

STAFF REPORT

DATE: October 8, 2019

TO: City Council

FROM: Ashley Feeney, Assistant City Manager
Sherri Metzker, Principal Planner

SUBJECT: Aggie Research Campus (formerly Mace Ranch Innovation Center)
Economic and Planning Services Contract

Recommendation

Approve the attached Resolution authorizing the City Manager to enter into a contract with Economic and Planning Services (EPS) to prepare an updated study of the market demand assumptions, the economic impact analysis, the fiscal impact analysis, and the financial feasibility analysis and public financing evaluation for the Aggie Research Campus.

Council Goals

This action does not directly relate to a current City Council goal.

Fiscal Impact

The update to the economic and fiscal analysis for the project Aggie Research Center contract amount is \$89,730. All costs, plus a twenty percent administrative fee, will be covered by applicant deposits. Fiscal and economic impacts of the Aggie Research Center will be evaluated as part of the scope of this contract.

Background

On September 19, 2017, the City Council adopted Resolution 17-125, certifying the Final EIR for the Mace Ranch Innovation Center Project. However, the planning applications related to the EIR were put on hold. Since that time, the property owner has submitted a request to revise the application and to continue processing the former Mace Ranch Innovation Center.

The applicant has renamed the project the Aggie Research Center. After spending two years analyzing the appropriate land uses, the applicant has decided to continue pursuing the appropriate general plan and zoning designations, as well as, an application to annex approximately 200 acres into the City of Davis. Part of the application will include the preparation of updated documents and studies to insure that the City has the most up to date information as the request is processed. This updated EPS study is one of those.

ATTACHMENT 1

RESOLUTION NO. 19-___, SERIES 2019

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A
PROFESSIONAL SERVICES CONTRACT WITH
ECONOMIC & PLANNING SERVICES
FOR THE AGGIE RESEARCH CAMPUS PROPOSAL**

WHEREAS, the City has received planning applications for the Aggie Research Campus proposal located east of Mace Boulevard and north of Chiles Road; and

WHEREAS, an Environmental Impact Report (EIR) was certified for the project site on September 17, 2017, for the applications in accordance with the provisions of the California Environmental Quality Act (CEQA); and

WHEREAS, the Department of Community Development and Sustainability has determined that a update to the certified EIR is warranted prior to the project moving forward for entitlements; and

WHEREAS, Economic & Planning Services (EPS) is well-positioned to perform market demand assumption preparation, economic and fiscal impact analysis, financial feasibility analysis and public financing evaluation services because EPS brings years of expertise in financial and fiscal analysis and planning; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Davis that it hereby approves a consultant agreement with Economic and Planning Services, not to exceed \$89,730.00, for the scope of work attached to this Resolution.

AND BE IT FURTHER RESOLVED that the City Manager is directed and authorized to execute the agreement, including any minor technical or clarifying changes as necessary.

PASSED AND ADOPTED by the City Council of the City of Davis on this 8th day of October, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

Brett Lee, Mayor

ATTEST:

Zoe Mirabile, CMC
City Clerk

**CITY OF DAVIS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of October 8, 2019, by and between the City of Davis, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 23 Russell Boulevard, Davis, CA 95616 (“City”), and Economic & Planning Systems, Inc., a CORPORATION, with its principal place of business at 400 Capitol Mall, 28th Floor, Sacramento, CA 95814 (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

Aggie Research Center (hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit “A.”

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit “B.”

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$ 89,730. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall

be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Term.

The term of this Agreement shall be from September 5, 2019 to January 31, 2020, unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the City to proceed (“Notice to Proceed”). The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project

- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbols 8 & 9, non-owned and hired autos.

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the

“Workers’ Compensation and Insurance Act,” Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer’s Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers’ compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. “Covered Professional Services” as designated in the policy must specifically include work performed under this Agreement. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

| | <u>Combined Single Limit</u> |
|------------------------------|---|
| Commercial General Liability | \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage |
| Automobile Liability | \$1,000,000 per occurrence for bodily injury and property damage |
| Employer’s Liability | \$1,000,000 per occurrence |
| Professional Liability | \$1,000,000 per claim and aggregate (errors and omissions) |

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer’s equivalent) signed by the insurer’s representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by

a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to contain a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, 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 of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify

shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from

any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Living Wage Ordinance.

a. Consultant agrees to comply with Davis Municipal Code Chapter 15.20, the City of Davis Living Wage Ordinance. If Consultant employs six (6) or more employees, and receives \$25,000 or more from the City pursuant to this Agreement and any other contracts with the City during a twelve month period, Consultant shall be required to provide all employees eligible under Chapter 15.20 with the minimum compensation set forth in Davis Municipal Code Section 15.20.060 during the term of this Agreement.

b. Prior to commencement of any work under this Agreement, Consultant and all subconsultants that are subject to the requirements of Chapter 15.20 will provide certification in a form satisfactory to the City that Consultant and subconsultants are providing all eligible employees the minimum compensation required pursuant to Davis Municipal Code Section 15.20.060. Additionally, prior to commencement of any work, Consultant shall notify in writing all employees that are eligible for minimum compensation of their rights under Chapter 15.20.

