

**INSTRUCTIONS FOR USING AND COMPLETING  
THE FOLLOWING MASTER CONSULTANT AGREEMENT FORMS FOR  
CONSULTANTS PERFORMING WORK ON PUBLIC WORKS PROJECTS:**

1. Master Consultant Agreement
2. Service Orders Issued Pursuant to a Master Consultant Agreement
3. Amendments to Master Consultant Agreements
4. Amendments to Service Orders

**1.**

**GENERAL INFORMATION**

**1.1 Contracting for Consultant Services:** There are 2 basic methods of contracting for consultant services for a public works project. One method uses a standard consultant agreement. The other method uses a master consultant agreement.

**1.1.1 Standard Consultant Agreement:** Generally, you will use a standard consultant agreement when you want the consultant to perform a **known** scope of services. The scope of services, along with the compensation for those services, is specified in the standard consultant agreement.

Most of the time – but not always – the known scope of services is performed for a specific capital project. For example, you would use a standard consultant agreement when you are contracting with a consultant to perform all design work related to the construction of a new community center.

You can also use a standard consultant agreement to contract with a consultant to perform the identical scope of services at different locations or for different projects. The location or project would be specified in the notice to proceed issued by the City. An example of this would be the consultant performing a standard set of sewer assessment services at different locations throughout the agreement term.

**1.1.2 Master Consultant Agreement:** Generally, you will use a master consultant agreement when the bulk of the services you want the consultant to perform in the future are unknown at the time you enter into the agreement. The master consultant agreement is basically a retainer agreement that sets forth the basic rates of compensation and the other general terms and conditions applicable to the consultant's services. The specific scope of services that a consultant is to perform, the compensation for those services, and the time for completing the services are set forth in individual service orders issued in accordance with the master consultant agreement. Service orders can be issued for a whole range of services and for a number of different projects.

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**1.2 Purpose of These Instructions:** These instructions explain how to complete the various forms related to master consultant agreements.<sup>1</sup> The standard consultant agreement forms are addressed in a separate set of instructions.

The following master consultant agreement forms are attached to these Instructions:

Attachment No. 1:	Form Master Consultant Agreement
Attachment No. 2:	Form Service Order
Attachment No. 3:	Form Master Consultant Agreement Amendment
Attachment No. 4	Form Service Order Amendment

The forms were developed by the Office of the City Attorney in coordination with the Department of Public Works. They were developed to be used to hire a consultant who will be performing services to further one or more City public works projects. Both the Office of the City Attorney and the Department of Public Works have approved the use of these forms.

You need to use these forms whenever you enter into a master consultant agreement that will further a City public works project and whenever you issue a service order pursuant to such a master consultant agreement.

**1.3 Changes to the Forms:** In order to maintain the ongoing integrity of the forms and to maximize efficiency in processing the forms, you are **not** authorized to change the forms except as follows:

- These instructions expressly state that you can change the particular portion of the form at issue, or
- You obtain prior approval for making the specific change from your division manager, and the Deputy or Senior Deputy City Attorney assigned to your division.

Changes to the forms fall into 2 different categories. One category of changes is those that are needed to accommodate the needs of your specific project. Although the form documents should work in the overwhelming majority of situations, this category of changes recognizes that a form can not accommodate every situation. Accordingly, you should feel free to request changes to the forms as needed to accommodate the special needs of your project.

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<sup>1</sup> Note that the master consultant agreement form that includes a schedule or menu of specific services as an exhibit has been eliminated and should not be used. In its place will be an ongoing attempt to standardize scopes of services. See, the "Note" after Subsection 3.2.2.3 of these Instructions.

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The other category of changes is those involving permanent modifications to the form. This category of changes is not project based, but is based on the desire to improve and modify the forms to accommodate the changing needs of the City with regard to obtaining consultant services to further its public works projects. You should feel free to suggest changes falling into this category. The intent of the Office of the City Attorney is to meet with applicable departments at regular intervals to discuss form improvements.

- 1.4 Review and Approval by the Office of the City Attorney:** The Office of the City Attorney must review and approve only certain master consultant agreements, service orders and amendments to service orders. The following instructions are for determining when the Office of the City Attorney must review and approve your document.

**NOTE:** Even if your document does not have to be reviewed and approved by the Office of the City Attorney, you are always free to request such review and approval.

- 1.4.1 Projects Receiving State or Federal Funding:** The conditions for receiving state or federal funds often include incorporating special conditions and requirements into the various construction and consultant agreements for the project. In order to help ensure that the City complies with any such conditions and requirements, the Office of the City Attorney must review and approve any master consultant agreement, service order or amendment to a service order that relates to a project receiving state or federal funds.

Review and approval by the Office of the City Attorney is required regardless of the dollar value of your document. When you transmit the document to the Office of the City Attorney for review and/or approval, please indicate in the transmittal that the document relates to a project receiving state or federal funds.

- 1.4.2 Projects *Not* Receiving State or Federal Funding:** The Office of the City Attorney does *not* need to review and approve a master consultant agreement, a service order, an amendment to a master agreement, or an amendment to a service order that meets *both* of the following requirements:

- The maximum compensation payable under the master consultant agreement, service order or amendment is equal to or less than \$100,000, **and**
- You use the forms approved by the Office of the City Attorney – which are attached to these Instructions - **without making any changes to them.**

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If your master agreement, service order or amendment is over \$100,000, then the Office of the City Attorney must review and approve it.

Before you make any change to one of the attached forms that has been approved by the Office of the City Attorney, the change must be reviewed and approved by your assigned attorney. Such review and approval is necessary regardless of the significance of the change or whether the change was approved by your division manager.

- 1.5. Including Form Master Consultant Agreement in the Solicitation:** A solicitation for consultant services can be in the form of a request for proposals (“RFP”) or a request for qualifications (“RFQ”). Both types of solicitations include an exemplar consultant agreement as an attachment and a provision requiring the proposer to identify any exceptions it may have to the exemplar agreement. The exemplar consultant agreement is ultimately the basis of the agreement between the City and the selected consultant.

If your consultant solicitation is for a master agreement, you need to make sure you attach the master consultant agreement form to the solicitation. The Office of the City Attorney must review the exemplar master consultant agreement **before you attach it to the solicitation** only if you make a change to the form.

## **2.**

### **COMPLETING THE AGREEMENT FORM**

- 2.1 Attaching Exhibits:** Make sure you attach the appropriate exhibits to your master consultant agreement.
- 2.1.1 Exhibit A - Service Order Form:** The complete service order form is attached to the master consultant agreement as **Exhibit A**. See Section 3 of these Instructions for directions on completing this exhibit.
- 2.1.2 Exhibit B - Schedule of Rates & Charges:** The Schedule of Rates and Charges is attached to the master consultant agreement as **Exhibit B**. The Schedule of Rates and Charges *must* set forth at least the following: (a) the consultant’s billing rates and charges for the services, and (b) any reimbursable expenses ***in addition*** to those identified in Section 10.5 of the master consultant agreement form. The Schedule of Rates and Charges also *may* include the billing rates and service charges for any subconsultants.
- 2.1.2.1 No Increases:** The Schedule of Rates and Charges should ***not*** include any provisions other than the rates and charges of the

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consultant and any subconsultantss. The schedule should not include any provisions regarding increases in the rates and charges – this issue is addressed in subsection 10.8 of the master consultant agreement form, entitled “Schedule of Rates and Charges.”

**2.1.2.2 Reimbursable Expenses:** If the Schedule of Rates and Charges contains any reimbursable expenses, you need to make sure the language is consistent with subsection 10.5 of the master consultant agreement form.

**2.1.3 Exhibit C - Insurance Requirements:** The insurance requirements are attached to the master agreement as **Exhibit C**. You need to coordinate with the City’s Risk Manager to make sure you are attaching the most current insurance requirements, and that you are attaching insurance requirements and limits appropriate for your master consultant agreement.

