

**Paoli, Diana**

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**From:** Jacob Patterson <jacob.patterson.esq@gmail.com>  
**Sent:** Friday, July 11, 2025 5:17 PM  
**To:** City Clerk  
**Cc:** Whippy, Isaac  
**Subject:** Public Comment -- 7/14/25 CC Mtg., Item No. 5F, MJC Contract Amendment

City Council,

I don't think you necessarily need to pull Item No. 5F, the proposed Sixth Amendment to our contract with Marie Jones Consulting (MJC), however I want to draw your attention to an important aspect of the proposal because the agenda item is misleading as written. Actually, the Sixth Amendment itself could use some revisions because it would result in an internal inconsistency within the overall amended contract. Neither the draft resolution nor the Sixth Amendment itself indicate that Exhibit A or the hourly rates are being changed but it appears they are at least are attempting to be changed even though the drafting leaves something to be desired. Exhibit A to the Contract, the Scope of Work, has remained the same through the Fifth Amendment and it reads as follows:

**Exhibit A**

**Scope of Work**

Marie Jones Consulting will provide planning consulting services, on a time and materials basis, to the City of Fort Bragg in the following general areas:

1. Long Range Planning
2. Policy and Ordinance Development
3. Special Projects
4. Grant Writing
5. Planning Department Guidance and Supervision
6. Planning Commission
7. Current Planning Projects & CEQA Review

The hourly rate for Marie Jones Consulting services is \$120 per hour.

The version of Exhibit A attached to the proposed Sixth Amendment is different and reads as follows:

**Exhibit A**

**Scope of Work**

Marie Jones Consulting will provide planning consulting services, on a time and materials basis, to the City of Fort Bragg in the following general areas:

- 1) Long Range Planning
- 2) Policy and Ordinance Development
- 3) Current Planning Projects & CEQA Review
- 4) Economic Development

- 5) Special Projects
- 6) Grant Writing

The hourly rate for Marie Jones Consulting services is as follows:

- Grant Funded Projects \$175/hr.
- Developer Deposit Account Funded Projects \$155/hr.
- General Fund Funded Projects \$135/hr.

As you can see, Exhibit A purports to slightly alter the substantive scope of work categories and creates three separate hourly rates for work funded from different sources. However, none of the contract amendments explicitly change the content of Exhibit A, Scope of Work, including the actual language of the proposed Sixth Amendment. The Sixth Amendment should include the changes to Exhibit A in the list of five substantive provisions, but only the first two, 1. TIME OF PERFORMANCE, and 2. TERM AND TERMINATION, amend the contract. There should be a third explicit provision/action to Amend Exhibit A as well, provided that is the intent. Otherwise, the original Exhibit A should, and IMO would, control rather than this new version. The second recital in the first five amendments (except the Third Amendment, which omitted the relevant recital) reads as follows:

**"WHEREAS**, the Contract states that Consultant will provide land use expertise and planning services as described in Consultant's Scope of Work attached to the Contract as Exhibit A; and"

In the proposed Sixth Amendment this is slightly altered to read:

**"WHEREAS**, the Contract states that Consultant will provide land use expertise and planning services as described in Consultant's Scope of Work attached to *this Contract Amendment* as Exhibit A; and" [Note: the italicized and underlined "this" rather than "the" and the addition of "Amendment" are the only differences.]

The resulting internal inconsistency is important because of the fourth substantive provision of all of the amendments, which states "4. All other terms, conditions, and provisions of the Agreement, as amended, shall remain in full force and effect." That means that the rest of the original contract, including the original version of Exhibit A, which has never been amended through any of the first five contract amendments, will remain in full force and effect despite the apparent discrepancy and the new wording of the second recital. Contract recitals are statements of fact that explain the purpose of the contract or amendment and explain why the following substantive provisions are being enacted, but the substantive provisions are the operative part of a contract, or amendment thereto. Recitals in an amendment, if technically incorrect, do not actually change the substance of the contract because the recitals do not amend any contract language, only the substantive provisions after the recitals do that. Thus, without a substantive provision explicitly amending the language of the original version of Exhibit A in the proposed Sixth Amendment, the purported "Exhibit A" attached to the Sixth Amendment isn't actually the Exhibit A referred to in the amended contract. Basically, because the proposed Sixth Amendment only describes the scope of work in a recital, the contract (as in the full contract includes the original contract language as amended through the substantive provisions of all the subsequent amendments) won't actually "state" that the description of the work (or the operative hourly rate) is "as described in Consultant's Scope of Work attached to this Contract Amendment as Exhibit A".

Until the date of this new amendment, MJC's contract established her billing rate at \$120 per hour for all types of services. You probably aren't aware, but the MJC invoices haven't consistently reflected the

contracted rate of \$120 per hour and the City has been overpaying MJC as a result (just as we were for the Jones & Mayer contract until I raised the issue and we got a credit for the improper charges). The City cannot make payments under a contract that differ from the contracted rate listed in the contract, and we should audit the MJC invoices and payments to date to calculate a credit toward future invoices (again, as we did for the Jones & Mayer contract). In order to pay more than the original rate, this contract needed to be amended to change those rates. As discussed above, the proposed Sixth Amendment still doesn't actually do that even though that may have been the **non-disclosed** intent.

Moreover, I find it highly objectionable that the differences in the scope of work exhibit are not disclosed in the resolution or the draft Sixth Amendment as being part of what is being updated or revised if you approve this. In fact, both documents describe the change as simply extending the end date for another year and increasing the "not to exceed" amount that can be paid out through that date. I only noticed this myself because I already knew about the hourly rate billing discrepancies that have occurred so this stood out when I reviewed this agenda item. I am not saying that any of this is intentional but the way this agenda item is written is far from fully-transparent. Most people who read it will assume (and IMO, actually be correct) that the hourly rates are still going to be what they were through the Fifth Amendment. I also don't think it is appropriate to try to back-door a retroactive change to the hourly rates this way so the prior invoices and overpayments wouldn't seem like they happened when they did. I have no issue updating the hourly rates and setting different rates for different funding sources but I certainly object to the past payments not following the contract provisions just as I did for the Jones & Mayer contract. Did Barron sign off on this? I hope not because this is questionable at best and presents an ethical quandary.

The Sixth Amendment should be revised to actually make the changes to Exhibit A so you probably shouldn't approve it as written unless staff provides revised documents for the meeting before you vote on this, which is an acceptable practice, albeit one that I think should be disclosed any time it happens, which is what my other town Claremont, does when they have amended agenda materials after the initial publication but before the meeting itself. I think the City should strive for maximum transparency in all actions or proposed actions it takes to preserve or improve public trust, which involves making sure everyone interested is aware of what action is being proposed and if anything of substance changes after agenda publication because most people don't re-review agenda materials to be on the lookout for alterations.

Sorry for the detailed comment about a consent calendar item (and being nitpicky) but this rubs me the wrong way and I don't want the City to enter into contracts that are ambiguous or include terms that might not be enforceable. Both parties to a contract should have their mutual intent reflected in the contract language and that doesn't appear to be the case with this amendment as written. At least I provide a suggested solution...

Best regards,

--Jacob