

# **Request for Proposals: Regional Assessment Procedure Documenting Operational Process and Diversion Rates for Construction and Demolition Debris Recovery Facilities.**

## **1. RFP Introduction**

The local government agencies identified in Section 2 below (“Participants”) located within the San Francisco Bay Area are seeking proposals from consulting firms (“Consultant”) to develop a reliable, efficient, and uniform process to assess operations and diversion rates of facilities that accept, process, and divert construction and demolition (C&D) waste from landfill disposal throughout the San Francisco Bay Area Region. If the regional assessment process is adopted by the Participants, the proposing Consultant will also provide and implement the facility assessments and the assessment process will be used to support each adopting Participants’ C&D diversion activities (primarily described in their C&D Ordinances). The proposing Consultant must have relevant expertise and experience as well as an approach that demonstrates their ability to efficiently provide the required services.

## **2. Participating Local Government Agencies**

The local government agencies that currently make up the Participants soliciting proposals include:

- **Central Contra Costa Solid Waste Authority** (dba “RecycleSmart”) composed of the Cities/Towns of Danville, Lafayette, Moraga, Orinda, Walnut Creek, and unincorporated Contra Costa County areas including Alamo, Diablo, and Blackhawk.
- **Sonoma County Waste Management Agency** composed of the Cities of Cloverdale, Cotati, Healdsburg, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, Sonoma, and Windsor, and unincorporated Sonoma County Contra Costa County.
- **Solano County** (unincorporated areas)
- **City of San Jose**
- **City of Sunnyvale**



The participating agencies listed here are directly and equally responsible for issuance and evaluation of this RFP. Other Bay Area government agencies have expressed interest in a regional approach to the assessment of C&D processing facilities and may join this RFP process as a supporting participant prior to its conclusion. The Participants will also make selected procedures available for other government agencies to join and adopt if it becomes operational.

## **3. Scope of Work**

The successful proposal submittal must demonstrate that the Consultant has the appropriate professional and technical background as well as access to adequate resources to fulfill the stated task in

the scope of work. This RFP solicits the proposal of a regional assessment procedure and procedure implementation. Proposals must describe an assessment development process consisting of two tasks:  
1) To develop an assessment proposal responding to the methodology requirements listed below that describes a regional procedure to evaluate facility operational methods, effectiveness, and diversion rates.

2) If the proposal is selected by the Participants, design and implement the selected procedure for independent assessment of facilities for a one year contract period with option for two, one-year extensions.

### **3.1 Task 1. Procedure Development**

This RFP requests response to both requirements listed below:

**Methodology (A)** Propose a detailed, step-by-step methodology for assessing facility operations. This will not include Consultant calculation of a facility diversion rate but will include reporting a diversion rate provided to the Consultant by the operators of the assessed facility. This method must respond to current and anticipated requirements for construction waste reduction, disposal, and recycling found in the California Green Building Standards (CalGreen), consistent with Proposal Deliverables Section 4 of this RFP.

**Methodology (B)** Propose a methodology that provides an operational assessment as requested in Methodology (A) and also include a detailed, independent determination of facility diversion rate calculated as part of the Consultant assessment. This method must respond to current and anticipated requirements for construction waste reduction, disposal, and recycling found in the California Green Building Standards (CalGreen) and LEEDv4 “Construction and Demolition Waste Management Planning” requirements, consistent with Proposal Deliverables Section 4 of this RFP.

To assist in responding to the proposal requirements, the Participants have developed a list of **interest areas** for both methodologies. These areas are listed below.

**Methodology (A)** Detailed operational assessment that must include:

- Facility Identification and Location
- Detailed Facility Description – Location, Total Capacity, Daily/Weekly/Monthly Processing Volumes
- Facility Disposal Fees
- Detailed Operational Description
- Photographs
- Market Destinations
- Facility Permitting (SWFP or CDI) & Complaint/Infraction Record
- Receipt Examples
- Mixed Load Acceptance Standards/Thresholds (Interest: Does this influence facility ability to maintain a higher diversion rate?)
- Facility reported diversion rate

**Methodology (B)** Detailed operational assessment and determination of a facility diversion rate as part of the assessment that must include:

- Facility Identification and Location

- Detailed Facility Description – Location, Total Capacity, Daily/Weekly/Monthly Processing Volumes
- Facility Disposal Fees
- Detailed Operational Description
- Photographs
- Market Destinations
- Facility Permitting (SWFP or CDI) & Complaint/Infraction Record
- Receipt Examples
- Mixed Load Acceptance Standards/Thresholds (Interest: Does this influence facility ability to maintain a higher diversion rate?)
- C&D Material Recovery/Diversion Rate using a methodology such as mass balance accounting that will accurately determine a rate based on material input/output over a period not less than six months (minimum twelve month period for LEED 3<sup>rd</sup> point pilot credit). Procedure will be described in detail with hypothetical examples provided.

**Must Demonstrate a Regional Approach.** A primary goal in developing a regional assessment procedure is to make it regional in application. A regional assessment procedure means that facilities will undergo one uniform assessment (or reassessment in subsequent years) versus multiple assessments for different Participants. This will reduce costs and redundancy for C&D facilities throughout the Bay Area and will aid participating agencies to track and achieve diversion requirements.

**Description of Assessment Costs & Fees.** The proposed assessment procedure must include a description of all costs to conduct assessments and administer the program for the Participants. The procedure design must incorporate all of the estimated assessment costs (fees and any administration costs) that will be integrated into a proposed schedule of assessment fees to be paid by the assessed facilities.