**2.2 CPMS Contract Number:** Under the title of the master agreement insert the “CPMS Contract No.” as indicated. The “CPMS Contract No.” is the capital project management system (“CPMS”) number for the master agreement followed by a hyphen and the number 1, 2, 3, etc. as needed to create a unique identifying number for your contract.

For example, if the CPMS number for your master agreement is “6661,” the “CPMS Contract No.” would be “6661 – 1.” If multiple consultants are selected from a single master agreement procurement, the “CPMS Contract No.” for the first master agreement would be “6661-1.” The “CPMS Contract No.” for the second master agreement would be “6661-2.” In this way, each master agreement will have a unique identifying number.

***You will use the unique “CPMS Contract No.” for your master agreement on all service orders and amendments that are related to your agreement.*** The “CPMS Contract No.” will identify the service orders and amendments as being related to the master agreement. Accordingly, you will use the unique “CPMS Contract No.” on a service order ***even if the service order is for a project that has a different CPMS number.***

**2.3 Consultant’s Legal Name:** You must insert the consultant’s full legal name and business entity form in the first paragraph of the master consultant agreement. Confirm that the name and business entity form are correct. You can obtain and verify the legal name of a registered California corporation, limited partnership, limited liability partnership, and limited liability company at the Secretary of State’s website (<http://www.ss.ca.gov/business/business.htm>) using the “California Business Search” function.

The following is a guide for properly completing the name and business entity form:

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<u>Legal Form of Business</u>	<u>Correct Reference</u>
<i>For an individual:</i>	James L. Jones, an individual
<i>For an individual with a “dba”:</i>	James L. Jones, an individual doing business as Jones Enterprises
<i>For a California corporation:</i>	Argus Industries, a California corporation
<i>For an out-of-state corporation:</i>	J.P.J. Contractors, a [State of Formation] corporation authorized to do business in California
<i>For a general partnership:</i>	Garcia & Smith, a [State of Formation] general partnership
<i>For a limited partnership:</i>	Gong Developers, a [State of Formation] limited partnership
<i>For a corporation doing business under another name:</i>	Whitworth International, Inc., a [State of Formation] corporation doing business as Project Management Services
<i>For a limited liability company:</i>	C&C Company, a [State of Formation] Limited Liability Company
<i>For a limited liability partnership:</i>	Smith and Jones LLP, a [State of Formation] Limited Liability Partnership

**2.4 Contract Date:** The Clerk’s Office will complete the Contract Date in the second paragraph of the master consultant agreement. Neither City staff nor the consultant should insert any information regarding the Contract Date.

**2.5 General Description of Profession Consulting Services:** In Subsection 1.1 of the master consultant agreement, insert a general description of the type of services the consultant will provide. If the master consultant agreement relates to a specific project, include the project name.

### Examples

- Architectural Design Services for Various Capital Projects
- Project Management Services for Various Capital Projects
- Testing and Inspection Services for the San Jose Convention Center Project

**2.6 Director:** In Subsection 1.3 of the master consultant agreement, insert the City department for which the director is responsible for administering the agreement.

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- 2.7. Agreement Expiration Date:** In Section 2 of the master consultant agreement, insert the agreement expiration date using the following format: Month DD, YYYY.
- 2.8. NOTE - Compensation for Service Order Preparation:** Subsection 3.4.4 of the master consultant agreement provides that the City will pay the consultant for the time spent preparing a service order proposal **if the proposal is used to prepare the final service order.** Subsection 3.4.3 states that the service order proposal prepared by the consultant must include a statement of proposed costs associated with the consultant's preparation of the proposal.
- 2.8.1 Amount of Compensation:** If the consultant is entitled to compensation for the preparing the service order, then the amount of compensation will be a lump-sum negotiated between the City and the consultant. The agreed upon lump-sum amount will be set forth in **Attachment C** ["Compensation Table"] of each Approved Service Order.
- 2.8.2 Payment of the Compensation:** The City will pay the consultant the lump-sum within 20 business days of the Director's execution of the Approved Service Order. (See, Subsection 10.7 of the Master Agreement.)
- 2.9 Maximum Total Compensation:** In Subsection 10.1 of the master consultant agreement, insert the Maximum Total Compensation in numeric form. You do not need to spell out the number.

**NOTE:** The Maximum Total Compensation is the maximum compensation for all Approved Service Order that can be issued pursuant to your master consultant agreement. The City does not need to appropriate the Maximum Total Compensation at the time it enters into the master consultant agreement. This is because entering into the master consultant agreement does not obligate the City to issue any service orders. The City's obligation to pay the consultant arises from the issuance of individual service orders. Accordingly, you will need to identify a proper appropriation when you issue each service order under the master consultant agreement.

- 2.10 Notices:** Be sure to complete the information required by Subsection 20.3 of the master consultant agreement form regarding to whom notices are to be provided.
- 2.11 Tax Certification:** Right before the signature block on the master consultant agreement form, the consultant is required to make a tax certification. Be sure that the consultant initials whichever one of the certifications is appropriate. You can not process the consultant agreement until the consultant has made the certification.

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- 2.12 City Signature Block - Person Executing Agreement for City:** When the City Clerk will execute the master agreement on behalf of the City Council, this item should read as follows: DENNIS D. HAWKINS, CMC. When the City Manager will execute the master agreement, this item should set forth the name and title of the person from the City Manager's office who is authorized to execute agreements.
- 2.13 City Signature Block - City Attorney Approval as to Form:** See Subsection 1.4 of these Instructions, entitled "Review and Approval by the Office of the City Attorney," for the requirements regarding when the Office of the City Attorney must review and approve your master consultant agreement. You have the following 2 choices:
- 2.13.1 First Box:** Mark the first box if the Office of the City Attorney does *not* have to review and approve your master consultant agreement.
- 2.13.2 Second Box:** Mark the second box if the Office of the City Attorney has to review and approve your master consultant agreement and have your assigned attorney review and sign the contract.
- 2.14 Consultant Signature Block - Person Executing Agreement for Consultant:** Insert the name of the person(s) who will execute the master consultant agreement for the consultant. Confirm that the person executing the master consultant agreement for the consultant has the authority to do so applying the following rules:

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<u><b>Type of Entity</b></u>	<u><b>Authorized Signatories</b></u>															
<p><i>For a corporation:</i></p>	<p>Pursuant to California Corporations Code Section 313 proof of authority to execute the Agreement is established if one of the corporate officers listed in Column A below and one of the corporate officers listed in Column B below <b><u>both</u></b> sign the documents.</p> <table border="1" data-bbox="418 478 1408 827"> <thead> <tr> <th data-bbox="418 478 821 548"><b>Column A</b></th> <th data-bbox="824 478 979 548"><b>AND</b></th> <th data-bbox="982 478 1408 548"><b>Column B</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="418 552 821 621">Chairman of the Board, or</td> <td data-bbox="824 552 979 621"></td> <td data-bbox="982 552 1408 621">Secretary, or</td> </tr> <tr> <td data-bbox="418 625 821 695">President, or</td> <td data-bbox="824 625 979 695"></td> <td data-bbox="982 625 1408 695">Assistant Secretary, or</td> </tr> <tr> <td data-bbox="418 699 821 768">Vice President.</td> <td data-bbox="824 699 979 768"></td> <td data-bbox="982 699 1408 768">Chief Financial Officer, or</td> </tr> <tr> <td data-bbox="418 772 821 827"></td> <td data-bbox="824 772 979 827"></td> <td data-bbox="982 772 1408 827">Assistant Treasurer</td> </tr> </tbody> </table> <p>Any combination of signatures other than those listed above or a single signature must be accompanied by a copy of the Board minutes, resolution, or articles of incorporation stating that the individual or individuals have the authority to bind the corporation.</p>	<b>Column A</b>	<b>AND</b>	<b>Column B</b>	Chairman of the Board, or		Secretary, or	President, or		Assistant Secretary, or	Vice President.		Chief Financial Officer, or			Assistant Treasurer
<b>Column A</b>	<b>AND</b>	<b>Column B</b>														
Chairman of the Board, or		Secretary, or														
President, or		Assistant Secretary, or														
Vice President.		Chief Financial Officer, or														
		Assistant Treasurer														
<p><i>For a general partnership, a limited partnership, or a limited liability partnership:</i></p>	<p>All the general partners must sign the Agreement (a general partnership agreement is sufficient to establish the names of all general partners) unless the person signing the Agreement provides proof that he/she has authority to bind the partnership.</p>															
<p><i>For a limited liability company (LLC)</i></p>	<p>Copies of the following documents should be provided to establish who has authority to bind the LLC: (1) State Forms LLC-1 and LLC-12 if the company was formed in California; and (2) the operating agreement for the LLC – whether formed in California or another state.</p>															
<p><i>For a sole proprietor, or a sole proprietor doing business under another name:</i></p>	<p>Only the individual who owns the business can sign. Either a Fictitious Business Name Statement or a San Jose Business Tax Certificate is sufficient to establish the authority of an individual to bind a sole proprietorship.</p>															

