

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: August 15, 2019

Item description/summary:

EPS Proposal for technical support:

Past staff changes and lack of written documentation necessitate the clarification of prior fee credit agreements, system wide capacity fee use, and amounts payable to developers from present and future capacity fees for past construction of water and waste water collection infrastructure. Attached is the proposal from EPS to provide technical support to the District for prior studies prepared by EPS, fee programs developed with EPS's assistance, developer negotiations, and other tasks as required

Fiscal Analysis:

Hourly charges, as needed.

Employee Feedback

Highly recommended to provide clarification of all terms.

Sample Motion:

Authorize EPS proposal for technical support

Prepared by:

Karin Helvey – Financial Manager

August 30, 2018

John Tillotson
General Manager
Olivehurst Public Utility District
P.O. Box 670
Olivehurst, CA 95961

Subject: Fiscal Year 2018-19 Technical Support; EPS #182122

Dear John:

Economic & Planning Systems, Inc. (EPS) would appreciate the opportunity to provide technical support to the Olivehurst Public Utility District (District) during the 2018-19 fiscal year related to prior studies prepared by EPS, fee programs developed with EPS's assistance, developer negotiations, and other tasks as required.

EPS currently provides technical support for Mello-Roos Community Facilities Districts (CFDs) formed by the District. This contract would provide assistance related to other District programs not covered by existing contracts for the CFDs.

EPS has provided technical support to the District since the early 2000s with relation to impacts on the District coming from new development. The proposed scope of work for this proposal is discussed below.

Scope of Work

EPS will assist the District on an "as-needed" basis during the current fiscal year in the areas shown below, and others as needed:

- Assistance with fee program administration.
- Assistance with developer negotiations and interpretations of past agreements related to new development.
- Assistance with reconciliation of fee program funds or accounts.
- Other related areas of EPS expertise, as needed.

The Economics of Land Use



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Key Personnel

Managing Principal Jamie Gomes will serve as Principal-in-Charge of this project and will provide guidance and input as needed. Senior Vice President Russ Powell will serve as Project Manager and will conduct the day-to-day management of this project. Additional EPS staff may assist in identifying, collecting, and analyzing data.

Schedule

EPS will begin working on this project as soon as contract approval is received, and EPS will provide you with accurate information and work products on a schedule that meets your needs.

Budget

The estimated budget to complete this work is **\$7,500**. EPS charges for its services on a direct-cost (hourly billing rates plus direct expenses), not-to-exceed basis; therefore, you will be billed only for the work completed up to the authorized budget amount. Travel, data, or reproduction expenses will be billed at cost, and invoices are submitted monthly and are payable on receipt. If additional work or meetings are required, EPS will request authorization for additional budget with the understanding that terms will be negotiated in good faith. EPS's Hourly Billing Rates and Standard Terms and Conditions are attached as part of this letter agreement.

Again, EPS would appreciate the opportunity to work on this project. To approve this proposal, please sign below, return a signed copy of this letter agreement to EPS, and keep another copy for your records. If you have questions or require changes to this proposal, please call Project Manager Russ Powell at (916) 649-8010.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC. (EPS)



Russ Powell
Senior Vice President

Attachments

Approved:

Olivehurst Public Utility District

Date

2018 HOURLY BILLING RATES

Sacramento Office

Managing Principal	\$260–\$290
Senior Principal	\$300
Principal	\$230–\$245
Executive/Senior Vice President	\$230
Vice President	\$205
Senior Technical Associate	\$190
Senior Associate	\$175
Associate	\$160
Research Analyst II	\$120
Research Analyst I	\$90
Production and Administrative Staff	\$80

Billing rates updated annually.



Economic & Planning Systems, Inc.
Terms and Conditions for Consulting Services
EPS #182122

1. Authority

Each party has full power and authority to enter into and perform this contract, and the person signing this contract on behalf of each has been properly authorized and empowered to enter into this contract. Each party further acknowledges that it has read this agreement, understands it, and agrees to be bound by it.

2. Independent Contractor

It is specifically understood and agreed that in the creation and performance of this Agreement, CONSULTANT is an independent contractor, and is not and shall not be construed to be an employee or agent of the CLIENT.

3. Insurance

CONSULTANT shall maintain the following insurance:

- 3.1. Workers Compensation as required by law.
- 3.2. General Liability insurance policy of \$1,000,000, \$3,000,000 in aggregate, for personal injury and property damage.
- 3.3. Auto Liability insurance of \$1,000,000, combined single limit for bodily injury and property damage covering all vehicles including hired, owned and non-owned vehicles.
- 3.4. Errors and Omissions/Professional Services Liability and Personal and Advertising Injury insurance in the amount of \$2,000,000.
- 3.5. Excess/Umbrella Liability insurance in the amount of \$1,000,000.

4. Personnel

The CONSULTANT represents that it is an equal opportunity employer and has, or will secure at its expense, all personnel required in performing the services under this Agreement. All personnel engaged in the work shall be authorized or permitted under State and Local law to perform such services.

5. Interest of CONSULTANT

CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

6. Publication, Reproduction, and Use of Material

CLIENT may publish, distribute, or otherwise use any data, information, reports, or other materials prepared under this Agreement by CONSULTANT (CONSULTANT Work Product), in whole or in part, for purposes of this project (as described in an attached Work Order). This authority does not apply to any computer models or software used or developed as a result of this contract, unless a separate agreement is signed concerning the disposition of such materials or compelled by legal process. CLIENT acknowledges that CONSULTANT Work Product was prepared by CONSULTANT solely for contemporaneous use by CLIENT for this Project and that it is not intended for use at any other time, location, purpose or by any other party. Accordingly, CLIENT shall not, without the prior written consent of CONSULTANT (which CONSULTANT may withhold in its sole discretion), (i) use CONSULTANT Work Product for purposes unrelated to the Project, (ii) modify CONSULTANT Work Product, or (iii) disclose or distribute any CONSULTANT Work Product to any other person, firm, or entity. CONSULTANT shall be entitled to indemnification by CLIENT, pursuant to paragraph 13 hereof, if CLIENT breaches this provision, in addition to all other available remedies at law or in equity.