**The submitted proposals will provide separate and detailed descriptions of Methodologies (A) and (B) that address the interest areas described here and other measures that the Consultant might add to enhance effectiveness. This task will also include a detailed description of estimated costs to develop the assessment, a separate description of estimated costs to conduct assessments at the facilities (Task 2), and a detailed timeline to complete development.**

### **3.2 Task 2. Conducting Assessments Based on Regional Procedure**

The RFP also seeks to conduct and pilot testing C&D facility assessments using the proposed regional procedure (Task 1), if adopted by the Participants. For this task, the proposal should address how the assessment procedure will be implemented and an assessment fee schedule will be used to support the regional program. Again, costs for facility assessments must be borne entirely by the evaluated C&D facilities.

Proposals must address the ability for proposed procedures to assess facilities of varying sizes and capabilities, accepting materials from a variety of C&D projects throughout the Bay Area. The range of C&D facilities to potentially be assessed include:

- **Small Facilities** - Small “pad sort” operations, and backyard facilities
- **Large Facilities** - Large multi-processing line facilities

- **Landfills and Transfer Stations** - Landfills that receive solid waste and process mixed C&D materials, and facilities that do not process C&D, but transfer materials to other facilities
- **Accepting both Mixed and Single Materials** - Facilities that accept mixed C&D waste or source-separated material (concrete, metal, wood) and facilities that also accept MSW
- **Salvage (Reuse)** - Reuse facilities that accept materials which require minimal or no processing and can be sold “as is” for reuse

The proposal must also identify how assessment fees charged to facilities will take into account facility size, capacity and scale, operational process, and type of materials accepted. For example, the proposal must address how a small, single material facility versus a large, multi-line facility will be evaluated and charged an assessment fee appropriate to their size and operational scope.

Participants intend to add a requirement for facilities in their respective jurisdictions to successfully complete assessments provided by the selected Consultant in order to participate in the individual agencies’ C&D Programs. Participating agencies will publicize facilities which have successfully undergone Consultant’s assessments and will accept weight tickets documenting diversion from those facilities. This will incentivize broad facility participation in this regional program, providing that the assessment fees are reasonable, as proposed by the selected Consultant, and adopted by the participating agencies. The cost to the facilities to participate must be equitable, as to not prohibit or cause an unreasonable barrier to participation or entry for the breadth of the region’s existing facilities. The proposed assessment program and cost to participate must clearly offer a value on investment for participating facilities, incentivizing and streamlining commitment to waste diversion tracking, consistent reporting, and best business practices in these areas.

### **3.3 Cal Green Requirements and LEEDv4 Accreditation**

The adopted assessment procedures must support current and anticipated California Green Building Standards (CalGreen) for construction and demolition waste diversion. This will include procedures that support the 65% diversion standard for nonhazardous construction and demolition waste, effective January 1, 2017.

The adopted assessment procedures will also support LEED v4 “Construction and Demolition Waste Management Planning” requirements that permit one or two points for 50% and 75% diversion, respectively, and exclude land clearing debris and use as alternative daily cover (ADC) for approved diversion.

Additionally, Consultant will consider adding procedures that will allow LEED 3<sup>rd</sup> point “pilot” credit through the use of a mixed material recovery facility that have achieved third party verification using more rigorous facility audit procedures that include mass-balance accounting over a 12 month period.

## **4. Proposal Deliverables**

All information contained in the proposal should be concise and in direct response to the content of this request. Consultants responding to this RFP are to address each deliverable listed below in its description of development of a proposed regional assessment procedure. The deliverables must be clearly identified in the proposal response to avoid confusion during review and evaluation.

#### 4.1 Deliverable 1. – Response to Task 1 Procedure Development

Provide proposal response to the following requirements. Proposals are required to respond to both Methodologies (A) and (B). Methodology descriptions must be separate and supporting content must clearly identify which methodology is being addressed. Include a thorough discussion or description addressing the proposal’s regional approach, response to Participants “Interest Areas”, and clearly define proposed costs and assessment fee schedule, if implemented.

- **Methodology (A)** Propose a detailed methodology for assessing facility operations only. This will not include Consultant calculation of a facility diversion rate but will include Consultant reporting a diversion rate provided by the facility operators.
- **Methodology (B)** Propose a methodology that provides an operational assessment as requested in Task (A) which also includes a detailed, Consultant conducted independent determination of facility diversion rate as part of the assessment.

In your descriptions of Methodologies (A) and (B), please respond to the following:

- **Facility Operations.** Describe how the proposed assessment procedure will document the operational processes used at the evaluated facilities to process, recover, and divert materials.
- **Materials Accepted & Processed.** Describe how the proposed assessment procedure will identify and quantify materials that are accepted by the evaluated facility.
- **Processed Material Disposition, Residuals & Markets and/or End Users.** Describe how the proposed assessment procedure will identify processed materials and their markets/end users.
- **Procedure for Measuring Facility Diversion Rate - Methodology (B) response only.** Describe in detail how the proposed assessment procedure will measure the evaluated facility’s diversion rate using a methodology such as mass balance accounting that will accurately determine a rate based on material input/output over a period not less than six months. Procedure will be described in detail with examples provided.
- **Other.** Describe other actions and services that will enhance the evaluation process including inclusion of facility photographs, weight ticket examples, description of “customer service” provided by the facility to its customers, and creation and updating of a regional guide listing all assessed facilities for use as a reference by participating members and the public.

#### 4.2 Deliverable 2. – Response to Task 2 Conducting Assessments

- **Assessment Procedure Implementation.** Describe how the proposed assessment procedure will be implemented and administered for a one year test period (with Participants option to extend an additional one year based on performance).
- **Data Collection & Retention.** Describe how the proposed assessment procedure will record data throughout the evaluation procedure and how this data can be retained for future reference. As part of data collection and retention, describe how confidentiality can be maintained for data that facilities may consider proprietary.
- **Cost & Fee Schedule.** Provide detailed budget that will include the fee(s) that will be paid by evaluated facilities to perform complete assessments. Costs will be provided in a schedule format that reflects the size and type of facility that is evaluated as described in Section 3 above. Assessment fees must be proportional and sensible, and designed for payment entirely

by the evaluated facility. Consultants will also provide a fee schedule that reflects initial assessment and subsequent re-assessments.