**3.**

**COMPLETING THE SERVICE ORDER FORM**

The service order form consists of the following parts:

- A cover page.
- An **Attachment A**, entitled “Tasks.”
- An **Attachment B**, entitled “Terms and Conditions.”
- An **Attachment C**, entitled “Compensation Table.”

For the most part, filling in the blanks on the forms that are part of a service order should be self explanatory. The following instructions provide some general information that will assist you in completing the forms.

**3.1 Cover Page:** The cover page is the first page of the service order. Attached to the cover page are Attachment A (Tasks), Attachment B (Terms and Conditions) and Attachment C (Compensation). You should complete the cover page as follows:

**3.1.1 Line No. 1.a:** Insert the CPMS Contract No. associated with the master agreement pursuant to which the service order is being issued. See Subsection 2.2 of these Instructions for a discussion of the master agreement CPMS number.

**3.1.2 Line No. 1.b:** Insert the AC number associated with the master agreement pursuant to which the service order is being issued.

**3.1.3 Line No. 2:** Insert the approved service order number. The approved service order number that you insert should be the next number in sequence following the previously **approved** service order(s) under the relevant master consultant agreement. Sometimes the numbering can become an issue if there are one or more other pending service orders.

**3.1.4 Line No. 3:** Insert the Consultant’s full legal name as it appears on the master consultant agreement.

**3.1.5 Line No. 4:** Insert the complete name of the project for which the Consultant will provide services.

**3.1.6 Line No. 5:** Insert the location of the project identified on line number 4. The project location that you insert generally should be a street address if one is available. If a street address is not available, you can use an assessor parcel number or some other general description that reasonably

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identifies the project location (e.g. “200 feet west of the intersection of Hillsdale and Cherry Avenues”).

- 3.1.7 Line No. 6:** This is standard provision. It does not require you to insert any information.
- 3.1.8 Line 7.a:** Insert the total *unencumbered* amount under the master agreement pursuant to which the service order is being issued. The unencumbered amount is the “Maximum Total Compensation” under the master consultant agreement less the sum of the amounts encumbered on all approved service orders issued under the master consultant agreement.
- 3.1.9 Line 7.b:** Insert the maximum service order compensation for your service order. This will be the maximum amount that you will pay the consultant for completing the services and deliverable required by your service order.
- 3.1.10 Line 7.c:** Insert the new, unencumbered balance left on the master consultant agreement after subtracting line 7.b from line 7.a.
- 3.1.11 Line 7.d:** On line 7.d You need to (a) identify the unexpended appropriation(s) that will be used to pay for your service order and (b) obtain the signature of the person authorized to certify the existence of the unexpended appropriation(s) and that the amount of your service order will be encumbered against the unexpended appropriation(s). This certification is needed because funds for the master agreement generally are not appropriated at the time the City enters into the agreement. Funds are appropriated and encumbered with the issuance of each service order.
- 3.1.12 Line 8:** This is the signature line for the approval of the division analyst. Get this signature after the signature needed for on line 7.d.
- 3.1.13 Line 9:** This is the signature line for the approval of the consultant. Get this signature after the signatures needed for lines 7.d and 8.

**NOTE:** Do not make any modifications to the service order after the consultant’s signature without first obtaining the consultant’s written consent to the change and consulting with the attorney assigned to review your agreements.

- 3.1.14 Line 10:** With regard to obtaining the approval of the Office of the City Attorney, you need to check whichever box is applicable to your service order. Check the first box if you do not need to obtain the signature of a senior deputy or deputy city attorney. You do not need to obtain the signature of a senior deputy or deputy city attorney if the maximum compensation for the service order is \$100,000 or less **and** you have **not** changed the service order form approved by the Office of the City Attorney. In all other situations, you need to check the second box and

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obtain the signature of the senior deputy or deputy city attorney assigned to your department.

If you need to obtain the signature of the attorney assigned to your department, do so after you have obtained the signatures required on lines 7.d, 8 and 9.

**3.1.15 Line 11:** The last signature you need to obtain is that of the Director or the Director's authorized designee. Once the Director or the Director's authorized designee signs your service order, it becomes an "Approved Service Order."

**NOTE:** The order of obtaining signatures is as follows:

1. Authorized signature of the person certifying the appropriation,
2. The division analyst approval,
3. The consultant's approval,
4. Your attorney's approval, if necessary, and
5. The approval of the Director or the Director's designee.

**3.2 Completing Attachment A of Service Order Form:** **Attachment A** of the service order, entitled "Tasks," is where you set forth the specific services and deliverables that the consultant must provide. The form provides a method and structure for organizing the description of services and deliverables. The following instructions will help you complete **Attachment A**.

**3.2.1 General Description of Project:** This is an optional provision. You would want to include a general description of the project when doing so will help clarify the description of the services. Consider including information such as the following:

- construction budget
- project delivery method
- unusual site conditions or constraints
- significant milestones
- expected roles and responsibilities of the consultant and any subconsultants
- any other information you feel is important for the consultant to know

If you decide to omit the project description, be sure to **delete it from the Attachment A form**.

**Example:** If the service order is for the design of a fire station, you might include something like the following as a general description:

The Project involves the City constructing a new fire station through the design-bid-build delivery method. The Consultant will provide design services culminating in the completion of a 100 percent design package that the City will use to publicly bid the Project. The Consultant will also provide bidding and construction administration services.

The Project location is an approximately one-acre, rectangular site. The fire station structure will be a one company, two-story facility, with three apparatus bays, a community room and associated restroom. The footprint of the fire station structure will be approximately 5,000 square feet, and the total square footage of the two-story structure will be approximately 9,000 square feet in size. The Consultant must design the structure so that, at some future time, the City can expand the footprint by approximately 2,600 square feet to a full two-company station. The Consultant will also need to design other improvements on the Project site, such as driveways, parking and landscaping.

The Consultant's design will need to comply with all state and local requirements applicable to an "Essential Services Building." The Consultant's design will need to meet or exceed the minimum standards for obtaining Leadership in Energy and Environmental Design ("LEED") silver level certification.

In addition, the Consultant will need to provide a complete design that the City can construct within the Project's construction budget of \$4,200,000 ("Construction Budget"). The Construction Budget includes the following: (a) the cost of labor, materials and equipment necessary to construct the Project, (b) reasonable overhead and profit for the construction contractor, and (c) a reasonable contingency to accommodate changing market conditions and reasonable changes in work during construction. The Construction Budget does not include the Consultant's compensation, the cost of City staff time, or the cost of land or rights of way.