7. Confidentiality

Any reports, information, or data given to or prepared or assembled by the CONSULTANT under this Agreement shall not be made available to any individual or organization by the CONSULTANT without the prior written approval of the CLIENT. CONSULTANT is entitled to retain copies of all data, working papers, interim documents, memoranda, and reports produced under this Agreement. However, nothing contained herein shall prevent the disclosure of such information if compelled by legal process, and in the event thereof, only after notice to CLIENT.

8. Amendments to the Contract

No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of both parties.

9. Disputed Invoices

In the event that CLIENT disputes any item on an invoice, CLIENT shall notify the CONSULTANT of this disputed item within five working days of receipt of the invoice. CLIENT will approve payment of items on an invoice that are not in dispute and CLIENT and CONSULTANT will proceed to negotiate or arbitrate the disputed items as specified elsewhere in this Agreement.

10. Audits and Inspections

On reasonable notice, CLIENT may inspect any books, records, or other materials that pertain directly to this Agreement.

11. Compensation for Testimony and Preparation Thereof

If any legal action is brought in connection with the Agreement, other than an action that is solely the result of the incompetence or malfeasance by CONSULTANT, by or against a third party, and CLIENT requests that CONSULTANT or a SUBCONSULTANT, (or if CONSULTANT or a

SUBCONSULTANT is otherwise required) to testify, provide information, produce materials, or otherwise spend time on such action, then CLIENT shall pay CONSULTANT or SUBCONSULTANT for time expended at their standard rates then in effect, plus advance all related expenses and costs, including, but not limited to, reasonable attorneys' fees. Such compensation shall be in addition to the maximum charge for services defined in the Agreement.

12. Termination of Agreement

The CLIENT may, at its option, elect to cancel the contract at any time, by notice to CONSULTANT, on completion of any task described in the scope of services. In such event the CLIENT will pay to the CONSULTANT the amount due by virtue of completion of the products therefore delivered. If such cancellation is not based on any claim of CONSULTANT default, such payment shall include any sums withheld pursuant to this Agreement. In addition, the CONSULTANT shall be reimbursed (in addition to the payment) for that portion of the actual out-of-pocket costs not otherwise reimbursed under this Agreement previously incurred by the CONSULTANT during the period of the Agreement, which are directly attributable to the incomplete portion of the services covered by this Agreement.

13. Indemnification/Limitation of Liability

CLIENT agrees to release, indemnify, hold harmless, and defend CONSULTANT and all of its partners, employees, agents, and representatives of all types from and against all claims, liability, loss, cost, damage, expense, or obligation, including, but not limited to reasonable attorneys' and experts' fees and costs, which any of them may hereafter incur, suffer, or be required to pay by reason of any acts or omissions of Client in connection with its performance of this Agreement except as to claims arising from the sole negligence or willful misconduct of CONSULTANT.

CONSULTANT agrees to release, indemnify, hold harmless, and defend CLIENT and all of its partners, employees, agents, and representatives of all types from and against all claims, liability, loss, cost, damage, expense, or obligation, including, but not limited to reasonable attorneys' and experts' fees and costs, which any of them may hereafter incur, suffer, or be required to pay by reason of any acts or omissions of Consultant in connection with its performance of this Agreement except as to claims arising from the sole negligence or willful misconduct of CLIENT.

In cases of shared negligence, responsibility shall be in proportion to each party's negligence.

14. Nondiscrimination and Equal Opportunity

CONSULTANT and its SUBCONSULTANTS shall not unlawfully discriminate against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by CONSULTANT under this Agreement because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age (over 40), gender, or gender orientation. CONSULTANT shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services

that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of CONSULTANT thereby.

15. Standard of Performance

All work performed by CONSULTANT for CLIENT pursuant to this Agreement shall be performed by qualified persons, and shall be performed in accordance with standards of performance generally applicable to experts in the field for which CONSULTANT's services are retained.

As in all projects of this type, the estimated results are based on the continued competent and efficient management by CLIENT. In addition, the conclusions reached by CONSULTANT are based on the assumption that no significant changes in project conditions will occur beyond those expressly discussed in CONSULTANT Work Product. CONSULTANT shall be able to rely on information provided to it by the CLIENT, and CONSULTANT shall have no responsibility to audit or otherwise verify such information.

16. Force Majeure

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, power failures, earthquakes, or other disasters.

17. Arbitration

Any disputes arising out of this agreement shall be resolved by arbitration in accordance with Part 3, Title 9 of the Code of Civil Procedure, commencing with section 1280. All of the provisions of section 1283.05 are incorporated into, made a part of, and shall be applicable to, this agreement to arbitrate, except subdivision (e) requiring that leave be granted by the arbitrator before the taking of depositions.

18. Governing Law

This contract will be governed by and construed in accordance with the laws of the State of California.

19. Notice

Notice given under the terms of this Agreement shall be in writing and shall be effective the day it is mailed, properly addressed, to the party to receive such notice. Notice delivered other than by mail shall be effective when received. Any change of address of either of the parties shall be effective on receipt of notice of such change by the opposite party.