

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

1. Standard Consultant Agreement - Standard
2. Amendments to Standard Consultant Agreements

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 and use the standard consultant agreement forms. The master consultant agreement forms are addressed in a separate set of instructions.

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

Attachment No. 1:	Form Standard Consultant Agreement
Attachment No. 2:	Form Standard Consultant Agreement 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 standard consultant agreement that will further a City public works project.

- 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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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 standard consultant agreements and amendments. 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 standard consultant agreements or amendment 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 standard consultant agreements or amendment that meets ***both*** of the following requirements:

- The maximum compensation payable under the standard consultant agreement or amendment is equal to or less than \$100,000, **and**

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- You use the forms approved by the Office of the City Attorney – which are attached to these Instructions - **without making any changes to them.**

If your standard consultant agreement 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 Consultant Agreement Form in Consultant 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.

1.5.1 Attorney Review Required Before Solicitation: The Office of the City Attorney must review the exemplar consultant agreement **before you attach it to the solicitation** in either of the following situations:

- You make any change to the standard consultant agreement form, or
- You are attaching a specific scope of services to the exemplar agreement, and you expect the maximum compensation payable under the agreement to exceed \$100,000.

By having the Office of the City Attorney review the exemplar consultant agreement **before** attaching it to a solicitation in the above situations, you avoid issues potentially arising from having to change the consultant agreement after the solicitation. You also expedite approval of the consultant agreement once you have selected the consultant.

1.5.2 Attorney Review NOT Required Before Solicitation: The Office of the City Attorney does not need to review your consultant agreement exemplar ***before you attach it to the solicitation*** in the following 2 situations.

- The maximum compensation is \$100,000 or less, and you are using the approved standard consultant agreement form unchanged.
- The maximum compensation is over \$100,000, you are using the approved standard agreement form unchanged, and you are ***not*** attaching a specific scope of services. ***However, the Office of the City Attorney must still review and approve the standard consultant agreement before it is executed by the City and the selected consultant.***

2.

COMPLETING THE AGREEMENT FORM

2.1 Attaching Exhibits: Make sure you attach the appropriate exhibits to your standard consultant agreement.

2.1.1 Exhibit A - Scope of Basic Services: The scope of basic services is attached as **Exhibit A**. See Section 3 of these Instructions for direction on completing this exhibit.

NOTE: If you are including a completed scope of basic services as part of an exemplar consultant agreement that you are attaching to a consultant solicitation, the Office of the City Attorney must review the scope of basic services before you issue the solicitation. See Subsection 1.5.1 of these Instructions.

2.1.2 Exhibit B – Compensation Table/Schedule of Rates & Charges: The Compensation Table is attached as Exhibit B. If you will compensate the consultant for any services on a time-and-materials basis, the exhibit also will include a schedule of rates and charges. If you will be compensating the consultant for ***all*** services on a lump-sum basis, this exhibit will ***not*** include a schedule of rates and charges. See Section 4 of these Instructions for directions on completing this exhibit.

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NOTE: For purposes of comparison, in the master consultant agreement forms, a schedule of rates and charges is always included as an exhibit. A compensation table is attached as an exhibit to each service order.

2.1.3 Insurance Requirements: The insurance requirements are attached to the consultant agreement forms 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 consultant agreement.

2.1.4 Other Exhibits: Contact the attorney assigned to review your consultant agreement if you need to attach any additional exhibits to address issues like special state or federal funding requirements.

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

For example, assume that the CPMS number for a project involving the construction of a fire station is “6661.” The “CPMS Contract No.” for a standard consultant agreement to provide design services for the project would be “6661 – 1.” If you later enter into a new and separate standard consultant agreement for design review services, the “CPMS Contract No.” for that agreement would be “6661-2.” In this way, each consultant agreement related to the project will have a unique identifying number.

You will use the unique “CPMS Contract No.” for your standard consultant agreement on all amendments to your agreement.

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 standard 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.