**3.2.2 Tasks:** **Attachment A** is organized around individual "task" descriptions. Each task description consists of the following: (1) a title, (2) a description of the services, (3) a description of the deliverables, and (4) a time for completing the services and providing the deliverables. You can add as many tasks as you want to **Attachment A**. In most situations, it is probably a good idea to break the work down into small, discrete tasks. Beyond this, you need to use your judgment with regard to the best way to break down and sequence the description of the services.

The following provides some guidelines and information that may be helpful in completing each task.

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**3.2.2.1 Title:** Each title should be brief and descriptive of the services that the consultant will need to provide under the task. For example, for design consultant services you might have one task titled “Conceptual Design Services” and another task titled “30% Design Services.”

**3.2.2.2 Be Clear on Who Provides the Service:** When drafting the description of the services and deliverables be sure that you clearly state who is responsible for performing a service and providing a deliverable as between the consultant and the City. For example, instead of writing the following:

“This task consists of public information regarding the Project site being gathered.”

You should write the following:

“This task consists of the Consultant gathering public information regarding the Project site.”

**3.2.2.3 Description of Services:** You should try to use the same or similar language to describe a service as has been used to describe a similar service in previous service orders. You should also include in the description of the services any background information that is needed to fully understand the work. For example, if the services involve modifying a report previously prepared by the consultant, you should make reference to the consultant’s prior work.

**NOTE:** With regard to using the same or similar language to describe a service, the Department of Public Works is looking into creating on its intranet site a searchable database consisting of various scopes of services. The idea would be to include in the database various scopes of services that the Department and the Office of the City Attorney have reviewed and believe represent good examples for a particular type of service. You would be able to download the examples and use them in your service order.

**3.2.2.4 Optional or Contingent Services:** Often times the consultant’s performance of a particular service will be optional or contingent.

An optional service is a service that the City has the discretion to require the consultant to perform. Generally, there is some time by which the City must exercise its option to have the consultant perform the “optional” service.

A contingent service is a service that a consultant might or might not have to perform depending upon the outcome of some

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other service. For example, assume that the consultant is required to perform a burrowing owl survey before construction commences and that you want the consultant to perform services to protect any active burrowing owl nests discovered as a result of the survey. The performance of services to protect active burrowing owl nests is contingent upon the survey revealing active burrowing owl nests.

Each optional and contingent service should be drafted as an independent, separate task. For example, in the burrowing owl survey example above, one task would be for the consultant to perform the burrowing owl survey. The other task would be to perform the services to protect any active burrowing owl nests if the survey reveals the existence of such nests.

You should clearly indicate in the description of the service that the performance of the task is optional or contingent.

**NOTE:** Importantly, the Compensation Table attached to the service order must reflect the optional or contingent nature of a task. That is, the Compensation Table must reflect the amount of compensation if the consultant performs the optional or contingent service and if the consultant does not perform the optional or contingent service.

For example, the compensation for the entire service order should not be a single, lump-sum amount if the work includes a service that is optional or contingent. The compensation should reflect the amount payable if the optional service is performed and the amount payable if the optional service is not performed.

**3.2.2.5 Deliverables:** For each task, you need to identify the deliverables that the consultant must provide for the specific services. If there are no deliverables associated with the services, then just write “No Deliverables.”

**3.2.2.6 Completion Time:** The form service order does not include a separate section setting forth a completion schedule for all work. Rather, for each task, you need to indicate the time by which the consultant must complete the services and deliverables. You have 2 basic options with regard to specifying a completion time:

**Box No. 1:** If you check this box, you must provide a specific completion date.

**Box No. 2:** If you check this box, you must provide a specific number of ***business*** days within which the consultant must

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complete the work. You must include the event from which the calendar days begin to run, e.g., “30 Business Days from the date the Director executes this Service Order,” or “45 Business Days from the completion of the previous task”.

**3.3 Completing Attachment “B” of Service Order Form:** Attachment B of the service order form sets forth terms and conditions that are specifically applicable to the service order.

**3.3.1 Item No. 1:** Item number one requires you to provide information regarding the City’s project manager for the service order.

**3.3.2 Item No. 2:** Item number two requires you to set forth information regarding the consultant’s project manager and other staffing who will be providing the services.

**3.3.2.1 Project Manager Information:** In the top part of the table, identify who will act as the project manager for the consultant. Insert the contact information as indicated on the form.

**3.3.2.2 Other Staffing Information:** In the bottom part of the table, identify each consultant and/or each professional employee of the consultant **who will be principally responsible for performing the work** and each individual’s assignment. Do *not* identify individuals who do not provide any services, who engage in clerical or administrative activities only, or whose work receives significant review.

**NOTE:** The consultant will be contractually bound to provide the named individual(s) to provide the services required by the service order. This is an important protection for the City. There have been instances in the past when the City has engaged a consultant believing a particular individual or individuals would provide the services only to find out that the consultant assigned a different person to the project.

**3.3.2.3 Form 700 Information:** In the column to the far right, indicate for the project manager and for each “other staffing” individual whether the person is legally required to complete and file a Form 700 disclosure form. ***Instructions for determining whether a person must complete and file a Form 700 disclosure form are set forth below in Section 4, entitled “Instructions for Requiring and Completing Form 700.”***

**3.3.3 Item No. 3:** For item number 3 you need to mark the correct box identifying whether or not the consultant is authorized to use subconsultants to provide the services. If the consultant is authorized to

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use subconsultants, you need to identify each subconsultant and the subconsultant's area of work.

**NOTE:** The term "subconsultants" does not include contractors or suppliers. Identify only whether the consultant is allowed to hire other consultants to perform some of the work. You do not need to identify contractors or suppliers.

- 3.3.4** **Item No. 4:** You need to consider item number 4 only if the Compensation Table provides that the City will separately reimburse the consultant for expenses. If you are separately reimbursing the consultant for expenses, then you will check the box here and add any **additional** reimbursable expenses **that are not already set forth in Subsection 10.5.3 of the master consultant agreement or in Attachment B of the master consultant agreement.** Remember, the allowable mark up can not exceed 10 percent in accordance with Subdivision 10.5.3 of the master consultant agreement.

**NOTE:** For purposes of these forms, the cost of subconsultants is not treated as a reimbursable expense. (See, Subsection 10.5.1 of the master consultant agreement.)

- 3.4** **Completing Attachment C of the Service Order Form:** Attachment C of the service order form is the Compensation Table. The Compensation Table is where you specify the method you will use to compensate the consultant. The Compensation Table is subject to the terms and conditions set forth in Section 10 of the master consultant agreement. You need to be familiar with the provisions of Section 10. The following guidelines and instructions will assist you in completing the Compensation Table.

- 3.4.1** **Part 1 – Column 1:** In Column 1 of Part 1 write down each task number associated with a task in **Attachment A** of your service order. Each task number that you write down in this column must correspond directly to the same task number in **Attachment A**, and vice versa.

To streamline the completion of the Compensation Table you can group together on the same line task numbers for tasks that involve the same method of compensation. See the examples below.

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**NOTE:** In accordance with Subsection 10.4.1 of the master consultant agreement, if a task number included in Attachment A of your service order is not included in the first column of Part 1 of the Compensation Table, then the City will not compensate the Consultant separately for that task. Payment for the task that is excluded from the first column is deemed included in the other task(s) for which the consultant is compensated.

**3.4.2 Part 1 – Column 2:** In Column 2 of Part 1 check the appropriate box indicating whether – for the task or tasks listed on that line in Column 1 – you will compensate the consultant on a “time-and-materials” basis or on a “fixed-fee” basis.

**NOTE #1:** As a *general rule*, your description of each task in **Attachment A** of your service order must be very detailed and clear if you are paying the consultant a “fixed-fee” basis. The description of each task needs to spell out precisely the scope of work that the consultant must complete for the fixed fee. Your description of each task can be a little less detailed if you are paying the consultant on a “time-and-materials” basis.

