



Local Agency Formation Commission  
2222 M Street  
Merced, CA 95340  
Phone (209) 385-7671 / Fax (209) 726-1710  
www.lafcomerced.org

DATE: January 20, 2022 (Agenda)

TO: LAFCO Commissioners

FROM: Bill Nicholson, Executive Officer *BN*

RE: Amendment No. 1 to Contract with Economic and Planning Systems, Inc. (EPS) for preparation of an update to the "Agricultural Irrigation Service Providers Municipal Service Review" increasing the amount of the contract from \$35,000 to \$50,000, and extending the contract expiration date from April 30, 2022 to June 30, 2022  
**(Agenda Item VII. A)**

The Commission entered a contract with Economic and Planning Systems, Inc. (EPS) on January 16, 2020 for preparation of an update to the urban Agricultural Irrigation Service Providers Municipal Service Review (MSR). LAFCO staff has been working closely with the consulting team of EPS and their subconsultant, Berkson Associates, on preparation of the internal administrative draft of the document by incorporating data and information from received from the various irrigation districts included in the MSR. However, there are still two remaining districts where the information survey requests have not been returned and compiling the information is taking more staff time than originally anticipated.

Given competing duties of Tiffany Ho, LAFCO Planner with her role in the County Community and Economic Development Department, and with limitations in the Executive Officer's time, the consultant team has offered to complete the Administrative Draft for Staff review and provide additional logistical support in an amount not to exceed \$15,000. This increase would result in the total contract amount increasing to \$50,000. In terms of cost and total hours, Richard Berkson would be performing the bulk of the additional tasks to complete the MSR. His billable rate is \$230, and his current remaining balance under the existing contract is \$7,300 (as of the latest invoice from November 2021). This would provide funding for approximately 65 hours of additional time devoted to the Administrative Draft MSR. All other support and production costs for EPS remain available under the existing contract balance.

In addition, the time necessary to complete the Administrative Draft MSR and present a final version to the Commission for adoption will require a two month extension of time. Therefore, LAFCO staff, in coordination with EPS, is requesting the Commission extend the expiration date to June 30, 2022.

Once the consultant team has completed the first draft MSR, LAFCO staff will review and edit, and EPS compiles a Draft of the MSR, an "Administrative Draft" will be shared with the respective special districts for accuracy and comment before sending out for public review and scheduling for LAFCO hearing. These steps should all be completed before the proposed new expiration date at the end of June.

**Requested Action**

Approve Amendment No. 1 to the Agricultural Irrigation Service Providers Municipal Service Review Update, which will increase the Consultant cost from \$35,000 to \$50,000, and will extend the expiration date for two months, from April 30, 2022 to June 30, 2022.

**Attachments:** Amendment No. 1 to Special Services Agreement with EPS #201013; a copy of the most recent invoice from EPS Dated November 30, 2021; and the original Agreement dated April 16, 2020.

cc: Ashleigh Kant, Principal, Economic and Planning Systems, Inc.  
Richard Berkson, Principal, Berkson Associates

**AMENDMENT NUMBER 1**  
**TO SPECIAL SERVICES CONTRACT**  
**FOR PREPARATION OF THE AGRICULTURAL IRRIGATION**  
**SERVICE PROVIDERS MUNICIPAL SERVICE REVIEW UPDATE**  
**BETWEEN THE MERCED LOCAL AGENCY FORMATION COMMISSION**  
**AND ECONOMIC AND PLANNING SYSTEMS**

**THIS AMENDMENT NUMBER 1 TO THAT CERTAIN AGREEMENT** for the preparation of Municipal Service Reviews is made and entered into this 20th day of January, 2022, by and between the Merced Local Agency Formation Commission (hereinafter referred to as "LAFCO"), and Economic & Planning Services, Inc., (hereinafter referred to as "Consultant").