- **Development & Implementation Schedule**. Provide a detailed schedule for both development of the assessment procedure and its implementation. This schedule may be modified if a Consultant is selected.

## 5. **Proposal Submission Requirements**

All information contained in the proposal must be concise and directly respond to the content of this request.

**Proposals are requested no later than 12:00 PM (Noon / Pacific Daylight Time) on Monday, August 8, 2016. Please provide an electronic copy only. Late submissions will not be accepted. Incomplete proposals will not be considered. It is the responsibility of the Consultant to ensure that the proposal arrives at the required time using the required format.**

The submittal, excluding the cover letter and required attachments, shall not exceed 25 pages on 8.5 x 11 inch, double-sided, 1.5 line-spacing, Arial font, no smaller than size 11 point. Pages in excess of the page limitation will not be reviewed.

**Please Email Proposals to:**

**NAME: Patrick Carter, Sonoma County Waste Management Agency**

**Email: [patrick.carter@sonoma-county.org](mailto:patrick.carter@sonoma-county.org)**

## 6. **Consultant Questions**

Consultants who have questions about services requested in this RFP or the RFP procedure should submit those questions by **12:00 PM (Noon / PDT) on Tuesday, July 22nd**, in writing, to Patrick Carter at [patrick.carter@sonoma-county.org](mailto:patrick.carter@sonoma-county.org). Response to all questions received by the deadline will be distributed via emailed addenda.

## 7. **Proposal Content**

The Proposal package shall address all information requested in this RFP and must include the following:

- 7.1. **Transmittal Letter.** The transmittal letter on the Consultant's letterhead must accompany the Proposal. The letter must be signed by an officer or employee having the authority to bind the Consultant by signature and give an overview of the Consultant's general ability to perform the scope of work described in this RFP.
- 7.2. **Company Information.** Legal name of firm, address, phone, fax, and email address, year the firm was established and type of business. Describe the mission and objectives of your firm including specialties, core services, and the types of clients served. Describe corporate qualifications and resources that support your abilities to undertake this project. Provide an

organizational chart that clearly identifies the Board of Directors, project manager, and key staff.

- 7.3. **Key Personnel.** Identify by name and position and provide one resume of the primary representative responsible for managing firm's support of requirements described in this RFP. Include resumes and description of the key employees, including managers and any other consultants that the firm proposes to use. Describe each employee's role(s) for this project, their relevant qualifications and experience, duration of employment, and hourly billing rate.
- 7.4. **Subcontractors.** Identify any work that will be subcontracted, and include a list of the subcontractor's qualifications, key personnel, and hourly billing rates. Describe all relevant work experience of Consultants firm with each subcontractor.
- 7.5. **Experience.** Describe past experience completing similar C&D or recycling facility assessments and diversion rate measurement work. Include one or more examples developed by your firm similar what is requested in this RFP.
- 7.6. **Project Approach.** Provide a summary of the firm's project approach, providing a clear description of the methodology and specific work activities typically undertaken to successfully complete all the work. Identify key strategies describing how the Consultant's approach will ensure quality services/products and timely and accurate completion of work. Provide sufficient detail to clearly demonstrate understanding of the scope, requirements, and level of effort.
- 7.7. **References.** Provide two (2) references of similar projects that the firm has completed and include the following information for each: name of the public agency, name, title, and phone number of contact person, a brief description of the services, including starting date and completion date, and an explanation of your firm's role.

## 8. **Sample Agreement**

The Consultant selected to perform the services described in this RFP will enter into a Master Consultant Agreement with the Participants before performing any work related to Task 1 of this RFP. The Consultant selected will enter into a Master Consultant Agreement with each Participant individually before performing any work related to Task 2 of this RFP. An exemplar of the standard terms and conditions of the Master Consultant Agreement that the Consultant would need to enter into is set forth in Attachment 1 of this RFP, entitled "EXEMPLAR STANDARD CONSULTANT AGREEMENT." Complete FORM 1 - EXEMPLAR ACKNOWLEDGEMENT noting whether the Consultant takes any exceptions to the standard terms and conditions set forth in the Exemplar. **In selecting a Consultant, the Participants may consider any exceptions to the standard terms and conditions taken by a Consultant.**

## 9. **Conflict of Interest**

In order to avoid conflict of interest, or the perception of a conflict of interest, all Consultant's must complete the attached CONFLICT OF INTEREST FORM (Form 2).

## 10. **Insurance Requirements**

- The selected Consultant(s), at Consultant's sole cost and expense and for the full term of the Agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Exhibit C of the sample agreement.

- All policies, endorsements, certificates and/or binders shall be subject to approval as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Participants. The selected Consultant agrees to provide a copy of said policies, certificates and/or endorsements.
- Certificate of Insurance, as required, shall be provided within 10 days of the notice of award. Failure to provide the required Certificate of Insurance may result in withdrawal of the Award, and award to the next highest ranked proposer.

**11. Cost Proposal**

**This RFP requests a cost proposal as part of the submission. Costs will be itemized** and organized to correspond to direction provided in Proposal Deliverables of this RFP. Specifically, detailed description of costs will relate to the Task descriptions (1 & 2) required for response to this RFP. The Participants reserve the right and option to disqualify a proposal/respondent based on evaluation of proposal cost and/or content.

**12. Selection Process and Evaluation Criteria**

**Participating agency staff will evaluate each proposal, may conduct** interviews, and make a selection based upon demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required. The following evaluation methodology will be used in the selection process:

12.1 Proposal Evaluation Methodology

<b>RFP Responsiveness</b>	<b>Grading</b>
<b>Consultant’s Specialized Knowledge, Qualifications and Technical Competence</b>	<b>35 Points</b>
<b>Cost</b>	<b>30 Points</b>
<b>Experience with C&amp;D Waste Recovery</b>	<b>15 Points</b>
<b>Approach</b>	<b>10 Points</b>
<b>Completeness and Clarity of the Proposal</b>	<b>10 Points</b>

Each Consultant submitting a proposal in response to this RFP acknowledges and agrees that the preparation of all materials for submittal and all presentations, related costs, and travel expenses, are the candidate’s sole expense. The participating agencies shall not, under any circumstances, be responsible for any cost or expense incurred by the Consultant.