**NOTE #2:** When a task involves the consultant providing an unknown level or quantity of services, you should generally compensate the consultant on a “time and materials” basis. A typical example of this is when you require the consultant to provide bid support or construction administration services. When you enter into the service order, you do not know what quantity of services the consultant will need to provide. For instances, you do not know if the consultant will need to respond to 1 or 10 requests for information (RFIs). Nor do you know the complexity of the RFIs. Accordingly, you generally should not pay the consultant for such services on a lump-sum basis.

**3.4.3 Part 1 – Column 3:** In Column 3 of Part 1 check the appropriate box indicating whether - for the task or tasks listed on that line in Column 1 – you will require the consultant to invoice the City on a monthly basis, on completion of the task or tasks, or on completion of all the work. See Subsection 10.4.3 of the master consultant agreement for the terms and conditions that apply to each of these choices.

**3.4.4 Part 1 – Column 4:** In Column 4 of Part 1 insert the compensation that the City will pay the consultant for each task or group of tasks listed on the line in column 1. If you are paying the compensation on a time-and-materials basis, the amount in Column 4 is a maximum dollar amount. If you are paying the compensation on a fixed-fee basis, the amount in Column 4 is the amount of the fixed fee. See, Subsection 10.4.4 of the master consultant agreement. The following are some examples of how to complete Part 1 of the Compensation Table:

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**Example No. 1:** The consultant is supposed to perform 5 different tasks and you will compensate the consultant with a **fixed fee** of \$75,000 with **monthly** invoicing. You would complete this Part 1 of the Compensation Table as follows:

Column 1	Column 2	Column 3	Column 4
Task Nos.	Basis of Compensation	Invoicing	Compensation
1-5	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$75,000

**Example No. 2:** Assume the same facts as in Example No. 1 above, except that you want to pay the consultant **monthly** on a **time-and-materials** basis and have a **budget for each task**. You would complete Part 1 of the Compensation Table as follows:

Column 1	Column 2	Column 3	Column 4
Task Nos.	Basis of Compensation	Invoicing	Compensation
1	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$20,000
2	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$25,000
3	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$10,000
4	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$15,000
5	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$5,000

**Example No. 3:** You can also use the Compensation Table to mix and match different forms of compensation. Assume you want to compensate the consultant for task numbers 1 through 4 on a **time-and-materials** basis with **monthly invoicing**. However, assume you want to pay the consultant a **fixed fee** for Task No. 5 **at the completion** of the task. You would complete this Part 1 of the Compensation Table as follows:

Column 1	Column 2	Column 3	Column 4
Task Nos.	Basis of Compensation	Invoicing	Compensation
1 - 4	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$70,000
5	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$5,000

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**3.4.5 Part 2 - Reimbursable Expenses:** In Part 2 of the Compensation Table, mark the appropriate box indicating whether expenses are reimbursable. If expenses are reimbursable, then you need to insert the maximum amount of reimbursable expenses in the last column of the Compensation Table. You also need to remember to complete item number 4 of **Attachment B** of the service order form, which addresses what expenses are reimbursable.

**NOTE:** The cost of subconsultants is treated separately from reimbursable expenses. It is treated separately under Part 3 of the Compensation Table.

**3.4.6 Part 3 – Subconsultants:** In Part 3 of the Compensation Table, check the appropriate box indicating whether you will separately pay the consultant for the cost of any subconsultants. If you are going to pay the consultant separately, then you need to insert in the last column of the Compensation Table the maximum amount you will pay the consultant for subconsultants.

**3.4.7 Part 4 – Compensation for Preparation of Approved Service Order:** In the last column of Part 4 of the Compensation Table, insert the lump-sum amount that the City and consultant agreed upon as compensation for the consultant’s preparation of the service order. See, Subsections 3.4.4 and 10.7 of the master consultant agreement. If the consultant is not entitled to any compensation, then write “0.”

**3.4.8 Final Line of Compensation Table:** The final column of the last line of the Compensation Table is the sum total of all the number in the last column of the Table. ***The sum of these numbers must equal the Maximum Service Order Compensation from line 7.b. of the service order cover page.***

## 4.

### INSTRUCTIONS FOR REQUIRING AND COMPLETING FORM 700

**4.1 General:** State law requires that **some** individuals who provide consulting services to the City disclose certain personal financial information in order to avoid conflicts of interest. The disclosure form is commonly known as a Form 700 or a Statement of Economic Interests. If the Form 700 discloses that an individual who is providing consultant services to the City has a financial interest in the services, the individual may have to be disqualified from providing the services.

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Item Number 3 of **Attachment B** of the service order requires you to identify each individual who will be primarily responsible for providing the services and deliverables. It also requires you to indicate for each such individual whether he or she must file a Form 700. This portion of the instructions explains how you:

- Determine if an individual you have identified must file a Form 700, and
- Decide what financial disclosures the individual must make if the individual must file a Form 700.

You need to carefully analyze the responsibilities of the individual providing consultant services so that the City can achieve compliance with state law regarding the filing of Form 700. The consequences of failing to file a Form 700 when one is required are serious and can disrupt City contracting, lead to protracted litigation, and create significant legal liability for the City, the consultant and the individual providing the consulting services.

- 4.2 Identify Individual(s) Primarily Responsible for Performing Services:** Item number 3 of **Attachment B** of the service order requires you to identify the individual or individuals who will be *primarily responsible* for actually providing the consulting services to the City. (See, Section 3.3 of these Instructions, entitled “Completing **Attachment B** of the Service Order Form.”)

### EXAMPLES

The following are a couple of typical examples of how this rule applies:

**Example No. 1:** You entered into a master consultant agreement with a consulting firm that is a partnership consisting of 2 partners, Partner X and Partner Y. The service order you are preparing requires Partner X to provide consulting service to the City. Partner Y will not provide any consulting services under the service order. You would identify Partner X in Item Number 3 of **Attachment B** of the service order and would only need to be concerned about whether Partner X needs to complete and submit a Form 700.

**Example No. 2:** You entered into a master consultant agreement with a large, nationwide consulting firm to provide a variety of services. The service order you are preparing would require 2 employees from the local office to provide certain services to the City. You would identify the 2 employees in item number 3 of **Attachment B** of the service order and would only need to be concerned about whether these 2 employees need to complete and submit a Form 700. Even if those 2 employees were required to complete and submit a Form 700, the consulting firm would not have any obligation to complete and submit a Form 700.

### 4.3 **Only a Person Performing Certain Kinds of Services Must File a Form 700:**

Not every individual you identify in Section 3 of **Attachment B** of the service order will need to file a Form 700. Only an individual who performs services for the City meeting one of the following criteria must file a Form 700:

- The services will involve the individual making a Governmental Decision;
- The services will involve the individual Serving in a Staff Capacity and Participating in Making a Governmental Decision; or
- The services will involve the individual Serving in a Staff Capacity and performing the same or substantially the same duties as a regular employee who would be required to file a Form 700.

The definitions of the capitalized words and phrases in the above criteria are set forth in the next subsection of these Instructions. Each of these above criteria is explained in more detail below in Subsections 4.5 through 4.7 of these Instructions. If an individual you have identified in Item Number 3 of **Attachment B** meets one of the above criteria, then you need to mark the column indicating that the person must file a Form 700.

### 4.4 **Definitions Used to Determine if a Person Must File a Form 700:** The following definitions are applicable to the criteria for determining if an individual must file a Form 700.

#### 4.4.1 **Government Decision:** “Governmental Decision” means a decision involving at least 1 of the following 7 acts:

- Approving a rate, rule or regulation;
- Adopting or enforcing a law;
- Issuing, denying, suspending, or revoking any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
- Authorizing the City to enter into, modify, or renew a contract that otherwise requires City approval;
- Granting City approval to a contract which requires City approval;
- Granting City approval to a plan, design, report, study, or similar item; or
- Adopting or granting City approval of policies, standards, or guidelines for the City.