**RECITALS**

**WHEREAS**, the parties entered into an agreement for the processing of the Agricultural Irrigation Service Providers Municipal Service Review ("Agreement"), also referred to as EPS #201013, on the 16th day of April 2020; and

**WHEREAS**, additional time has been required to obtain information from various special districts and there have been limitations on LAFCO staff time devoted to incorporating the information received from the special districts, and therefore, the project may extended beyond the schedule included in the original Agreement.

**WHEREAS**, due to a limitation on LAFCO staff resources, the parties agree that additional Consultant services are required to complete the preparation of the Administrative Draft Municipal Service Review (ADMSR) document for review by the independent special districts included in the document; and

**WHEREAS**, Consultant has recently relocated their corporate offices where contract payments are to be made.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

**AMENDMENT**

1. Section 2, “**TERM**” is hereby amended by replacing the termination date of the 30th day of April 2022, with the 30th day of June 2022.

2. Section 3, “**COMPENSATION**” is hereby amended by increasing the amount of the contract from \$35,000.00 to \$50,000.00, and by changing the Consultants billing mailing address from 400 Capital Mall, 28<sup>th</sup> Floor, Sacramento, CA 95814, to 455 Capitol Mall, Suite 701, Sacramento, CA 95814.

3. Section 6, “**NOTICES**” is hereby amended by changing the Consultants mailing address for notices from One Kaiser Plaza, Suite 1410, Oakland, CA 94612-3604 to 1330 Broadway, Suite 450 Oakland, CA 94612.

3. Continuing Effect of Agreement. Except as modified by this Amendment No. 1, all other understandings, agreements, terms and conditions as contained in Agreement shall remain in force and effect. From and after the date of this Amendment No. 1, whenever the term “Agreement” appears in the agreement, it shall mean the Agreement as amended by this Amendment No. 1.

4. Counterparts. This Amendment Number 1 is executed in counterparts, each of which shall be deemed a duplicate original.

**LAFCO of MERCED**

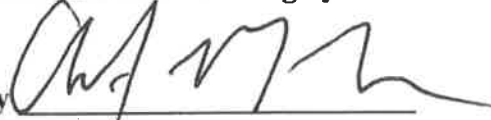
By \_\_\_\_\_  
Signature

Pat Nagy  
Name

LAFCO Chairman  
Title

\_\_\_\_\_  
Dated

**Economic and Planning Systems**

By   
Signature

Ashleigh Kanat  
Name

Principal  
Title

1/3/2022  
Dated

**APPROVED AS TO LEGALFORM**  
**Malathy Subramanian**  
**LAFCO LEGAL COUNSEL**

By \_\_\_\_\_



**AGREEMENT FOR SPECIAL SERVICES  
MERCED COUNTY LAFCO  
AND  
ECONOMIC & PLANNING SYSTEMS**

**THIS AGREEMENT**, is made and entered into this 16<sup>th</sup> day of April, 2020, by and between the Local Agency Formation Commission of Merced County, (hereinafter referred to as "LAFCO"), and Economic & Planning Systems, Inc. (hereinafter referred to as "CONSULTANT").

**WHEREAS**, LAFCO desires to contract for special services, pursuant to Government Code section 56375(k), which may consist of services, advice, education or training for public entities of the employees thereof; and

**WHEREAS**, the Cortese-Knox-Hertzberg Local Government Reorganization Act requires the periodic update of Municipal Service Reviews in relation to city and district spheres of influence updates pursuant to Government Code section 56425(g); and

**WHEREAS**, the Commission adopted the initial "Agricultural Irrigation Service Providers Municipal Service Review" on October 23, 2008, and desires to update the municipal service review for 13 special districts in the 2007 municipal service review; and

**WHEREAS**, the CONSULTANT and their identified subconsultant, Berkson Associates, is specially trained, experienced, expert and competent to perform the services in connection with the preparation of municipal service review updates for the urban sewer and water service providers pursuant to Section 56430 of the Government Code, having prepared the current adopted municipal service reviews for these special districts; and

**WHEREAS**, the parties desire to set forth herein the terms and conditions under which said services shall be furnished.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