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

<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 [INSERT STATE OF FORMATION] corporation authorized to do business in California
<i>For a general partnership:</i>	Garcia & Smith, a [INSERT STATE OF FORMATION] general partnership
<i>For a limited partnership:</i>	Gong Developers, a [INSERT STATE OF FORMATION] limited partnership
<i>For a corporation doing business under another name:</i>	Whitworth International, Inc., a [INSERT STATE OF FORMATION] corporation doing business as Project Management Services
<i>For a limited liability company:</i>	C&C Company, a [INSERT STATE OF FORMATION] Limited Liability Company
<i>For a limited liability partnership:</i>	Smith and Jones LLP, a [INSERT 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 consultant agreement. Neither City staff nor the consultant should insert any information regarding the Contract Date.

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- 2.5 Project Name/Location:** In Subsection 1.1 of the standard consultant agreement form, insert the complete project name and location. 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 identifies the project location (e.g. “200 feet west of the intersection of Hillsdale and Cherry Avenues”).
- 2.6 Director:** In Subsection 1.3 of the standard consultant agreement form, insert the City department for which the director is responsible for administering the consultant agreement.
- 2.7 Agreement Expiration Date:** In Subsection 2.1 of the standard consultant agreement form, insert the agreement expiration date using the following format: Month DD, YYYY.
- 2.8 Retroactive Services:** In Subsection 2.2 of the standard consultant agreement form, you must check the appropriate box regarding whether the consultant has performed any work before the agreement is executed.

Check the first box if the consultant has **not** provided any work before the agreement is executed.

Check the second box if the consultant provided services in anticipation of the agreement being executed. If you check this box, fill in the “retroactive” date. The “retroactive” date is the date before which the City will not compensate the consultant for any services performed.

- 2.9 City’s Project Managers:** In Section 5 of the standard consultant agreement form, you need to identify who will act as the project manager for the City. Insert the contact information as indicated on the form.
- 2.10 Consultant’s Project Manager and Other Staffing:** In Section 6 of the standard consultant agreement form, you need to identify who will be providing the services for the consultant.
- 2.10.1 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.

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- 2.10.2 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 will not provide any services, who will engage in clerical or administrative activities only, or whose work will receive significant review.

NOTE: The consultant will be contractually bound to provide the named individual(s) to provide the services required by the consultant agreement. 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.

- 2.10.3 Form 700 Information:** In the column to the far right, indicate for the project manager and for each "other staffing" individual you identify 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 5, entitled "Instructions for Requiring and Completing Form 700."***

- 2.11 Subconsultants:** In Subsection 7.1 of the standard consultant agreement form, 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 use subconsultants, you need to identify in the table 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.

- 2.15 Maximum Total Compensation:** In Subsection 10.1 of the standard consultant agreement form, insert the Maximum Total Compensation in **numeric** form. You do not need to spell out the number. The Maximum Total Compensation is the maximum amount that the City can pay the consultant under the consultant agreement.
- 2.16 Notices:** Be sure to complete the information required by Subsection 20.3 of the standard consultant agreement form regarding to whom notices are to be provided.

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2.17 Tax Certification: Right before the signature block on the standard 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.

2.18 City Signature Block - Person Executing Agreement for City: When the City Clerk will execute the consultant agreement on behalf of the City Council, this item should read as follows: DENNIS D. HAWKINS, CMC. When the City Manager will execute the consultant 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.

2.19 City Signature Block - Approval by Office of the City Attorney: 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 consultant agreement. You have the following 2 choices:

2.19.1 First Box: Mark the first box if the Office of the City Attorney does **not** have to review and approve your standard consultant agreement.

2.19.2 Second Box: Mark the second box if the Office of the City Attorney has to review and approve your standard consultant agreement and have your assigned attorney review and sign the contract.

2.20 Consultant Signature Block - Person Executing Agreement for Consultant: Insert the name of the person(s) who will execute the consultant agreement for the consultant. Confirm that the person executing the consultant agreement for the consultant has the authority to do so applying the following rules:

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<u>Type of Entity</u>	<u>Authorized Signatories</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 both sign the documents.</p> <table border="1" data-bbox="513 478 1406 827"> <thead> <tr> <th data-bbox="513 478 919 548">Column A</th> <th data-bbox="924 478 1016 548">AND</th> <th data-bbox="1021 478 1406 548">Column B</th> </tr> </thead> <tbody> <tr> <td data-bbox="513 554 919 623">Chairman of the Board, or</td> <td data-bbox="924 554 1016 623"></td> <td data-bbox="1021 554 1406 623">Secretary, or</td> </tr> <tr> <td data-bbox="513 627 919 697">President, or</td> <td data-bbox="924 627 1016 697"></td> <td data-bbox="1021 627 1406 697">Assistant Secretary, or</td> </tr> <tr> <td data-bbox="513 701 919 770">Vice President.</td> <td data-bbox="924 701 1016 770"></td> <td data-bbox="1021 701 1406 770">Chief Financial Officer, or</td> </tr> <tr> <td data-bbox="513 774 919 827"></td> <td data-bbox="924 774 1016 827"></td> <td data-bbox="1021 774 1406 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>	Column A	AND	Column B	Chairman of the Board, or		Secretary, or	President, or		Assistant Secretary, or	Vice President.		Chief Financial Officer, or			Assistant Treasurer
Column A	AND	Column 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 EXHIBIT A – SCOPE OF BASIC SERVICES

3.1 Completing Exhibit A: Exhibit A of the standard consultant agreement is where you set forth the specific basic 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 Exhibit A.

3.2 General Description of Project: This is an optional provision. You should 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
- unusual site conditions or constraints
- expected roles and responsibilities of the consultant and any subconsultants
- project delivery method
- significant milestones
- 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 Exhibit A form.**

Example: If the consultant agreement 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.

3.3 Tasks: **Exhibit 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 **Exhibit 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.

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

3.3.1 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.”

3.3.2 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.”

3.3.3 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 consultant agreements. 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 scope of services.

3.3.4 Optional or Contingent Services: Often times the consultant’s performance of a particular service will be optional or contingent upon the occurrence of some event.

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 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 in **Exhibit B** 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.

3.3.5 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.”

3.3.6 Completion Time: The consultant agreement form does not include a separate exhibit 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:

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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 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 Agreement,” or “45 Business Days from the completion of the previous task”.

4.

COMPLETING EXHIBIT B – COMPENSATION

- 4.1 General: Exhibit B** of the consultant agreement deals with compensation. It consists of 2 sections: a Compensation Table and a Schedule of Rates and Charges. The exhibit is subject to the terms and conditions set forth in Section 10 of the consultant agreement. You need to be familiar with the provisions of Section 10. The following guidelines and instructions will assist you in completing the exhibit.
- 4.2 Compensation Table:** Section 1 of **Exhibit B** is a Compensation Table. The Compensation Table consists of 4 different parts that you need to complete.
- 4.2.1 Part 1 – Column 1:** In Column 1 of Part 1 write down each task number associated with a task in **Exhibit A**. Each task number that you write down in this column must correspond directly to the same task number in **Exhibit 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 consultant agreement, if a task number included in **Exhibit A** is not included in the Column 1 of Part 1, then the City will not compensate the Consultant separately for the task. Payment for the task that is listed in the Compensation Table is deemed included in the other task(s) for which the consultant is compensated.

4.2.2 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 **Exhibit A** 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.

4.2.3 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 10.3.3 of the consultant agreement for the terms and conditions that apply to each of these choices.

4.2.4 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

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amount of the fixed fee. See, Subsection 10.3.4 of the consultant agreement.

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 Part 1 of the Compensation Table as follows:

Column 1	Column 2	Column 3	Column 4
Task Nos.	Basis of Compensation	Invoice Period	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	Invoice Period	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 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

4.2.5 Part 2 – Reimbursable Expenses: In Part 2 of the Compensation Table, mark the appropriate box indicating whether expenses are reimbursable. If

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expenses are reimbursable, then you need to insert the maximum amount of reimbursable expenses in the last column of the Compensation Table.

NOTE: The cost of subconsultants is *not* treated as a reimbursable expense. It is treated separately under Part 3 of the Compensation Table.