**4.4.2 Serving in a Staff Capacity:** “Serving in a Staff Capacity” means the individual:

- Performs more than a limited number of projects for the City, and
- Has an ***ongoing relationship*** with the City of more than 1 year.

If your service order will require the individual to perform services for more than 1 year – in other words, the term of the service order is more than 1 year – then the individual is “Serving in a Staff Capacity.”

If the term of your service order is less than 1 year, then you need to evaluate the individual’s entire relationship with the City. An individual has an “ongoing relationship” with the City if the person provides services to the City on separate projects and/or service orders over a combined period of time over 1 year. If you anticipate that the individual is ***reasonably likely*** to provide services to Public Works or other City Departments on a relatively regular basis for a period of over 1 year, then you should conclude that the individual will be “Serving in a Staff Capacity.”

**4.4.3 Participate in Making a Governmental Decision:** An individual will “Participate in Making a Governmental Decision” if he or she does any of the following:

- The individual negotiates with a governmental entity or private person regarding a Governmental Decision without any *Significant Substantive Review*,
- The individual advises or recommends to the decision maker directly or without any *Significant Substantive Review* by conducting research or making any investigation that requires the exercise of judgment by the individual and is intended to influence a Governmental Decision; or
- The individual advises or recommends to the decision maker directly or without any *Significant Substantive Review* by preparing or presenting a report, analysis or opinion, orally or in writing that requires the exercise of judgment and is intended to influence a Governmental Decision.

For purposes of this definition, “*Significant Substantive Review*” means:

- City staff or another consultant has completely and independently analyzed and reviewed from top to bottom the advice and recommendation made by the individual(s), and

## INSTRUCTIONS - MASTER CONSULTANT AGREEMENT

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- The City staff or other consultant who provided such analysis and review did not work directly with the individual(s) to formulate the advice and recommendation.

It is deemed “participation” if City officials rely on the advice and recommendation prepared by the individual without checking it independently or if they rely on the professional judgment of the consultant.

- 4.5 Application of Rule: A Person Making a Governmental Decision:** The individual must file a Form 700 if the service order requires the person to make a Governmental Decision.

### EXAMPLES

**Example No. 1:** The City contracts with a third party to provide plan check services. A contract plan checker who reviews plans for building compliance, and has authority to approve plans or to issue or deny permits or approvals, would be making a Governmental Decision and would need to file a Form 700.

**Example No. 2:** The City’s Department of Human Resources hires a third-party contractor to initiate and enforce a labor compliance program. The consultant functions with the same governmental authority to enforce labor compliance laws and regulations and follows the same procedures as a City employee. The consultant would be making a Governmental Decision and would need to file a Form 700.

Rarely will a service order issued in furtherance of the City public works project require a consultant to perform services that would involve the consultant making a Governmental Decision.

- 4.6 Application of Rule: A Person who Serves in a Staff Capacity and Participates in Making a Governmental Decision:** An individual will need to file a Form 700 if the Task Order requires the individual to Serve in a Staff Capacity **and** to Participate in Making a Governmental Decision.

If you determine that the individual is not Serving in a Staff Capacity, then you do **not** need to consider if the individual is Participating in Making a Governmental Decision.

If you determine that the individual is Serving in a Staff Capacity, then you must consider whether the individual will Participate in Making a Governmental Decision. Determining whether the individual Participates in Making a Governmental Decision involves analyzing 2 separate elements: (a) is there a Governmental Decision at issue and (b) if there is a Governmental Decision at issue, whether the individual is “participating in making” it.

## EXAMPLES

**Example No. 1:** A department hires a professional accounting firm to do periodic independent audits of the department's annual financial statements over the course of five years. The firm provides the department with a detailed report of their annual findings, but it does not provide recommendations as to any course of action. Although they appear to serve in a staff capacity (with an ongoing multi-year contract and regular contact with the agency), the consultants provide only independent data, not advice or recommendations; therefore, they do not meet the definition of "participating." These consultants would not be required to file a Form 700.

**Example No. 2:** The City hires a planning consultant to draft a specific plan for future development for a period of 8 months with periodic involvement over a period of two years or more. The consultant worked with staff to develop goals, objectives, and policy; previewed the plan with the community; and presented the plan to the planning commission and city council. The only review conducted was performed by City officials who worked with the consultant in the drafting process and to prepare the plan. Due to reliance on the consultant's judgment and an absence of "significant substantive review", the consultant would be required to file a Form 700 because he satisfies the definition of "participation."

There may be instances in which a service order issued in furtherance of a City public works project requires a consultant to Serve in a Staff Capacity and Participate in Making a Governmental Decisions. Two such areas to pay particular attention to are when the services involve the consultant providing inspection services, or drafting or reviewing plans and specifications. However, in most instances, any such services are more clearly covered by the 3<sup>rd</sup> criteria a referenced in Subsection 4.3 of these instructions.

- 4.7 Application of Rule: A Person Serves in a Staff Capacity and Performs the Same or Substantially the Same Duties as an Employee who is Required to File a Form 700:** An individual who is providing consultant services to the City would have to complete a Form 700 if the individual Serves in a Staff Capacity and has the same or substantially the same responsibilities as a City employee whose position is "designated" in the City's Conflict of Interest Code. A "designated" position is one in which the employee who fills that position must file a Form 700. ***This is the criterion that will probably trigger the greatest need to have consultants submit a Form 700.***

As of the date of these Instructions, the current lists of "designated" positions in the Department of Public Works, Environmental Services Department and Airport Department are set forth in Resolution No. 75654. You can obtain Resolution No. 75654 on the Clerk's website using the following link:

[http://www.sanjoseca.gov/clerk/SOEI/reso\\_75654.pdf](http://www.sanjoseca.gov/clerk/SOEI/reso_75654.pdf).

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Every two years, the City adopts a resolution updating the list of “designated” City positions. Before relying on Resolution No. 75654, confirm that it is the most recent resolution “designating” City employee positions at the following link on the Clerk’s website: <http://www.sanjoseca.gov/clerk/SOEI/SOEI700.asp>. ***Make sure you use the most current resolution.***

If the consultant performing the services in a service order Serves in a Staff Capacity and is performing work that is the same or substantially the same work done by a designated employee, then the person must file a Form 700.

### EXAMPLES

**Example No. 1:** You issue a service order for an engineering consultant to draft plans and specifications for a roadway project. The consultant will perform the work over an 18-month time period. The consultant would be Serving in a Staff Capacity. Moreover, the consultant would be performing work that is the same or substantially the same as the work that is or could be performed by a designated engineer. Accordingly, you would need to require the consultant to submit a Form 700.

**Example No. 2:** You issue a service order for a consultant to review the plans and specifications drafted by another consultant for code compliance and a variety of other issues. The consultant is required to provide you with a report setting forth any issues. The consultant is required to complete the services under your service order within 6 months. You anticipate that the consultant will be providing similar services for other projects over the 4-year term of the master agreement. The consultant would be Serving in a Staff Capacity. Moreover, the consultant would be performing work that is the same or substantially the same as the work that is or could be performed by a designated engineer. Accordingly, you would need to require the consultant to submit a Form 700.

**Example No. 3:** You issue a service order for a consultant to provide special inspection services for a project that is under construction. The consultant will be responsible for determining whether a variety of elements of the construction comply with the applicable standards. The consultant will provide you with a report following each inspection addressing the results of the inspection. You know that the consultant will be providing similar services on a number of other City construction projects over the terms of the 3-year master agreement. The consultant would be Serving in a Staff Capacity. Moreover, the consultant would be performing work that is the same or substantially the same as the work that is or could be performed by a designated inspector. Accordingly, you would need to require the consultant to submit a Form 700.

- 4.8 Kind of information the Consultant Must Disclose:** The Form 700 has various areas of disclosure. These areas of disclosure are investments, business positions, interests in real property and sources of income. If you are requiring a consultant to complete a Form 700, you will need to inform the consultant as to which categories of disclosure the consultant must complete. Subsection 17.2 of the master agreement form requires the disclosure of categories as required by the Director.