**1. SCOPE OF SERVICES**

Services shall include all activities of CONSULTANT necessary to perform such services in accordance with the terms and conditions stated herein and shall perform all services as an independent contractor; not as an agent or employee of LAFCO. In performance of CONSULTANT's duties to perform such services, CONSULTANT's services include, but are not limited to, the following:

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires LAFCO to prepare municipal service reviews prior to updating Spheres of Influence of cities and special districts in accordance with Section 56430. These municipal service

reviews must include an analysis of each service and written statement of determinations with respect to each of the following:

- 1) Growth and population projections for the affected area;
- 2) The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence;
- 3) Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence;
- 4) Financial ability of agencies to provide services;
- 5) Status of, and opportunities for, shared facilities;
- 6) Accountability for community service needs, including governmental structure and operational efficiencies;
- 7) Any other matter related to effective or efficient service delivery, as required by the California Government Code and commission policy.

The scope of services is documented in this Agreement and shall include the following:

**Task 1: Background Data Collection and Review** –The EPS Team will review the prior MSR as well as the Sustainable Groundwater Management Act (SGMA) and boundary changes since the last MSR. LAFCO will review the Groundwater Sustainability Plans (GSPs) and determine what information from these plans is useful for the MSR update. The EPS Team and LAFCO will coordinate to prepare a data request for each district that is focused on collecting the information that is not otherwise obtainable from the GSPs, the State Controller’s website, the State Department of Water Resources, and the Bureau of Reclamation for those districts that are federal contractors. The data request will be organized in tables to the extent possible, for ease of transferring data to the MSR and to facilitate future updates.

**Task 2: Preliminary MSR Update** – The EPS Team will update the prior MSRs prepared by EPS and adopted by LAFCO, based on Task 1 data. Revisions due to changes in State law regarding MSRs, including the SGMA, will be incorporated. The EPS Team will assist LAFCO in structuring report data and district profile tables, building on the format in the urban water/wastewater MSRs. The tables will be intended to provide summary comparisons of key data in each MSR category, referenced to specific documents (and page numbers) and explained; this approach will facilitate future updates by LAFCO staff. The EPS Team will rely upon LAFCO staff for direction and assistance in identifying and evaluating Disadvantaged Communities (DUCs) and any other issues not otherwise raised by the districts.

**Task 3: Interviews with District Representatives** – It is anticipated that additional information will be required from the districts to prepare the update. It is expected that

LAFCO will conduct follow-up phone interviews with district representatives to obtain this information, as necessary.

**Task 4: Administrative Draft Revised MSR** – The EPS Team will produce an administrative draft MSR report for review by LAFCO, incorporating maps prepared by LAFCO. Following LAFCO review, these drafts can be distributed to the districts for their internal review prior to public release.

**Task 5: Draft Revised MSR** - EPS Team will revise the administrative draft based on comments received.

**Task 5: LAFCO Hearing and Final MSR** – If requested by LAFCO staff based on scope and budget priorities, a representative of the EPS Team will be available to participate in presentation of the report at a LAFCO hearing. Final MSRs will subsequently be produced with changes, if any, resulting from the hearing, in electronic format and one master copy. The proposed budget assumes that one hearing for the MSR update will be held on the same day.

## 2. TERM

The term of this Agreement shall commence on the 16<sup>th</sup> of April, 2020, and continue until the 30th day of April, 2022, unless sooner terminated in accordance with the sections entitled “TERMINATION FOR CAUSE” or “TERMINATION AT WILL” as specified elsewhere in this Agreement.

## 3. COMPENSATION

LAFCO agrees to pay CONSULTANT a not-to-exceed Total Contract Price of Thirty Five Thousand Dollars and No/100 Cents (\$35,000.00 ), in accordance with the hourly rates and costs set forth in Exhibit “A” attached hereto and incorporated herein by reference. The Total Contract Price shall include all of LAFCO’s compensation to CONSULTANT, including reimbursement for all expenses incurred by CONSULTANT in the performance of this Agreement. No other fees or expenses of any kind shall be paid to CONSULTANT in addition to the Total Contract Price. In no event shall the total services to be provided hereunder exceed the Total Contract Price. This fee may be subject to withholding for State of California income tax.

