

Olivehurst Public Utility District

Agenda Item Staff Report



Meeting Date: March 21, 2024

Item description/summary:

EPS Proposals for Administration of OPUD CFDs. Each year OPUD benefits for the assistance provided by Economic and Planning Systems (EPS) in compiling, formatting and submitting the requisite information to Yuba County and regulatory entities associated with the tax assessments entailed in OPUD CFDs 2002-1 and 2005-2. OPUD has received proposals from EPS to continue the services.

Fiscal Analysis:

There is a reasonable charge by EPS for their services. The sources of funding are revenues derived from CFD assessments, not property taxes or service charges. EPS proposal for services remain at the 2023-24 and 2024-25 level with a budget of \$9,000 for CFD 2002-1 and \$4,000 for CFD 2005-2.

Sample Motion/Staff Recommendation:

Move to accept the proposals from Economic and Planning Systems for support in administrating Community Facility Districts (CFDs) 2002-1 and 2005-2.

Prepared by:

Karin Helvey, Financial Manager

The Economics of Land Use



March 12, 2024

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

Subject: Plumas Lake Community Facilities District No. 2002-1
Administration for Fiscal Year 2024-25; EPS #242046

John:

Economic & Planning Systems, Inc. (EPS) would appreciate the opportunity to prepare the Fiscal Year (FY) 2024-25 Tax Report, the Annual Report (as needed), the Annual California Debt and Investment Advisory Commission (CDIAC) Report, and the Continuing Disclosure Certificate for Plumas Lake Community Facilities District (CFD) No. 2002-1.

Key Personnel

Managing Director **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 also may assist on this project.

Scope of Work

Task 1: Set FY 2024-25 Annual Tax Levy, Prepare Tax Report, Prepare Annual Report, Prepare CDIAC Report, and Prepare Continuing Disclosure Certificate for FY 2023-24, as needed.

Task 2: Provide Technical Support as needed. Judicial foreclosure technical support will be covered under this task as needed. **Task 2** includes an \$800 data acquisition fee for access to current Assessor's data to identify taxable parcels and prepare disclosure reports. If needed, EPS will prepare a list of parcels with a delinquent special tax and instruct the Olivehurst Public Utility District (CLIENT) on the procedures required under the Indenture to notify such property owners of pending judicial foreclosure actions by the CLIENT if special taxes are not paid current.

Economic & Planning Systems, Inc.
455 Capitol Mall, Suite 701
Sacramento, CA 95814
916 649 8010 tel
916 649 2070 fax

*Oakland
Sacramento
Denver
Los Angeles*

www.epsys.com

Schedule

By July 1, 2024, EPS will submit the FY 2024-25 annual tax levy and preliminary tax report to the CLIENT for review. After making any edits, the tax levy will be provided to the CLIENT electronically by July 7, 2024, and transmitted to the Yuba County Auditor-Controller by July 31, 2024. EPS will complete the FY 2023-24 CDIAC Report before October 30, 2024. EPS will complete the Continuing Disclosure Certificate as needed.

Budget

The estimated budget to complete this work is **\$9,000**, composed of \$7,000 for **Task 1** and \$2,000 for **Task 2**. EPS proposes the budget for **Task 1** be a flat fee billed in 3 installments in June (20 percent), July (30 percent), and August (50 percent). EPS will charge for its services for **Task 2** 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. **Task 2** includes an \$800 data acquisition fee for access to current Assessor's data for identifying taxable parcels and preparing disclosure reports. 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 Terms and Conditions for Consulting Services 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. Please call me at (916) 649-8010 if you have questions or require changes to this proposal.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC. (EPS)



Russ Powell
Senior Vice President

Attachments

Approved:

Olivehurst Public Utility District

Date

2024 Hourly Billing Rates

Sacramento Office

Managing Principal	\$320
Principal	\$300
Senior Vice President	\$260
Senior Consultant	\$260
Vice President	\$245
Senior Technical Associate	\$215
Senior Associate	\$215
Associate	\$195
Research Analyst II	\$155
Research Analyst I	\$105
Production and Administrative Staff	\$100

Billing rates updated annually.



Terms and Conditions for Consulting Services

EPS #242046

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, EPS is an independent contractor, and is not and shall not be construed to be an employee or agent of the CLIENT.