All proposals received in response to this RFP will become the property of the participating agencies and will not be returned. Within the requirements of California law, the participating agencies intend to retain the submitted proposals as confidential until a selection is made. If a Consultant believes that portions of its proposal are exempt from disclosure to third parties after the selection



is made and a contract executed, under the Public Records Act, or any other provision of the law, the Consultant must clearly label the specific portions that are proposed to be kept confidential and shall state to the Participants the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Marking all or substantially all of the proposal as confidential may result in the Consultant being considered non-responsive by the Participants.

Notwithstanding the foregoing, the Consultant recognizes and agrees that the participating agencies must comply with all laws and public information requests and requirements. As such, the participating agencies will not be responsible or liable in any way for any losses or damage that the Consultant may suffer from the disclosure of information or materials to third parties.

**13. RFP and Follow-on Activities Schedule**

RFP Distribution & Response Period	July 8 – August 8, 2016
Consultant Questions Due	July 22 (Response NLT July 26)
<b>Proposals Due Via Email</b>	<b>12:00 PM (Noon), August 8, 2016</b>
Proposal Evaluation	August 9 - August 30, 2016
Consultant Selection*	August 31, 2016
Contract Development & Adoption	Sept 1,2016 - Oct 1, 2016
Task / Phase 1 Project Work	October 2016 – March 2017
Task / Phase 2 Project Work	April – March 2018
Option to Extend Contract Work	April 2018 – March 2019

\*Participants may revise this schedule as needed with notification of all parties. Participants reserve the right to postpone selection.

**14. Acceptance or Rejection of Proposals**

The participating agencies reserve all rights and options including, without limitation:

- a. To reject any and all proposals that fail to meet the requirements of this RFP.
- b. To accept proposals that are, in the judgment of the participating agencies, in the best interest of the Participants.
- c. To request clarification from any respondent.
- d. To reject any and all non-responsive proposals.
- e. To waive irregularities in any proposal that the Participants may elect to waive.
- f. To reject all proposals without cause.
- g. To issue subsequent requests for new proposals.
- h. To select a proposal other than the lowest cost proposal.

- i. To contact references provided and seek information from any client with which the Consultant has done business.

**15. Notification of Award**

The Participants intend to select one consultant through this RFP process. Initial notification of selection will be made by **August 31, 2016**. The Participants reserve the right to change the notification date.

**16. List of Attachments and Forms**

Attachment 1 EXEMPLAR STANDARD CONSULTANT AGREEMENT  
Form 1 EXEMPLAR ACKNOWLEDGEMENT  
Form 2 CONFLICT OF INTEREST FORM

# Exemplar Standard Consultant Agreement

This Agreement is between the Central Contra Costa Solid Waste Authority (RecycleSmart), The City of San Jose, The City of Sunnyvale, The Sonoma County Waste Management Agency, and County of Solano (collectively the "Parties"), and [REDACTED], [REDACTED] ("Consultant").

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ ("Contract Date")

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

## 1. AGREEMENT SCOPE

1.1 **General:** This Agreement sets forth the terms and conditions under which the Consultant will provide professional consulting services to the Parties for the following project:

**Project Name:** [REDACTED]

**Project Location:** [REDACTED]

1.2 **Exhibits:** This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:

**Exhibit A:** Scope of Basic Services

**Exhibit B:** Compensation

**Exhibit C:** Insurance Requirements

1.3 **Project Manager:** "Project Manager" means \_\_\_\_\_ or the Project Manager's designee.

1.4 **Business Days:** "Business Day" and "Business Days" means weekdays

1.5 **Entire Agreement:** This Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.

1.6 **Amendments:** This Agreement may be modified only by a written amendment executed by the parties.

## 2. AGREEMENT TERM

- 2.1 Term:** The Agreement term is from the Contract Date to  , inclusive, unless terminated earlier pursuant to Section 19 below.
- 2.2 Retroactive Services:** There shall be no payment for work performed prior to the effective date of this agreement. Project Manager

## 3. SCOPE OF SERVICES

- 3.1 Basic Services:** “Basic Services” means the services set forth in **Exhibit A**. The Consultant must perform the Basic Services to the Project Manager’s satisfaction.
- 3.2 Additional Services:** “Additional Services” means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate to the Project but are not included in the Basic Services.
- 3.2.1 Authorization:** The Consultant can not perform any Additional Services without the Project Manager’s prior written authorization.
- 3.2.2 Project Manager’s Authorization:** The Project Manager may authorize the Consultant to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The Project Manager must authorize the Consultant to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the Consultant for such services. The Project Manager is authorized to execute the amendment for Additional Services for the City.

## 4. OMITTED

## 5. OMITTED

## 6. CONSULTANT’S STAFFING

- 6.1 Consultant’s Project Manager and Other Staffing:** Identified below are the following: (a) the Consultant’s project manager, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 (“Form 700”), the Consultant must comply with the requirements of Subsection 17.2 below.

		<b><u>Required to File Form 700?</u></b>	
		<b>Yes</b>	<b>No</b>
<b><u>Consultant’s Project Manager</u></b>			
Name:	Phone No.:		
Address:	E-mail:		

Consultant: Insert Consultant's Name.

<u>Other Staffing</u>			
<u>Name:</u>	<u>Assignment:</u>		
1.			
2.			
3.			