Any and/or all payments made under this Agreement shall be paid by check, payable to the order of the CONSULTANT and be mailed or delivered to CONSULTANT at:

Name:	Economic & Planning Systems
Address:	400 Capitol Mall, 28 <sup>th</sup> Floor
City/State/Zip:	Sacramento, CA 95814

CONSULTANT may request that LAFCO mail the check to CONSULTANT to such



other address as CONSULTANT may from time to time designate to LAFCO. Such request must be made in writing in accordance with the procedures as outlined under Section 6, "NOTICES".

**4. TERMS OF PAYMENT**

Payment shall be only for full and complete satisfactory performance of the services required to be provided herein and as set forth under Section 1, "SCOPE OF SERVICES." Payment shall be made in the following manner:

CONSULTANT shall submit monthly invoices detailing the services it has provided pursuant to Section 1, "SCOPE OF SERVICES," and the amount owed under this Agreement. In addition to the invoice submitted by the CONSULTANT for payment, CONSULTANT must complete and submit to LAFCO, Form W-9, "A Request for Taxpayer Identification Number and Certification". Both the invoice and W-9 form shall be forwarded to LAFCO at the address shown under Section 6, "NOTICES" of this Agreement. Upon approval by LAFCO, the fee due hereunder shall be paid to CONSULTANT within thirty (30) days following receipt of a proper invoice.

**5. NO PAYMENT FOR SERVICE PROVIDED FOLLOWING EXPIRATION/TERMINATION OF AGREEMENT**

CONSULTANT shall have no claim against LAFCO for payment of any kind whatsoever for any services provided by CONSULTANT which were provided after the expiration or termination of this Agreement.

**6. NOTICES**

All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
- B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- C. Certified Mail. When mailed by certified mail, return receipt requested. Notice is effective upon receipt, if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

- E. Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 P.M. (recipient's time) or on a non-business day.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

LAFCO of Merced County c/o Executive Officer, Bill Nicholson 2222 "M" Street Merced, CA 95340	Economic & Planning Systems c/o Principal, Ashleigh Kanat One Kaiser Plaza, Suite 1410 Oakland, CA 94612-3604
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Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

**7. CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING**

The compensation paid to CONSULTANT pursuant to this Agreement is based on LAFCO's continued receipt of local, state and/or federal funding for this purpose. In the event that funding is terminated, in whole or in part, for any reason, this Agreement and all obligations of the LAFCO arising from this Agreement shall be immediately discharged. LAFCO agrees to inform CONSULTANT no later than ten (10) calendar days after receiving notification that funding will be terminated and the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by CONSULTANT arising out of performance of this Agreement must be submitted to LAFCO prior to the final date for which funding is available.

**8. TERMINATION AT WILL**

This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by either party at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination. Upon effective date of termination, LAFCO shall have no further liability to CONSULTANT except for payment for actual services incurred during the performance

hereunder. Such liability is limited to the time specified in said notice and for services not previously reimbursed by LAFCO. Such liability is further limited to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by CONSULTANT prior to, and in connection with, discontinuing the work hereunder.

**9. TERMINATION FOR CAUSE**

If CONSULTANT materially defaults in the performance of or repeatedly fails to comply with any of its obligations under this Agreement, or otherwise breaches this Agreement (a "Default"), LAFCO may, in addition to any other remedies it may have, provide CONSULTANT with written notice of Default in the manner set forth under Section 6, "NOTICES", specifying the provision(s) or term(s) of this Agreement that CONSULTANT has failed to comply with or breached. LAFCO's written notice of Default shall provide the CONSULTANT with thirty (30) calendar days from the date of proper mailing of such notice allowing CONSULTANT to fully cure the Default to LAFCO's satisfaction. Should CONSULTANT thereafter fail to proceed with all reasonable diligence to fully cure the Default, LAFCO may terminate this Agreement for cause by giving five (5) calendar days written notice to CONSULTANT in the manner set forth under Section 6, "NOTICES". In the event of any proceeding by or against the CONSULTANT, including but not limited to bankruptcy, insolvency, appointment of a receiver or trustee, or an assignment for the benefit of creditors, LAFCO may exercise at its election its right of termination under this Section.