3. Insurance

EPS shall maintain the following insurance:

- 3.1. Workers Compensation as required by law.
- 3.2. General Liability insurance of \$2,000,000 each occurrence, \$4,000,000 general aggregate.
- 3.3. Auto Liability insurance of \$2,000,000, combined single limit for bodily injury and property damage, covering non-owned and hired autos only.
- 3.4. Errors and Omissions/Professional Services Liability insurance in the amount of \$2,000,000 per claim/aggregate.
- 3.5. Excess/Umbrella Liability insurance of \$3,000,000.

4. Personnel

EPS 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 EPS

EPS 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 EPS (EPS 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 EPS Work Product was prepared by EPS 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 EPS (which EPS may withhold in its sole discretion), (i) use EPS Work Product for purposes unrelated to the Project, (ii) modify EPS Work Product, or (iii) disclose or distribute any EPS Work Product to any other person, firm, or entity. EPS 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 EPS under this Agreement shall not be made available to any individual or organization by EPS without the prior written approval of the CLIENT. EPS 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 EPS 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 EPS 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 EPS, by or against a third party, and CLIENT requests that EPS or a SUBCONSULTANT, (or if EPS or a SUBCONSULTANT is otherwise required) to testify, provide information, produce materials, or otherwise spend time on such action, then CLIENT shall pay EPS 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 EPS, on completion of any task described in the scope of services. In such event the CLIENT will pay to EPS the amount due by virtue of completion of the products therefore delivered. If such cancellation is not based on any claim of EPS default, such payment shall include any sums withheld pursuant to this Agreement. In addition, EPS 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 EPS 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 EPS 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 EPS.

EPS 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 EPS 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

EPS 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 EPS under this Agreement because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age (over 40), gender, or gender orientation. EPS 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 EPS thereby.

15. Standard of Performance

All work performed by EPS 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 EPS'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 EPS are based on the assumption that no significant changes in project conditions will occur beyond those expressly discussed in EPS Work Product. EPS shall be able to rely on information provided to it by the CLIENT, and EPS 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.

The Economics of Land Use



March 12, 2024

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

Subject: Olivehurst Public Utility District Community Facilities District
No. 2005-2 Administration for Fiscal Year 2024-25; EPS #242047

John:

Economic & Planning Systems, Inc. (EPS) would appreciate the opportunity to prepare the Fiscal Year (FY) 2024-25 Tax Report for Community Facilities District (CFD) No. 2005-2. The CFD was formed by Olivehurst Public Utility District (CLIENT) to provide a funding source for maintenance of parks being constructed to serve new development. The CLIENT recognized that the assessment levied and collected by Yuba County (County) for County Service Area (CSA) 66 was not sufficient to fully fund the costs of maintaining parks. The CFD was formed to provide additional funding to maintain parks in the event CSA 66 would not provide sufficient funding of park maintenance costs.

The CFD initially was formed for the Wheeler Ranch development, and there have been several annexations into the CFD since initial formation; however, only Wheeler Ranch has been taxed under the CFD to date. The CLIENT Board of Directors (Board) may consider initiating the levy of the special tax for annexation areas and their respective "tax zones" for FY 2024-25.

Each tax zone may be taxed at varying rates up to the maximum special tax allowed for the CFD in FY 2024-25. Annual CFD costs would be established for each tax zone, and a corresponding special tax levy would be submitted for consideration by the Board in July 2024.

Scope of Work

Task 1: Set FY 2024-25 Annual Tax Levy, Prepare Tax Report, and Prepare Annual Report (as needed) for all tax zones.

Task 2: Provide Technical Support (as needed).

Economic & Planning Systems, Inc.
455 Capitol Mall, Suite 701
Sacramento, CA 95814
916 649 8010 tel
916 649 2070 fax

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Key Personnel

Managing Director **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 also may assist on this project.

Schedule

EPS will begin working on this project as soon as contract approval is received, and EPS will provide accurate information and work products on a schedule that meets the CLIENT's needs.

Budget

The estimated budget to complete this work is **\$4,000**. The proposed budget for **Task 1** is \$3,000, and the proposed budget for **Task 2** is \$1,000. 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 Terms and Conditions for Consulting Services are attached as part of this letter agreement.

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Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC. (EPS)



Russ Powell
Senior Vice President

Attachments

Approved:

Olivehurst Public Utility District

Date

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Vice President	\$245
Senior Technical Associate	\$215
Senior Associate	\$215
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Research Analyst II	\$155
Research Analyst I	\$105
Production and Administrative Staff	\$100

Billing rates updated annually.