**6.2** Project Manager's Authority: The Consultant's project manager is authorized to act on behalf of the Consultant.

**6.3** Staffing Changes: The Project Manager's prior written approval is required for the Consultant to remove, replace or add to any of its staffing identified in this provision.

## 7. USE OF SUBCONSULTANTS

**7.1** Authority to Use: Whichever of the following is marked applies to this Agreement:

- The Consultant can **not** use any subconsultants without the Project Manager's prior written approval.
- The Consultant will use the following subconsultants for the specified areas of work. The Consultant can not remove, replace or add to any of the subconsultants identified in this provision without the Project Manager's prior written approval.

Subconsultant's Name	Area of Work
1.	
2.	
3.	

**7.2** Subconsultant Work: The Consultant warrants all services and deliverables provided by any subconsultants it uses, and represents that each such subconsultant is specially trained, experienced, and competent to perform its portion of the work.

## 8. INDEPENDENT CONTRACTOR

**8.1** General: The Consultant has complete control over its operations and employees, and is an independent contractor. The Consultant is not an agent or employee of the Parties, and shall not represent or act as the Parties' agent or employee. The Consultant does not have any rights to retirement benefits or other benefits accruing to Parties employees, and expressly waives any claim it may have to any such rights.

**8.2** Subcontractors: As an independent contractor, the Consultant has complete control over its

Consultant: Insert Consultant's Name.

subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.

- 8.3** **Indemnity:** The Consultant shall place in each Subcontractor agreement indemnity obligations in favor of the Parties in the exact form and substance of those contained in Section 11 below.

## **9. STANDARD OF PERFORMANCE**

The Consultant represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The Consultant represents that its performance of the Basic Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

## **10. COMPENSATION**

- 10.1** **Maximum Total Compensation:** The maximum amount the Parties will pay the Consultant for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is \$[Insert Dollar Amount] ("Maximum Total Compensation").
- 10.2** **Omitted.**
- 10.3** **Exhibit B - Compensation:** The Parties will pay the Consultant up to the Maximum Total Compensation in accordance with **Exhibit B**. **Exhibit B** contains a compensation table that sets forth how the Parties will pay the Maximum Total Compensation to the Consultant ("Compensation Table"). If the City will compensate the Consultant for any Basic Services on a time-and-materials basis, then **Exhibit B** also includes a schedule setting forth the Consultant's rates and charges ("Schedule of Rates and Charges").
- 10.4** **Compensation Table – Part 1:** Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services. The following terms and conditions apply to Part 1 of the Compensation Table.
- 10.4.1** **Task Numbers (Column 1):** Column 1 sets forth the task number(s) for which the Parties will compensate the Consultant. Each task number corresponds to the same task number in **Exhibit A**. If a task number included in **Exhibit A** is not included in the Compensation Table, then the Parties will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
- 10.4.2** **Basis of Compensation (Column 2):** Column 2 identifies whether the Parties will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee basis.
- 10.4.3** **Invoice Period (Column 3):** Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the Parties by the 10<sup>th</sup> Business Day of each month for work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the Project Manager within 20 Business Days following completion of the task(s) to the Project Manager's satisfaction. If invoicing is upon the completion of all work, the Consultant must submit its invoice to the Project Manager

Consultant: Insert Consultant's Name.

within 20 Business Days following completion of all work to the Project Manager's satisfaction.

**10.4.3.1 Invoice:** Each invoice must include sufficient information and supporting documents to establish to the Project Manager's satisfaction that the Consultant is entitled to the payment requested. The Parties will pay the undisputed portion of the invoice amount within 20 Business Days of the Project Manager's approval of such undisputed amount.

**10.4.3.2 Invoices Based on Time and Materials:** If time and materials is the basis of compensation, then the Consultant will base its invoice on the hours, professional fees, costs, and charges associated with the work completed during the invoice period. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs associated with the work completed during the invoice period. The Parties will compensate the Consultant in accordance with the Schedule of Rates and Charges included in **Exhibit B**.

**10.4.3.3 Monthly Invoices Based on Fixed Fee:** If the Consultant invoices monthly for a "fixed fee," then the Consultant will base its monthly invoice on the percentage of work completed during the previous month. If the task(s) completed the previous month involve the Consultant performing construction administration services, the percentage of work completed during the previous month will be measured based on the percentage of construction completed during the previous month. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs incurred during the previous month.

**10.4.4 Compensation (Column 4):** Column 4 sets forth the total compensation the Parties will pay the Consultant for completing the task(s).

**10.4.4.1 Time & Materials:** If time and materials is the basis of compensation, then the amount in Column 4 is a "not-to-exceed" or maximum amount. Any hours worked for which payment would result in a total exceeding the amount in Column 4 is at no cost to the Parties. If the Consultant completes the task(s) for less than the amount set forth in Column 4, the Project Manager (in the Project Manager's sole discretion) *may* use the cost savings to increase the budget of another task. The Project Manager must authorize such reallocation of cost savings in writing.

**10.4.4.2 Fixed Fee:** If "fixed fee" is the basis of compensation, then the Consultant must complete the task(s) for the amount set forth in Column 4. Any hours worked for which payment would result in a total exceeding the amount in Column 4 are at no cost to the Parties.

**10.5 Compensation Table – Part 2:** Part 2 of the Compensation Table indicates whether or not the Parties will reimburse the Consultant separately for expenses incurred in providing the work. The following terms and conditions apply if the Parties reimburse the Consultant separately for expenses.

**10.5.1 Subconsultants:** The cost of subconsultants is not treated as a reimbursable expense. Subsection 10.6 of this Agreement addresses payment for the cost of subconsultants.

**10.5.2 Maximum Amount of Reimbursable Expenses:** The Parties will reimburse the Consultant for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the Consultant incurs in excess of the stated maximum are at no cost to the Parties.