**10. COMPENSATION AND LIABILITY FOR DAMAGES UPON TERMINATION**

CONSULTANT shall be entitled to receive compensation for any work completed prior to receipt of the notice of termination. Neither party, however, shall be relieved of liability to the other for damages sustained by either party by virtue of any breach of this Agreement, regardless of whether this Agreement was terminated at will or for cause. LAFCO may withhold any payments not yet made to CONSULTANT for purpose of setoff until such time as the exact amount of damages due to LAFCO from CONSULTANT is determined and established in writing, signed by both parties.

**11. MODIFICATION OF THE AGREEMENT**

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto

**12. INSURANCE**

A. Prior to commencement of work, CONSULTANT shall purchase and maintain

the following types of insurance for minimum limits indicated during the term of this Agreement and provide a Certificate of Endorsement from CONSULTANT's Insurance Carrier guaranteeing such coverage to. Such Certificate shall be mailed directly to the County department as referenced under Section 6, "NOTICES", with a copy going to Merced County Risk Management, 2222 "M" Street, Merced, California 95340. CONSULTANT shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to LAFCO that they have secured all insurance required under this section. Policies of commercial general liability insurance and automobile liability provided by such subcontractors or subconsultants shall be endorsed to name LAFCO as an additional insured or an endorsement providing the exact same coverage. If requested by CONSULTANT, LAFCO may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

1. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering bodily injury, personal injury and property damage. LAFCO and its officers, employees and agents shall be endorsed to above policies as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, or split limits of \$500,000 per person \$1,000,000 per accident for bodily injury and \$250,000 per accident for property damage. LAFCO and its officers, employees and agents shall be endorsed to above policies as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026.
3. Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against LAFCO.
4. Professional Liability: \$1,000,000 limit per occurrence and \$2,000,000 annual aggregate limit covering CONSULTANT's wrongful acts, errors and omissions.
5. CONSULTANT's Environmental/Pollution Liability: Limits not less than \$2,000,000 per claim covering CONSULTANT's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred arising out of the work or services to be performed under this agreement. Coverage shall be provided for both work performed as well as transportation and proper disposal of hazardous materials.

**B. Insurance Conditions**

1. Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the County Risk Manager.
2. Each of the above required policies shall be endorsed to provide LAFCO with 30 days prior written notice of cancellation. LAFCO is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of CONSULTANT to furnish insurance during the term of this Agreement.
3. If the CONSULTANT maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.
4. If the CONSULTANT uses Sub-Contractors or others to perform work under this contract, such Sub-Contractor or other persons shall be Named Insured or Additionally Insured to the CONSULTANT's required insurance coverage, or required by the CONSULTANT to comply with equivalent insurance and conditions of this Section.

**13. INDEMNIFICATION**

CONSULTANT shall defend, indemnify and hold LAFCO, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, errors or omissions, or willful misconduct of CONSULTANT, its officials, officers, employees, agents, subcontractors and sub-consultants arising out of or in connection with the performance of the Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. CONSULTANT shall defend, at CONSULTANT's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against LAFCO, its directors, officials, officers, employees, agents or volunteers. CONSULTANT shall pay and satisfy any judgment, award or decree that may be rendered against LAFCO or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. CONSULTANT shall reimburse LAFCO and its directors, officials, officers,

employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by LAFCO or its directors, officials, officers, employees, agents or volunteers. Notwithstanding the foregoing, to the extent CONSULTANT's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. This Section shall survive any expiration or termination of this Agreement.