Terms and Conditions for Consulting Services

EPS #242047

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

3. Insurance

EPS shall maintain the following insurance:

- 3.1. Workers Compensation as required by law.
- 3.2. General Liability insurance of \$2,000,000 each occurrence, \$4,000,000 general aggregate.
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4. Personnel

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5. Interest of EPS

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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 EPS (EPS 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 EPS Work Product was prepared by EPS 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 EPS (which EPS may withhold in its sole discretion), (i) use EPS Work Product for purposes unrelated to the Project, (ii) modify EPS Work Product, or (iii) disclose or distribute any EPS Work Product to any other person, firm, or entity. EPS 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 EPS under this Agreement shall not be made available to any individual or organization by EPS without the prior written approval of the CLIENT. EPS 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

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9. Disputed Invoices

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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

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12. Termination of Agreement

The CLIENT may, at its option, elect to cancel the contract at any time, by notice to EPS, on completion of any task described in the scope of services. In such event the CLIENT will pay to EPS the amount due by virtue of completion of the products therefore delivered. If such cancellation is not based on any claim of EPS default, such payment shall include any sums withheld pursuant to this Agreement. In addition, EPS 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 EPS 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

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may hereafter incur, suffer, or be required to pay by reason of any acts or omissions of EPS 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

EPS 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 EPS under this Agreement because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age (over 40), gender, or gender orientation. EPS 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 EPS thereby.

15. Standard of Performance

All work performed by EPS 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 EPS'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 EPS are based on the assumption that no significant changes in project conditions will occur beyond those expressly discussed in EPS Work Product. EPS shall be able to rely on information provided to it by the CLIENT, and EPS shall have no responsibility to audit or otherwise verify such information.

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

19. Notice

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Terms and Conditions for Consulting Services

EPS #242046

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15. Standard of Performance

All work performed by EPS 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 EPS'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 EPS are based on the assumption that no significant changes in project conditions will occur beyond those expressly discussed in EPS Work Product. EPS shall be able to rely on information provided to it by the CLIENT, and EPS 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.

Terms and Conditions for Consulting Services

EPS #242047

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, EPS is an independent contractor, and is not and shall not be construed to be an employee or agent of the CLIENT.

3. Insurance

EPS shall maintain the following insurance:

- 3.1. Workers Compensation as required by law.
- 3.2. General Liability insurance of \$2,000,000 each occurrence, \$4,000,000 general aggregate.
- 3.3. Auto Liability insurance of \$2,000,000, combined single limit for bodily injury and property damage, covering non-owned and hired autos only.
- 3.4. Errors and Omissions/Professional Services Liability insurance in the amount of \$2,000,000 per claim/aggregate.
- 3.5. Excess/Umbrella Liability insurance of \$3,000,000.

4. Personnel

EPS 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 EPS

EPS 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 EPS (EPS 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 EPS Work Product was prepared by EPS 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 EPS (which EPS may withhold in its sole discretion), (i) use EPS Work Product for purposes unrelated to the Project, (ii) modify EPS Work Product, or (iii) disclose or distribute any EPS Work Product to any other person, firm, or entity. EPS 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 EPS under this Agreement shall not be made available to any individual or organization by EPS without the prior written approval of the CLIENT. EPS 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 EPS 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 EPS 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 EPS, by or against a third party, and CLIENT requests that EPS or a SUBCONSULTANT, (or if EPS or a SUBCONSULTANT is otherwise required) to testify, provide information, produce materials, or otherwise spend time on such action, then CLIENT shall pay EPS 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 EPS, on completion of any task described in the scope of services. In such event the CLIENT will pay to EPS the amount due by virtue of completion of the products therefore delivered. If such cancellation is not based on any claim of EPS default, such payment shall include any sums withheld pursuant to this Agreement. In addition, EPS 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 EPS 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 EPS 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 EPS.

EPS 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 EPS 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

EPS 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 EPS under this Agreement because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age (over 40), gender, or gender orientation. EPS 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 EPS thereby.

15. Standard of Performance

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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 EPS are based on the assumption that no significant changes in project conditions will occur beyond those expressly discussed in EPS Work Product. EPS shall be able to rely on information provided to it by the CLIENT, and EPS shall have no responsibility to audit or otherwise verify such information.

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