**10.5.3 Expenses That Are Reimbursable:** The Parties will reimburse the Consultant for only the expenses set forth below in the Reimbursable Expense Schedule. The Parties will reimburse these expenses at actual cost plus the specified markup. In no event shall a markup for a reimbursable expense exceed 5 percent.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	5%
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	5%
3.	Telephone and facsimile transmission charges.	5%
4.	The rental of any specialized equipment to the extent the Parties' project manager has preapproved, in writing, the cost of such rental.	5%
5.	With the written pre-authorization of the Project Manager, mileage and other travel-related expenses.	No Markup
6.	Any other expenses expressly identified in <b>Exhibit B</b> as being reimbursable.	As specified, not to exceed 5%

**10.6 Compensation Table – Part 3:** Part 3 indicates whether the Parties will compensate the Consultant separately for subconsultant costs incurred in providing any part of the services. If the Parties will compensate the Consultant for subconsultant costs, the Parties will do so in accordance with the following terms and conditions.

**10.6.1 Actual Costs:** The Consultant can invoice the Parties for no more than the actual cost of each subconsultant plus up to a 5 percent markup.

**10.6.2 Schedule of Rates and Charges:** Any subconsultant rates and charges set forth in the Schedule of Rates and Charges, if one is included in **Exhibit B**, must be the subconsultant's actual rates and charges exclusive of any markup. The Parties will compensate the Consultant in accordance with those rates and charges.

**10.6.3 Maximum Amount:** The Parties will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the Parties.

**10.7 Compensation Table – Part 4:** Part 4 sets forth the maximum compensation that the Project Manager can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the Consultant that would result in compensation exceeding this maximum amount is at no cost to the City.



**10.8 Schedule of Rates and Charges:** If **Exhibit B** contains a Schedule of Rates and Charges for the payment of services provided on a time-and-materials basis, the Schedule is subject to the following requirements.

**10.8.1 Premium Pay:** "Premium Pay" is any higher or additional charge for performing any services because of activities such as, but not limited to, expediting performance, working over 8 hours per day, working on Saturdays, Sundays or holidays, or working a swing or graveyard shift. The Parties will pay Premium Pay only in the following circumstances: (a) the Schedule of Rates and Charges provides for the payment of Premium Pay, and (b) the Consultant obtains the Project Manager's prior written consent to perform work in a manner that would require Premium Pay.

**10.8.2 No Increases:** The Parties will *not* increase the Schedule of Rates and Charges during the Agreement term.

**10.8.3 Conflict:** In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.

**10.9 Tax Forms Required:** The following are conditions on the Parties' obligation to process any payment pursuant to this Agreement:

**10.9.1 U.S. Based Person or Entity:** If the Consultant is a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the Parties with a properly completed Internal Revenue Service Form W-9 before the Parties will process payment. If the Consultant is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant acknowledges and agrees that the Consultant is required to provide the Parties with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

**10.9.2 Non-U.S. Based Person or Entity:** If the Consultant is not a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the Parties will process payment.

## **11. INDEMNIFICATION**

**11.1 Obligation:** The Consultant shall defend, indemnify and hold harmless the Parties and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:

- The Consultant's negligent performance of all or any part of the Basic Services and any Additional Services; or
- Any negligent act or omission, recklessness or willful misconduct of the Consultant, any of its Subcontractors, anyone directly or indirectly employed by either the Consultant or any of its Subcontractors, or anyone that they control; or
- Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Parties 'use of any services, deliverables or other items provided by the Consultant pursuant to the requirements

Consultant: Insert Consultant's Name.

of this Agreement; or

- Any breach of this Agreement by the Consultant or any Subcontractors.

**11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the Parties or its officers, employees or agents.

**11.3 Duty to Defend:** The Consultant's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City as set forth in Section 2778 of the California Civil Code. Upon the Parties' written request, the Consultant, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.

**11.4 Insurance:** The Parties' acceptance of any insurance in accordance with Section 12 does not relieve the Consultant from its obligations under this Section 11. The Consultant's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.

**11.5 Survival:** The Consultant's obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

## **12. INSURANCE REQUIREMENTS**

**12.1 General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.

**12.2 Documentation:** Before performing any services, the Consultant must submit to the Parties' designated risk manager ("Risk Manager"), all documents demonstrating compliance with the requirements of **Exhibit C**.

## **13. OWNERSHIP OF WORK PRODUCT**

**13.1 Ownership:** The Parties own all rights in and to any of the following work product (including electronic equivalents) immediately when and as created by the Consultant or any of its Subcontractors pursuant to this Agreement: drawings, plans, elevations, sections, details, schedules, diagrams, specifications, studies, reports, surveys, data, information, models, sketches, and other similar documents and materials (collectively "Work Product").

**13.2 Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the property of the Parties. In the event it is ever determined that any Work Product is not a work for hire under United States law, the Consultant hereby assigns to the Parties all copyrights to such works when and as created.

**13.3 City's Reuse:** The Parties' reuse of any Work Product is subject to California Business and Professions Code Sections 5536.25, 6735, 6735.3, 6735.4 or 8761.2, whichever is applicable.

**13.4 Consultant's Reuse:** With the Project Manager's prior written consent, the Consultant may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.

## 14. DISCLOSURE OF WORK PRODUCT

- 14.1 Prohibition:** Except as authorized by the Project Manager or as otherwise required by law, the Consultant shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the Parties and Consultant, or (c) information prepared, developed or received by the Consultant or any of its Subcontractors in the course of performing services pursuant to this Agreement.
- 14.2 Notification:** The Consultant will immediately notify the Project Manager if it is requested by a third party to disclose any Work Product, discussions or information that the Consultant is otherwise prohibited from disclosing.
- 14.3 Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures between the Consultant and its Subcontractors that are needed to perform the Basic Services.
- 14.4 Survival:** This Section 14 survives the expiration or earlier termination of this Agreement.