You want to require the consultant to disclose any investment, business position, interest in real property or source of income that may foreseeably be affected by the consultant's advice or recommendation. The categories of disclosure must fit the duties and powers of the particular scope of services provided by each consultant and provided reasonable assurance that all potential conflicts of interest will be disclosed and prevented.

For example, if the consultant were reviewing plans and specifications drafted by another consultant, you generally would not need to have the consultant disclose interests in real property. It is unlikely that an interest in real property would be affected by the consultant's advice and/or recommendations on the plans and specifications the consultant is reviewing.

- 4.9 When and how to file a Form 700:** Subsection 17.2 of the master consultant agreement addresses the question of when and how a consultant files a Form 700. It requires the consultant to file the Form 700 no later than 30 calendar days after the date the consultant executes the service order. The consultant must file the original Form 700 with the City Clerk
- 4.10 Err on the side of requiring the consultant to complete the Form 700:** If after going through the above analysis you believe it is a close call whether to require the consultant to submit a Form 700, you should err on the side of requiring the consultant to submit a Form 700. Incorrectly requiring a consultant to submit a Form 700 is significantly less risky than incorrectly *not* requiring a consultant to submit a Form 700.
- 4.11 Contacting the Assigned Deputy City Attorney:** If you have any questions regarding whether to require a consultant to submit a Form 700, you should contact the Deputy or Senior Deputy City Attorney assigned to your department/division.

5.

**COMPLETING THE AGREEMENT AMENDMENT FORM**

- 5.1 **General:** Occasionally, you will need to amend a master consultant agreement. The forms for amending a master consultant agreement are included as Attachment 3 of these Instructions.

The forms are for the most common amendments to master consultant agreements: (1) extending the term, (2) changing the Maximum Total Compensation, and (3) making adjustments to the Schedule of Rates and Charges. If you need to amend a master consultant agreement in some other way, you will need to contact the Deputy or Senior Deputy City Attorney assigned to your department/division about doing so.

- 5.2 **Title:** In the title, mark the appropriate box indicating whether this is the “first,” “second,” or “third” amendment to the master agreement. On the next line, insert the CPMS Contract No. associated with the master agreement you are amending. See Subsection 2.2 of these Instructions for a discussion of the master agreement CPMS number.

- 5.3 **Item No. 4:** For line Item Number 4, mark the box or boxes that indicate the amendments you are making to the master agreement.

- 5.3.1 **Box 1 - Agreement Term:** Mark this box if you are extending the term of the master agreement. If you select this amendment, then you need to mark the correct box indicating whether you are amending the term “to extend” or “to retroactively extend” the expiration date. You will mark the box “to retroactively extend” the term when you are seeking to extend the master agreement *after* the existing term has already expired.

Then, in the first blank space, you need to insert the contractual expiration date existing at the time of the amendment. If a previous amendment already extended the expiration date, then you would use that expiration date.

In the second blank space, insert the new expiration date.

- 5.3.2 **Box 2 - Maximum Total Compensation:** Mark this box if you are changing the Maximum Total Compensation set forth in Subsection 10.1 of the master consultant agreement form. If you select this amendment, then mark the appropriate box indicating whether you are increasing or decreasing the Maximum Total Compensation. Then, in the first blank indicate the current Maximum Total Compensation. In the second blank indicate the new Maximum Total Compensation.

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**NOTE:** Once you have expended the maximum total compensation in your master consultant agreement, you can **not** amend it to add additional funding. You need to go through a new competitive procurement and enter into a new master consultant agreement. The exception to this rule is when the additional compensation is needed for the consultant to **complete ongoing work**, and it would not be practical for a new consultant to step in and complete the work.

**5.3.3 Box 3 - Schedule of Rates and Charges Box – Exhibit B:** Mark this box if you are changing the Schedule of Rates and Charges, which is **Exhibit B** of the master consultant agreement. If you mark this box, then you first need to mark the appropriate box indicating whether the version of **Exhibit B** that you are amending is the original **Exhibit B**, or the first or second amended **Exhibit B**. Next, you need to mark the box indicating whether the **Exhibit B** you are attaching to the amendment is the first, second or third revision.

### Examples

If you are amending **Exhibit B** for the first time, you would complete the form as follows:

**Schedule of Rates and Charges – Exhibit B:** The  original  First Revised  Second Revised **Exhibit B** is amended to read as set forth in the attached  First  Second  Third Revised **Exhibit B**, which is incorporated by reference into this Amendment.

If you have already amended **Exhibit B** once and are amending it a second time, you would complete the form as follow:

**Schedule of Rates and Charge – Exhibit B:** The  original  First Revised  Second Revised **Exhibit B** is amended to read as set forth in the attached  First  Second  Third Revised **Exhibit B**, which is incorporated by reference into this Amendment.

Remember to attach a Revised **Exhibit B** to your amendment. See Subsection 5.7 of these Instructions.

**5.4 City Signature Block - Person Executing Amendment for City:** When the City Clerk will execute the amendment on behalf of the City Council, this item should read as follows: DENNIS D. HAWKINS, CMC. When the City Manager will execute the amendment, this item should set forth the name and title of the person from the City Manager’s office who is authorized to execute agreements.

**5.5 City Signature Block - City Attorney Approval as to Form:** The same rules set forth in Section 1.4 of these Instructions, entitled “Review and Approval by the Office of the City Attorney,” apply to when the Office of the City Attorney must

## INSTRUCTIONS - MASTER CONSULTANT AGREEMENT

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review and approve an amendment to a master consultant agreement. You have the following 2 choices:

**5.5.1 Box 1:** Mark the first box if the Office of the City Attorney does *not* have to review and approve your amendment.

**5.5.2 Box 2:** Mark the second box if the Office of the City Attorney has to review and approve your amendment and have your assigned attorney review and sign the contract.

**5.6 Consultant Signature Block - Person Executing Amendment for Consultant:** Insert the name of the person(s) who will execute the amendment for the consultant. Confirm that the person executing the amendment for the consultant has the authority to do so. See, Subsection 2.12 of these Instructions.

**5.7 Revised Exhibit B – Schedule of Rates and Charges:** Complete the “Revised Exhibit B: Schedule of Rates and Charges” form as follows:

**5.7.1 Header:** Insert the information required in the header.

**5.7.2 Title:** Mark the appropriate box indicating whether this is the first, second or third Revised Exhibit B form. Make sure the box you mark here is that same as the one you marked for this item on the first page of the amendment.

**5.7.3 First Paragraph:** Mark the appropriate box indicating whether you are attaching the Revised Exhibit B to the first, second, or third amendment to the master agreement.

**5.7.4 Completing Schedule of Rates and Charges:** Restate all of the rates and charges set forth in the Schedule of Rates and Charges, i.e. the rates and charges that are unchanged as well as any revised rates and charges.

6.

**COMPLETING THE SERVICE ORDER AMENDMENT FORM**

**6.1 General:** Occasionally, you will need to amend an Approved Service Order. The forms for amending a service order consist of a cover page **and** the inclusion of 1 or more of the following exhibits:

- An amended budget/fiscal form,
- An amended **Attachment A** form, and/or
- An amended **Attachment C** form.

Note that there is no amendment to Attachment B form. The reason is that, in accordance with the master consultant agreement, all the information in Attachment B can be changed through a writing issued by the Director or the Director's authorized designee. An amendment is not necessary.

**6.2 Cover Page of Amendment Form:** The service order amendment cover page is relatively easy to complete. The following instructions will provide you with guidance on completing this form.

**6.2.1 Line No. 1 – CPMS Contract No.:** On line 1 insert the "CPMS Contract No." for the master agreement. See, Subsection 2.2 of these instructions.

