

Olivehurst Public Utility District

Agenda Item Staff Report



Meeting Date: May 20, 2021

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. This charge does not impact the OPUD operating budgets because the charge is allocated to the CFD admin component, i.e. it comes from the revenue derived from CFD taxes.

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



April 9, 2021

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 2021-22; EPS #212045

Dear John Tillotson:

Economic & Planning Systems, Inc. (EPS) would appreciate the opportunity to prepare the Fiscal Year (FY) 2021-22 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 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.

Scope of Work

Task 1: Set FY 2021-22 Annual Tax Levy, Prepare Tax Report, Prepare Annual Report, Prepare CDIAC Report, and Prepare Continuing Disclosure Certificate for FY 2020-21, 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.
P.O. Box 340176
Sacramento, CA 95834
916 649 8010 tel
916 649 2070 fax*

*Oakland
Sacramento
Denver
Los Angeles*

www.epsys.com

Schedule

By July 1, 2021, EPS will submit the FY 2021-22 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 10, 2021, and transmitted to the Yuba County Auditor-Controller by July 31, 2020. EPS will complete the FY 2020-21 CDIAC Report before October 29, 2021. 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

2021 HOURLY BILLING RATES

Sacramento Office

Managing Principal	\$285-\$300
Senior Principal	\$350
Principal	\$265
Executive/Senior Vice President	\$240
Senior Consultant	\$240
Vice President	\$215
Senior Technical Associate	\$195
Senior Associate	\$185
Associate	\$170
Research Analyst II	\$130
Research Analyst I	\$95
Production and Administrative Staff	\$80

Billing rates updated annually.



Economic & Planning Systems, Inc.
Terms and Conditions for Consulting Services
EPS #212045

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.

Economic & Planning Systems, Inc.
Terms and Conditions for Consulting Services
EPS #212045

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The Economics of Land Use



April 9, 2021

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 2021-22; EPS #212046

Dear John Tillotson:

Economic & Planning Systems, Inc. (EPS) would appreciate the opportunity to prepare the Fiscal Year (FY) 2021-22 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 2021-22.

Each tax zone may be taxed at varying rates up to the maximum special tax allowed for the CFD in FY 2021-22. 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 2021.

Scope of Work

Task 1: Set FY 2021-22 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.
P.O. Box 340176
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916 649 8010 tel
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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 **\$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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Russ Powell
Senior Vice President

Attachments

Approved:

Olivehurst Public Utility District

Date

2021 HOURLY BILLING RATES

Sacramento Office

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Vice President	\$215
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Billing rates updated annually.



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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.

Economic & Planning Systems, Inc.
Terms and Conditions for Consulting Services
EPS #212046

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.

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