals, newsletters, websites, job bulletins, and resources including publications that reach out to diverse interest groups.

Recruitment

CONSULTANT shall:

1. Identify and contact prospective candidates.
2. Contact leading and respected professionals to request assistance in identifying prospective candidates.
3. Advertise and outreach to engage a diverse candidate pool.
4. Execute a direct mail campaign by distributing a copy of the recruitment brochure to a targeted audience and key professional associations.

5. Select quality candidates for consideration from past CONSULTANT searches.

Resume Review, Personal Interviews and Recommendations

CONSULTANT shall:

1. Review, acknowledge and evaluate all resumes and other supporting materials received.
2. Conduct preliminary screening interviews with the most promising candidates. To the extent possible, CONSULTANT will conduct screening interviews in person.
3. Prepare a client report, which summarizes the results of the recruitment process and recommendations of candidates whose backgrounds and experience closely match the requirements of the position. CONSULTANT will meet with the Interim City Manager to review the report and assist the CITY in selecting a group of five to ten finalists for further evaluation.

Selection Process

CONSULTANT shall design a selection process and assist in scheduling final candidates for interviews with the City Council and Mayor. CONSULTANT will provide interviewing and selection tips, suggested interview questions and rating forms. CONSULTANT will be present at the interview/assessment center to facilitate the interview process.

Completion of Reference and Background Checks

CONSULTANT shall conduct reference checks of the top one to three candidates as directed by CITY, and also arrange for background checks conducted by a licensed firm (including credit report, court records check, driving record, academic degree confirmation, and newspaper article search), as directed by CITY. CONSULTANT will provide CITY with a detailed, supplemental written report on each candidate.

EXHIBIT C
SCHEDULE OF PERFORMANCE

CONSULTANT commenced the services required under this AGREEMENT on September 26, 2007. The estimated time for completion is September 30, 2008.

Anticipated Schedule

<u>Activity</u>	<u>Date</u>
Develop CITY input on Candidate Profile	September 26, 2007
Complete Candidate Profile	October 26, 2007
Publication of recruiting materials	October 31, 2007
Closing date for applications	November 30, 2007
Present recommendations of finalists to the Mayor	December 14, 2007
Panel interviews in San Jose	December, 2007
Interviews by Council/Mayor of recommended finalists	January, 2008
Appointment	February, 2008

EXHIBIT D
COMPENSATION

CITY agrees to compensate CONSULTANT for all services performed in accordance with the terms and conditions of this AGREEMENT, as specified in EXHIBIT B, for a fixed professional fee of Eighteen Thousand Dollars (\$18,000).

The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed Twenty-Six Thousand Five Hundred Dollars (\$26,500). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

Reimbursable expenses shall include actual expenses associated with this executive search for CONSULTANT's travel, advertising, printing and binding, postage and delivery, clerical, background checks, long distance telephone charges and other charges which have been specifically authorized in advance by the Director. The total amount of reimbursable expenses shall not exceed Eight Thousand Five Hundred Dollars (\$8,500).

EXHIBIT E
INSURANCE

CONSULTANT, at CONSULTANT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; 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 "nonowned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions.

B. Minimum Limits of Insurance

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

4. 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 officers, employees, agents and contractors; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. **Other Insurance Provisions**

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

1. Commercial General Liability and Automobile Liability Coverages
 - a. Insured. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. Contribution Not Required. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
 - c. Provisions Regarding the Insured's Duties After Accident or Loss. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
2. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits

except after thirty (30) days' prior written notice has been given to CITY's Risk Manager.

E. Acceptability of Insurers

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

F. Verification of Coverage

CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

CITY OF SAN JOSE
Department of Human Resources
Risk Management Division
200 East Santa Clara Street, 3rd Floor Wing
San Jose, CA 95113

G. Subcontractors

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

EXHIBIT F

SPECIAL PROVISIONS

Retroactive Services.

It is understood and agreed that CONSULTANT has provided services prior to the execution of this AGREEMENT in anticipation of its execution. If CITY accepts and approves the services provided by CONSULTANT prior to the date of this AGREEMENT, CITY agrees to compensate CONSULTANT for those services in accordance with the terms of this AGREEMENT. However, in no event shall CONSULTANT be compensated for work performed for CITY prior to September 26, 2007.

WARRANTY AND INDEMNITY.

CONSULTANT represents and warrants to CITY that any visual or printed media ("Media") prepared hereunder shall be CONSULTANT's original and unpublished composition and that the Media will contain no defamatory or unlawful matter and will in no way infringe upon or violate the copyright, trademark or proprietary rights of any person whomsoever. CONSULTANT agrees to indemnify and hold CITY harmless from any suit, demand, or claim made against CITY based on defamation or violation of copyright, trademark or proprietary infringement, and CONSULTANT further agrees to pay any judgment or reasonable settlement offer resulting from any such suit, demand, or claim, and to pay any reasonable attorneys' fees incurred by CITY in defending against such suit, demand, or claim.

GRANT OF PUBLISHING RIGHTS, COPYRIGHT AND TRADEMARK.

CONSULTANT hereby grants to CITY and its successors and assigns the sole and exclusive right to copyright, trademark and publish any Media in the United States and Canada and other countries of the world. Any copyright or trademark shall be solely in the name of the CITY and the CITY shall remain the sole owner of such copyright or trademark. CONSULTANT hereby grants to CITY the right and power to apply in its name or otherwise for such copyright or trademark or renewal or extension thereof as the CITY may deem proper and all right, title, and interest in any such copyright or trademark, renewal, or extension shall vest exclusively in CITY and its successors and assigns.