#### **14. INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that CONSULTANT is an independent contractor in the performance of the work duties and obligations devolving upon CONSULTANT under this Agreement. LAFCO shall neither have, nor exercise any control or direction over the methods by which CONSULTANT shall perform professional work and functions. The sole interest and responsibility of LAFCO is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is mutually understood and agreed that no employer-employee relationship is created and CONSULTANT shall hold LAFCO harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes, contributions or premiums imposed or required by workers' compensation, unemployment insurance, social security, income tax, other statutes or codes applying to CONSULTANT, or its sub-contractors and employees, if any.

It is mutually agreed and understood that CONSULTANT, its sub-contractors and employees, if any, shall have no claim under this Agreement or otherwise against LAFCO for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

CONSULTANT shall insure that all its personnel and employees, its sub-contractors and their employees, used to perform the contracted services are aware and expressly agree that LAFCO is not responsible for any benefits, coverage or payment for their efforts.

#### **15. RECORDS AND INSPECTIONS**

CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, LAFCO shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities

pertaining to this Agreement.

**16. REPORTS AND INFORMATION**

To the extent permitted by law, CONSULTANT shall furnish LAFCO such periodic reports as LAFCO may request pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection shall be borne by the CONSULTANT.

**17. OWNERSHIP OF DOCUMENTS**

To the extent permitted by law, all technical data, evaluations, plans, specifications, reports, documents, or other work products developed by Contractor hereunder shall be the exclusive property of LAFCO and shall be delivered to LAFCO upon completion of the services authorized hereunder. In the event of termination, all finished or unfinished documents and other materials, if any, at the option of LAFCO, and to the extent permitted by law, shall become the property of LAFCO. CONSULTANT may retain copies thereof for its files and internal use. LAFCO must approve in writing any publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement. LAFCO recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONSULTANT's services and are not designed for use other than what is intended by this Agreement.

**18. QUALITY OF SERVICE**

CONSULTANT shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by such profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and/or other items and services furnished under this Agreement.

CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its reports, drawing, specifications, designs, and/or other related items or services.

**19. PERSONAL SATISFACTION AS A CONDITION PRECEDENT**

The obligations of LAFCO as provided in this Agreement are expressly conditioned upon CONSULTANT's compliance with the provisions of the contract to the personal satisfaction of LAFCO and LAFCO shall determine compliance in good faith and as a reasonable person would under the circumstances.

**20. ENTIRE AGREEMENT**

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

**21. LAFCO NOT OBLIGATED TO THIRD PARTIES**

The LAFCO shall not be obligated or liable hereunder to any party other than CONSULTANT.

**22. COMPLIANCE WITH STATE LAWS AND REGULATIONS**

The CONSULTANT and LAFCO agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practice, equal opportunity, and all other matters applicable to CONSULTANT and LAFCO, their subgrantees, contractors, or subcontractor, and their work.

**23. LAFCO'S RIGHTS NOT WAIVED BY PAYMENTS**

In no event shall the making, by LAFCO, of any payment to CONSULTANT constitute, or be construed as, a waiver by LAFCO of any breach of covenant, or any default which may then exist, on the part of CONSULTANT. The making of any such payment by LAFCO while any such breach or default shall exist, shall not be construed as acceptance of substandard or careless work or as relieving CONSULTANT from its full responsibility under this Agreement.

**24. PERSONNEL**

CONSULTANT represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by CONSULTANT or the EPS Team under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

**25. APPLICABLE LAW; VENUE**

All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon LAFCO unless agreed in writing by LAFCO and counsel for LAFCO

Notwithstanding any other provision of this Agreement, any dispute concerning any



question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

**26. WAIVER**

Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

**27. BREACH OF CONTRACT**

Upon breach of this Agreement by Contractor, LAFCO shall have all remedies available to it both in equity and/or at law.

**28. REMEDY FOR BREACH AND RIGHT TO CURE**

Notwithstanding anything else in this Agreement to the contrary, if CONSULTANT fails to perform any obligation of this Agreement, LAFCO may itself perform, or cause the performance of, such agreement or obligation. In that event, CONSULTANT will, on demand, fully reimburse LAFCO for all such expenditures. Alternatively, LAFCO, at its option, may deduct from any funds owed to CONSULTANT the amount necessary to cover any expenditures under this provision. This is in addition to any other remedies available to LAFCO by law or as otherwise stated in this Agreement.