**6.2.2 Line No. 2 – Approved Service Order:** On line 2 mark the box indicating whether this is the first, second, third or fourth amendment to the Approved Service Order. Consult with your assigned attorney if the Approved Service Order has been amended more than 4 times.

On line 2 you also need to insert the number of the Approved Service Order you are amending. See, Subsection 3.1.2 of these instructions.

**6.2.3 Line No. 4 - Amendments:** On line 4, mark the box or boxes that indicate the amendments you are making to the Approved Service Order.

**6.2.3.1 Box 1 - Budget/Fiscal:** Mark this box if you are amending any of the budget/fiscal information located in Section 7 of the cover page of the Approved Service Order. If you mark this box, then you first need to mark the appropriate box indicating whether you are revising the original Budget/Fiscal information set forth in Section 7 of the Approved Service Order, or whether you are revising the Budget/Fiscal information set forth in a first or second Revised Budget/Fiscal Attachment.

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Next, you need to mark the box indicating whether you are attaching the first, second or third Revised Budget/Fiscal Attachment.

### Examples

If you are amending the Budget/Fiscal information for the first time, you would complete the form as follows:

**Budget/Fiscal:** The  original Budget/Fiscal information in Section 7 of the Approved Service Order  First Revised Budget/Fiscal Attachment  Second Revised Budget/Fiscal Attachment is amended to read as set forth in the attached  First  Second  Third Revised Budget/Fiscal Attachment.

If you have already amended the Budget/Fiscal information once and are amending it a second time, you would complete the form as follows:

**Budget/Fiscal:** The  original Budget/Fiscal information in Section 7 of the Approved Service Order  First Revised Budget/Fiscal Attachment  Second Revised Budget/Fiscal Attachment is amended to read as set forth in the attached  First  Second  Third Revised Budget/Fiscal Attachment.

Remember to attach a Revised Budget/Fiscal Attachment to the amendment. See Subsection 6.3 of these Instructions.

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- 6.2.3.2 Box 2 – Tasks - Attachment A:** Mark this box if you are amending any of the tasks included in Attachment A of your Approved Service Order. If you mark this box, then you need to mark the appropriate box indicating whether the version of Attachment A that you are amending is the original Attachment A, or the second or third amended Attachment A. Next, you need to mark the box indicating whether the Attachment A you are attaching to the amendment is the first, second or third revision.

### Example

If you are amending Attachment A for the first time, you would complete the form as follows:

**Tasks - Attachment A:** The  original  First Revised  Second Revised Attachment A is amended to read as set forth in the attached  First  Second  Third Revised Attachment A.

If you have already amended Attachment A once and are amending it a second time, you would complete the form as follow:

**Tasks - Attachment A:** The  original  First Revised  Second Revised Attachment A is amended to read as set forth in the attached  First  Second  Third Revised Attachment A.

Remember to attach a Revised Attachment A. See Subsection 6.4 of these Instructions.

- 6.2.3.3 Box 3 - Compensation Table - Attachment C:** Mark this box if you are making any changes to the Compensation Table, which is Attachment C of your Approved Service Order. If you mark this box, then you need to mark the appropriate box indicating whether the version of Attachment C that you are amending is the original Attachment C, or the second or third amended Attachment C. Next, you need to mark the box indicating whether the amended version of Attachment C you are attaching to the amendment is the first, second or third revision. See, example above under Subsection 6.2.3.2 of these Instructions.

Remember to attach a Revised Attachment C. See Subsection 6.5 of these Instructions.

- 6.2.4 Line 6 – Consultant’s Signature:** This is the signature line for the approval of the consultant. Get this signature first.

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**NOTE:** Do not make any modifications to the amendment after the consultant has signed the document without first obtaining the consultant's written consent to the change(s) and consulting with the attorney assigned to review your agreements.

**6.2.5 Line 7: City Attorney Approval as to Form:** The same rules set forth in Section 1.4 of these Instructions, entitled "Review and Approval by the Office of the City Attorney," apply to when the Office of the City Attorney must review and approve an amendment to a master consultant agreement. You have the following 2 choices:

**6.2.5.1 Box 1:** Mark the first box if the Office of the City Attorney does *not* have to review and approve your amendment.

**6.2.5.1 Box 2:** Mark the second box if the Office of the City Attorney has to review and approve your amendment and have your assigned attorney review and sign the contract.

**6.2.5 Line 11 – Director's Signature:** The last signature you need to obtain is that of the Director or the Director's authorized designee.

**6.3 "Amended Budget/Fiscal" Attachment Form:** Complete the "Revised Budget/Fiscal Attachment" as follows:

**6.3.1 Header:** Insert the information required in the header.

**6.3.2 Title:** Mark the appropriate box indicating whether this is the first, second or third Revised Budget/Fiscal Attachment. Make sure the box you mark here is the same as the one you marked for this item on the first page of the amendment.

**6.3.3 Item No. 1:** Mark the appropriate box indicating whether you are attaching the Revised Budget/Fiscal Attachment to the first, second, or third amendment to the Approved Service Order. Next, insert the number of the Approved Service Order that you are amending.

**6.3.4 Item No. 2:** Mark the appropriate box indicating whether you are increasing or decreasing the Maximum Service Order Compensation.

For whichever box you check, insert in the appropriate space – in numeric form - the Maximum Service Order Compensation as of the date you are processing the amendment. If this is the first amendment to the service order, then the amount you insert will be the Maximum Service Order Compensation set forth on Line 7.c. of the original service order cover page. If you have previously amended the Maximum Service Order Compensation, then the amount you insert will be the Maximum Service Order Compensation from that amendment.

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For whichever box you check, you need to insert in the appropriate space – in numeric form – the new Maximum Service Order Compensation.

**6.3.5 Item No. 3:** Insert the new “Budget/Fiscal” information. Complete this portion of the form just like you completed the cover page of the Approved Service Order. See, Subsections 3.1.7 through 3.1.10 of these Instructions. Remember to obtain the signature of the person authorized to make the “appropriation certification.”

**6.4. “Revised Attachment A: Tasks” Form:** Complete the “Revised Attachment A: Tasks” form as follows:

**6.4.1 Header:** Insert the information required in the header.

**6.4.2 Title:** Mark the appropriate box indicating whether this is the first, second or third “Revised Attachment A: Tasks” form. Make sure the box you mark here is that same as the one you marked for this item on the first page of the amendment.

**6.4.3 First Paragraph:** Mark the appropriate box indicating whether you are attaching the “Revised Attachment A: Tasks” to the first, second, or third amendment to the Approved Service Order. Next, insert the number of the Approved Service Order that you are amending.

**6.4.4 Model Standard Provisions:** This form contains 3 model “standard provisions.” The first model standard provision applies if you are deleting a task in its entirety. The second model standard provision applies if you are amending an existing task. The third model standard provision applies if you are adding a completely new task. Select whichever of these model standard provisions apply to your amendment. Be sure to delete the provisions you do not use.

**NOTE:** You do *not* need to restate all of the tasks in your Approved Service Order or otherwise include in the amendment any tasks that you are not amending.

**6.5 “Revised Attachment C: Compensation Table” Form:** Complete the “Revised Attachment A: Tasks” form as follows:

**6.5.1 Header:** Insert the information required in the header.

**6.5.2 Title:** Mark the appropriate box indicating whether this is the first, second or third “Revised Attachment C: Compensation Table” form. Make sure the box you mark here is that same as the one you marked for this item on the first page of the amendment.

**6.5.3 First Paragraph:** Mark the appropriate box indicating whether you are attaching the “Revised Attachment C: Compensation Table” to the first,

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second, or third amendment to the Approved Service Order. Next, insert the number of the Approved Service Order that you are amending.

- 6.5.4 Completing Compensation Table:** Complete the revised Compensation Table by restating all of the unchanged compensation information and by including any new compensation information. For example, if your amendment is adding a new task, include the new task in the amended Compensation Table as well as the compensation information for all of the other tasks.

**END OF INSTRUCTIONS**