## 15. AUDIT/INSPECTION OF RECORDS

- 15.1 Retention Period:** The Consultant shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the Parties' final payment to the Consultant under this Agreement or for any longer period required by law:
- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Consultant's charges for performing services, or to the Consultant's expenditures and disbursements charged to the Parties; and
  - All Work Product and other records evidencing Consultant's performance.
- 15.2 Producing Records:** At any time during the Agreement term or during the period of time that the Consultant is required to retain the Records, the Parties, or a designated representative of any of the Parties may request, in writing, production of all or a portion of the Records. The Consultant shall produce the requested Records at the offices of the requesting Parties during normal business hours, or at any other location and time mutually agreed upon by the parties. The Consultant shall produce the requested Records at no cost to the Parties.
- 15.3 State Auditor:** In accordance with Government Code Section 8546.7, the Consultant may be subject to audit by the California State Auditor with regard to the Consultant's performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

## 16. NON-DISCRIMINATION/NON-PREFERENCE

- 16.1 Prohibition:** The Consultant shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Individual jurisdictions of the Parties may have specific requirements related to this section, and Consultant shall comply with all specific requirements for services provided within each jurisdiction.
- 16.2 Reasonable Accommodation:** The prohibition in Subsection 16.1 above is not intended to

preclude the Consultant from providing a reasonable accommodation to a person with a disability.

## 17. CONFLICT OF INTEREST

**17.1 General:** The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Consultant shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Consultant has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the Parties in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

**17.2 Filing Form 700:** In accordance with the California Political Reform Act (Government Code Sections 8311-83116), the Consultant shall cause each person identified in Attachment B of an Approved Service Order as having to file a Form 700 to do each of the following:

- Disclose the categories of economic interests in Form 700 as required by the Project Manager;
- Complete and file the Form 700 no later than 30 calendar days after the date the Consultant executes the Approved Service Order; and
- File the original Form 700 with the appropriate entities, as directed by the Project Manager.

**17.3 Future Services:** The Consultant acknowledges each of the following with regard to performing future services for the Parties:

- The Consultant's performance of the services required by this Agreement may create an actual or apparent conflict of interest with regard to the Consultant performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise one element or aspect of a multi-phase process or project;
- Such an actual or apparent conflict of interest would be a ground for the Parties to disqualify the Consultant from performing or participating in the performance of such future services; and
- The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

## 18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

**18.1** Individual jurisdictions of the Parties may have Environmental Preferable Purchasing Policies and Consultant shall comply with each set of requirements for services performed with each respective jurisdiction.

## 19. TERMINATION

- 19.1 For Convenience:** The Parties may terminate this Agreement at any time and for any reason by giving the Consultant written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days' after the date of the written notice.
- 19.2 For Cause:** The Project Manager may terminate this Agreement immediately upon written notice for any material breach by the Consultant. If the Project Manager terminates the Agreement for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the Parties.
- 19.3 Delivery of Work:** If the Project Manager terminates the Agreement – whether for convenience or for cause – the Project Manager has the option of requiring the Consultant to provide to the City any finished or unfinished Work Product prepared by the Consultant up to the date of Consultant's receipt of the written notice of termination.
- 19.4 Compensation:** The Parties will pay the Consultant the reasonable value of services satisfactorily rendered by the Consultant to the Parties up to the date of Consultant's receipt of the written notice of termination. For services to be "satisfactorily rendered," the Project Manager must determine that the Consultant provided them in accordance with the terms and conditions of this Agreement. The Project Manager will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.
- 19.5 Receipt of Notice:** For purposes of this provision, the Consultant's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

## 20. NOTICES

- 20.1 Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 When Effective:** A notice or other communication that is e-mailed is effective when sent. A notice or other communication that is personally serviced is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the Parties:

Attn: [Insert Name.]  
[Insert Mailing Address.]  
[Insert Telephone Number.]  
[Insert E-Mail Address.]

To the Consultant:

[Insert Consultant's Name]  
Attn: [Insert Name.]

Consultant: [Insert Consultant's Name.]

[Insert Mailing Address.]  
[Insert Telephone Number.]  
[Insert E-Mail Address.]

**20.4 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 20.

## 21. MISCELLANEOUS

**21.1 Gifts Prohibited:** Individual jurisdictions of the Parties may have specific requirements related to the prohibition of gifts and Consultant shall comply with those requirements.

**21.2 Disqualification of Former Employees:** Individual jurisdictions of the Parties may have specific requirements related to the disqualification of former employees and Consultant shall comply with those requirements.

**21.3 Waiver of a Violation:** The Parties' waiver of any violation of this Agreement by the Consultant is not a waiver of any other violation by the Consultant.

**21.4 Acceptance of Services Not a Waiver:** The Parties' acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.

**21.5 Compliance with Laws:** The Consultant shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Consultant's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.

**21.6 Business Tax:** Individual jurisdictions of the Parties may have specific requirements related to business tax certification or exemption and Consultant shall comply with those requirements.

**21.7 Assignability:** Except to the extent this Agreement authorizes the Consultant to use subconsultants, the Consultant shall not assign any part of this Agreement without the Project Manager's prior written consent. The Project Manager, at the Project Manager's discretion, may void this Agreement if a violation of this provision occurs.

**21.8 Governing Law:** California law governs the construction and performance of this Agreement.

**21.9 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.

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Consultant: Insert Consultant's Name.

**21.10 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.

**21.11 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.

**IN WITNESS WHEREOF,** the Parties and Consultant have caused this Agreement to be executed by their respective duly authorized representatives as follows.

**NOTE:** The Consultant must make one of the following representations by placing its initials in the space provided. The Parties will not process this Agreement unless the Consultant has initialed one of the provisions.

\_\_\_\_\_ The Consultant certifies that the Consultant has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Consultant will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Consultant ceases to have a permanent place of business in California or ceases to do any of the above, the Consultant will promptly notify the Parties at the address specified in Subsection 22.3 of this Agreement.