- 4.2.6. 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.
- 4.2.7 Part 4 – Additional Services:** In Part 4 of the Compensation Table, check the appropriate box indicating whether any money is budgeted for additional services. If money is budgeted for additional services, then you need to insert in the last column the maximum amount of compensation allocated for additional services.
- 4.2.8 Final Line of Compensation Table:** The final column of the last line of the Compensation Table is the sum total of all the numbers in the last column of the Table. ***The sum of these numbers must equal the Maximum Total Compensation from subsection 10.1 of the standard consultant agreement form. Confirm that these numbers match.***
- 4.3 Schedule of Rates and Charges:** Section 2 of the **Exhibit C** is for inserting a Schedule of Rates and Charges. In the first part of Section 2, check the appropriate box indicating whether or not you are included a Schedule of Rates and Charges. If you are paying the consultant on a “fixed fee” basis **only**, then you do not need to include a Schedule of Rates and Charges.
- 4.3.1 Rates and Charges Only:** If you include a Schedule of Rates and Charges, it should set forth: the consultant’s billing rates and charges for services the consultant will provide, and any expenses that are reimbursable **in addition** to those identified in Section 10.5 of the standard consultant agreement form. The Schedule of Rates and Charges also may include the billing rates and service charges for any subconsultants.

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4.3.2 No Increases: The Schedule of Rates and Charges should ***not*** include any provisions other than the rates and charges of the consultant and any subconsultants. The schedule should not include any provisions regarding increases in the rates and charges – this issue is addressed in Subsection 10.8 of the standard consultant agreement form, entitled “Schedule of Rates and Charges.”

4.3.3 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 standard consultant agreement form.

5.

INSTRUCTIONS FOR REQUIRING AND COMPLETING FORM 700

5.1 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.

Subsection 6.1 of the standard consultant agreement form requires you to identify the consultant’s project manager and 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

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protracted litigation, and create significant legal liability for the City, the consultant and the individual providing the consulting services.

5.2 **Identify Individual(s) Primarily Responsible for Performing Services:**

Subsection 6.1 of the standard consultant agreement form requires you to identify the individual or individuals who will be ***primarily responsible*** for actually providing the consulting services to the City. (See, Section 2 of these Instructions entitled “Completing the Standard Consultant Agreement Form.”)

EXAMPLES

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

Example No. 1: You entered into a consultant agreement with a consulting firm that is a partnership consisting of 2 partners, Partner X and Partner Y. Under the agreement, Partner X will provide consulting service to the City, and Partner Y will not provide any consulting services. You would identify Partner X in subsection 6.1 of the consultant agreement 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 consultant agreement with a large, nationwide consulting firm to provide a variety of services. The consultant agreement requires 2 employees from the local office to provide certain services to the City. You would identify the 2 employees in Subsection 6.1 of the consultant agreement 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.

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

Not every individual you identify in subsection 6.1 of the standard consultant agreement for 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

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- 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 in Subsections 5.5 through 5.7. If an individual you have identified in Subsection 6.1 of the consultant agreement meets one of the above criteria, then you need to mark the column indicating that the person must file a Form 700.

5.4 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.

5.4.1 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.

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

If the term of your consultant agreement 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 for 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.”

5.4.3 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;
- 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

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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
- 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.

5.5 Application of Rule: A Person Making a Governmental Decision: The individual must file a Form 700 if the services required by the Agreement involve the person making 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 an agreement issued in furtherance of the City public works project require a consultant to perform services that would involve the consultant making a Governmental Decision.

5.6 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 an agreement 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

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instances, any such services are more clearly covered by the 3rd criteria referenced above in Subsection 5.3 of these instructions.

5.7 **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.

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 an agreement 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: Your consultant agreement requires 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: Your consultant agreement requires 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 within 6 months. You anticipate that the consultant will be providing similar services for other projects over the 4-year term of your consultant 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: Your consultant agreement requires 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 3-year term of your consultant 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.

5.8 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 standard consultant 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

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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.

- 5.9 When and how to file a Form 700:** Subsection 17.2 of the standard consultant agreement form 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 consultant agreement. The consultant must file the original Form 700 with the City Clerk.
- 5.10 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.
- 5.11 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.

6.

COMPLETING THE STANDARD AGREEMENT AMENDMENT FORM

- 6.1** **General:** Occasionally, you will need to amend a standard form agreement. The forms for amending a standard agreement are included as Attachment 2 of these instructions.