**29. SUCCESSORS IN INTEREST**

All the terms, covenant, and conditions of this Agreement shall be binding and in full force and effect and inure to the benefit of the successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

**30. CONFLICT OF INTEREST**

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 this Agreement. CONSULTANT shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors, and LAFCO. CONSULTANT shall make all reasonable efforts to ensure that no LAFCO officer or employee, whose position in LAFCO enables them to influence this Agreement, shall have any direct or indirect financial interest resulting from this Agreement or shall have any relationship to the CONSULTANT or officer or employee of the CONSULTANT, nor that any such person will be employed by CONSULTANT in the performance of this Agreement without immediate divulgence or such fact to LAFCO.

**31. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

CONSULTANT and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of LAFCO, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONSULTANT shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of LAFCO employees and agents, and recipients of services are free from such discrimination and harassment.

CONSULTANT represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.

CONSULTANT agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

CONSULTANT shall include this nondiscrimination provision in all subcontracts related to this Agreement.

**32. CAPTIONS**

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

**33. SUBCONTRACTS - ASSIGNMENT**

With the exception of the firm of Berkson Associates, CONSULTANT shall not subcontract or assign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining the prior written consent by LAFCO. CONSULTANT remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONSULTANT shall be held responsible by LAFCO for the performance of any subcontractor whether approved by LAFCO or not.

**34. SEVERABILITY**

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected. Compensation due to CONSULTANT from LAFCO may, however, be adjusted in proportion to the benefit received despite the removal of the effected provision.

**35. DUPLICATE COUNTERPARTS**


This Agreement is executed in counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

**36. DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

**37. LICENSE AND PERMITS**

CONSULTANT shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies, including any certification and credentials required by LAFCO. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by LAFCO.

LAFCO of Merced  
By   
Signature  
Gurpal Samra  
Name  
Chairperson  
Title  
4/16/2020  
Dated

Economic & Planning Systems, Inc.  
By   
Signature  
Ashleigh Kanat  
Name  
Principal  
Title  
3/10/2020  
Dated

APPROVED AS TO LEGAL FORM

Malathy Subramanian  
LAFCO LEGAL COUNSEL

By  \_\_\_\_\_

EXHIBIT A

Table 1. Budget Estimate

Task/ Description	Kanat			EPS			BA		Total Hours	Staff Cost Subtotal	Direct Costs (3)	Grand Total
				Gade	Production	Subtotal	Berkson	Hours				
Task 1: Background Data Collection and Review	2	8	0	0	0	10	24	34	\$7,710	\$0	\$7,710	
Task 2: Preliminary MSR Update	5	10	2	2	17	17	56	73	\$16,505	\$0	\$16,505	
Task 3: Interviews with District Representatives	0	1	0	0	1	1	2	3	\$665	\$0	\$665	
Task 4: Prepare Admin. Draft Revised MSR (1)	2	8	2	2	12	12	12	24	\$5,150	\$0	\$5,150	
Task 5: Draft Revised MSR	1	2	1	1	4	4	6	10	\$2,165	\$0	\$2,165	
Task 6: LAFCO Hearing and Final MSR (2)	1	2	1	1	4	4	8	12	\$2,625	\$180	\$2,805	
TOTAL HOURS	11	31	6	6	48	48	108	156				
Billing Rates	\$275	\$205	\$100				\$230					
<b>TOTAL COSTS</b>	<b>\$3,025</b>	<b>\$6,355</b>	<b>\$600</b>		<b>\$9,980</b>	<b>\$24,840</b>			<b>\$34,820</b>	<b>\$180</b>	<b>\$35,000</b>	

(1) Assumes that LAFCO provides map graphics.

(2) Includes attendance at one LAFCO hearing.

(3) Expenses are billed at actual cost. Travel is reimbursed at IRS-allowed mileage rates for the calendar year. Assumes draft and final reports are provided electronically.