Or

\_\_\_\_\_ If the Consultant is unable to make the above certification, the Consultant acknowledges and agrees to provide the Parties with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.8 of this Agreement.

[SIGNATURE BLOCKS]

## EXHIBIT A: SCOPE OF BASIC SERVICES

The Consultant shall provide services and deliverables as set forth in this **Exhibit A**. The Consultant shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the Project Manager.

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**General Description of Project for which Consultant will Provide Services:** [Optional provision. Insert a general project description if you believe it would help understand the tasks. Otherwise delete.]

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**Task No. 1:** [Insert title of task.]

- A. **Services:** [Insert a description of the services.]
- B. **Deliverables:** [Insert a description of the deliverables.]
- C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: \_\_\_\_\_.
  - On or before \_\_\_\_ Business Days from \_\_\_\_\_.

**Task No. 2:** [Insert title of task.]

- A. **Services:** [Insert a description of the services.]
- B. **Deliverables:** [Insert a description of the deliverables.]
- C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: \_\_\_\_\_.
  - On or before \_\_\_\_ Business Days from \_\_\_\_\_.

**Task No. 3:** [Insert title of task.]

- A. **Services:** [Insert a description of the services.]
- B. **Deliverables:** [Insert a description of the deliverables.]
- C. **Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: \_\_\_\_\_.
  - On or before \_\_\_\_ Business Days from \_\_\_\_\_.



## Exhibit B: Compensation

### Section 1 – Compensation Table

Column 1	Column 2	Column 3	Column 4
Task Nos.	Basis of Compensation	Invoice Period	Compensation
	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
<input type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.		<input type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:	\$
<input type="checkbox"/> Subconsultant costs are <b>not</b> separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants.		<input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subconsultant costs is:	\$
<input type="checkbox"/> No money is budgeted for Additional Services, and the Project Manager can not authorize any Additional Services.		<input type="checkbox"/> The Project Manager may authorize the Consultant to perform Additional Services up to the following maximum amount:	\$
<b>Maximum Total Compensation</b> (sum of Parts 1 through 4):			\$

CPMS Contract No.: [Insert CPMS Contract Number.]

Consultant: [Insert Consultant's Name.]

## Section 2 – Schedule of Rates and Charges

- Omitted.** No Schedule of Rates and Charges is included because the City will not be compensating the Consultant for any Basic Services on a “time & materials” basis.
- The following is the Schedule of Rates and Charges applicable to this Agreement:

**EXHIBIT C**  
**INSURANCE**

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

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the Participating Local Government Agencies.

**B. Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit, coverage to be maintained following completion of work on project for 3 years or if policy is canceled, extended reporting period to equal the same.

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

Any deductibles or self-insured retentions must be declared to the Participating Local Government Agencies and shall be consistent with industry standard.

**D. Other Insurance Provisions**

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

1. Commercial General Liability and Automobile Liability Coverages
  - a. Participating Local Government Agencies, their officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
  - b. CONSULTANT's insurance coverage shall be primary insurance as respects Participating Local Government Agencies, their officers, employees, agents and contractors. Any insurance or self-insurance maintained by Participating Local Government Agencies, their officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided Participating Local Government Agencies, their officers, employees, agents, or contractors.

- d. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the Participating Local Government Agencies, their officers, employees, agents and contractors.

## 2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of Participating Local Government Agencies, their officers, employees, agents and contractors.

## 3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be cancelled or reduced in limits except after thirty (30) days' prior written notice has been given to Participating Local Government Agencies, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

## **E. Acceptability of Insurers**

Insurance is to be placed with insurers of an A.M. Best's Rating of A-, VII or better.

## **F. Verification of Coverage**

CONSULTANT shall furnish Participating Local Government Agencies with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT as the Participating Local Government Agencies request and to the address and location as designated by the Participating Local Government Agencies. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

## **G. Subcontractors**

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

**FORM 1 – EXEMPLAR ACKNOWLEDGEMENT**

Consultant Firm Name \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date signed \_\_\_\_\_

We take NO exceptions to ATTACHMENT A – EXEMPLAR STANDARD CONSULTANT AGREEMENT.

or

We take exception(s) to ATTACHMENT A – EXEMPLAR STANDARD CONSULTANT AGREEMENT outlined below:

## CONFLICT OF INTEREST FORM

To be completed by consultants making proposals.

NAME \_\_\_\_\_

DATE \_\_\_\_\_

PROPOSED ASSIGNMENT: \_\_\_\_\_

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

<p>1. Personal Relationships</p> <p>(a) Do you currently have or have had any official, professional, financial, or personal relationships with any person or firm associated with this assignment?</p> <p>(b) If yes, describe the type and extent of the relationship.</p> <p>(c) In your opinion, might this affect your judgment or your ability to execute this assignment in a fair and impartial manner?</p>		
<p>2. Stock and Investments</p> <p>(a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent own any stock in company likely to be affected by or involved in the Proposed Assignment?</p> <p>(c) Do you hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment:</p> <p>(d) Does your spouse or a dependent hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b> to any of the above questions, please provide the name of the company and the amount of the stock or investment.</p>		
<p>3. Employment &amp; Consulting</p> <p>(a) Is your spouse or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Has your spouse or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b> to any of the above questions, please provide name of employer, nature of services provided and if the dates employed or retained.</p>		

<p>4. Payments or Gifts</p> <p>(d) Within the past 12 months, have you received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(e) Within the past 12 months, has your spouse or a dependent received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the amount the payment or value of the gift, the name and position of the payor/donor and the date of receipt.</p>		
<p>5. Real Estate</p> <p>(a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the location of the property.</p>		
<p>6. Positions</p> <p>(a) Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is <b>yes</b>, please provide the name of the entity, and the title of the position held.</p>		
<p>7. Are you aware of any facts or circumstance that might give someone the impression that your participation in this process would create a conflict of interest?</p>		

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Date