The forms were developed to be used for the most common kinds of amendments to standard consultant agreements: (1) extending the term, (2) changing the Maximum Total Compensation, (3) deleting, changing or adding tasks to the Schedule of Basic Services in **Exhibit A**, (4) making adjustments to the Compensation Table and/or the Schedule of Rates and Charges set forth in **Exhibit B**, and (5) requiring the consultant to provide additional services. If you need to amend a standard consultant agreement in some other way, then 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 consultant agreement. On the next line, insert the CPMS Contract No. associated with the agreement you are amending. See Subsection 2.2 of these Instructions for a discussion of the consultant 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 consultant agreement.

5.3.1 **Box 1 - Agreement Term:** Mark this box if you are extending the term of the consultant 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 consultant 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.

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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 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.

NOTE: If you amend the Maximum Total Compensation, then you also need to amend the Compensation Table set forth in **Exhibit B**. See Subsection 5.8 of these instructions.

5.3.3 Box 3 - Scope of Basic Services – Exhibit A: Mark this box if you are amending any of the tasks included in **Exhibit A** of the consultant agreement. If you mark this box, then you need to mark the appropriate box indicating whether the version of **Exhibit A** that you are amending is the original **Exhibit A**, or the second or third amended **Exhibit A**. Next, you need to mark the box indicating whether the **Exhibit A** you are attaching to the amendment is the first, second or third revision.

Example

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

Scope of Services – Exhibit A: The original First Revised Second Revised Exhibit A is amended to read as set forth in the attached First Second Third Revised Exhibit A.

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

Scope of Services – Exhibit A: The original First Revised Second Revised Exhibit A is amended to read as set forth in the attached First Second Third Revised Exhibit A.

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

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5.3.4 Box 4 - Compensation – Exhibit B: Mark this box if you are amending the Compensation Table and/or the Schedule of Rates and Charges that are included in **Exhibit B** of the 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:

Compensation – 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 follows:

Compensation – 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 5.8 of these Instructions.

5.3.5 Box -5 - Additional Services: Mark this box if you are amending the agreement to require the consultant to perform additional services. Remember to attach the “Additional Services” exhibit to your amendment. See Subsection 5.9 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.

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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 review and approve an amendment to a 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 amendment.

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, Section 2.20 of these Instructions.

5.7 Revised Exhibit A – Scope of Services: Complete the “Revised Exhibit A: Scope of Services” 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 A 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 A to the first, second, or third amendment to the consultant agreement.

5.7.4 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.

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NOTE: You do *not* need to restate all of the tasks or otherwise include in the Revised Exhibit A any tasks that you are *not* amending.

5.8 Revised Exhibit B - Compensation: Complete the “Revised Exhibit B: Compensation” form as follows:

5.8.1 Header: Insert the information required in the header.

5.8.2 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.

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

5.8.4 Completing Compensation Table: Restate all of the compensation information in the Compensation Table, i.e. the compensation information that is unchanged as well as any revised 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.

5.8.5 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.

5.9 Additional Services Exhibit: Complete the Additional Services Exhibit form as follows:

5.9.1 Header: Insert the information required in the header.

5.9.2 First Paragraph: Mark the appropriate box indicating whether you are attaching the Additional Services Exhibit to the first, second, or third amendment to the consultant agreement.

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5.9.3 Additional Service No.: The additional services exhibit contains a table format that should be repeated for each additional service you are requiring the consultant to perform as part of the amendment.

- At the top of each table, mark the box indicating the appropriate number of the additional service, i.e. one, two, three or four.
- The first 3 parts of the table – entitled “Service,” “Deliverable(s),” and “Completion Time” - requires you to describe the additional service. Refer to Section 3 of these Instructions, entitled “Completing Exhibit A – Scope of Services,” for information on completing this portion of the additional services exhibit.
- The last part of the table – entitled “Compensation” – requires you provide the specific terms and conditions of how you will compensate the consultant for providing the additional services. Refer to Section 4 of these Instructions, entitled “Completing Exhibit B – Compensation,” for guidelines on completing this portion of the additional services exhibit.

NOTE: The Director is authorized to execute any amendments requiring the consultant to perform additional services.

END OF INSTRUCTIONS