c. Consultant shall maintain all records and documents necessary to establish whether Consultant is subject to Chapter 15.20. If Consultant is subject to the requirements of Chapter 15.20, Consultant shall further be required to maintain monthly records of Consultant's employees, including records showing the hourly rate paid to each employee, the amount paid by Consultant for health benefits, if any, and the amount of days off provided per year for sick leave, vacation, or personal necessity. The records described in this subsection shall be made available to the City upon request. The failure to produce these records within three (3) business days following request by the City shall be a default under this Agreement.

d. Consultant shall include the requirements of Chapter 15.20 in any and all agreements with subconsultants hired to provide services pursuant to this Agreement. Any and all subconsultants retained by Consultant to provide services pursuant to this Agreement that employ six or more employees and receive \$25,000 or more for services provided to the City pursuant to this and any other City contracts during a 12-month period shall be required to comply with the terms of Chapter 15.20. Failure by a subconsultant subject to the requirements of Chapter 15.20 to comply with the terms of Chapter 15.20 shall constitute a default of the Consultant under this Agreement.

16. Use of Recycled Paper. Consultant shall comply with the City's policy on the use of recycled paper, as set forth in Exhibit "C" of this Agreement.

17. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Yolo, State of California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing

any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

18. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

19. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

20. Organization

Consultant shall assign David Zehnder as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

21. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

22. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Davis
23 Russell Boulevard
Davis, CA 95616

Attn: Kellie Bruton, Community Development
and Sustainability

CONSULTANT:

Economic & Planning Systems, Inc.
400 Capitol Mall, 28th Floor
Sacramento, CA 95814

and shall be effective upon receipt thereof.

23. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

24. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

25. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

26. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

27. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

28. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

29. Time of Essence

Time is of the essence for each and every provision of this Agreement.

30. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

31. Interest of Consultant.

Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the City.

32. Interest of Subconsultants.

Consultant further covenants that, in the performance of this Agreement, no subconsultant or person having any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement shall be employed. Consultant has provided City with a list of all subconsultants and the key personnel for such subconsultants that are retained or to be retained by Consultant in connection with the performance of the Services, to assist the City in affirming compliance with this Section

33. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. If required, Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF DAVIS
AND ECONOMIC & PLANNING SYSTEMS, INC.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF DAVIS

ECONOMIC & PLANNING SYSTEMS, INC

By: _____
Michael Webb
City Manager

By: _____
David Zehnder
Managing Principal

By: _____
Jamie Gomes
Managing Principal

ATTEST:

By: _____
Zoe S. Mirabile, CMC
City Clerk

APPROVED AS TO FORM:

By: _____
G. Inder Khalsa
City Attorney

EXHIBIT A

Scope of Services

Task 1: Prepare Market Demand Update

EPS will conduct a succinct targeted update of key factors driving the type, value, mix, and phasing of development in the ARC to refine project development assumptions. Tasks include evaluation of market supply and demand factors, competitive position, prevailing lease rates and development costs, estimation of related asset values, nature of owner-user and speculative development of commercial space, identification of prevailing residential prototypes, and other research needed to populate driving assumptions related to development of an overall project description and specific land use attributes needed for the economic impact, fiscal impact, and pro forma analyses.

Following an initial meeting with the owner group, EPS will review and refine the static pro formas for key land uses to arrive at land and asset value assumptions populating the tasks below. EPS also will review local land sale comparables to provide additional perspective to this key input to the land development analysis. Finally, EPS will interview up to three select life sciences firms located in the Bay Area that could be prototypes for Davis, in order to better understand industry perceptions of Davis relative to other options for R&D/lab and/or headquarters functions.

Other fundamental drivers of speculative and owner-user support, including updates of previous UC-related growth factors, will be referenced to document and support key underlying assumptions.

Task 2: Prepare Economic Impact Analysis

This task will characterize the types of economic activities that could be housed in the ARC, describe the benefits of these activities, and estimate the resulting associated economic impacts:

- Establish inputs for the project, including the net new employment resulting from the buildout assumptions—this economic activity will constitute the direct industry impact.
- Use the IMPLAN input/output (I/O) model, with data calibrated for the Davis community and Yolo County, to estimate the indirect (demand on suppliers of goods and services) and induced (employee spending activity) industry impacts generated from the ongoing, long-term, direct industry impacts and mix of employment types associated with the two buildout assumptions for the three scenarios. Present the total industry economic impacts (accounting for direct, indirect, and induced activities) in terms of employment, employee compensation, output, and model-derived State and local tax generation. The tax generation estimates will be informed by the fiscal analysis and adjusted as necessary to inform consistency.
- Build an analysis using the Davis community and Yolo County IMPLAN models to define the multiplier effect and total employment, employee compensation, output, and model-derived State and local tax

impact for a standard number of jobs (e.g., the impact associated with every 10 jobs) in each of the clusters and employment types defined above.

- Employ the IMPAN modeling framework for the Davis community and Yolo County to calculate the indirect and induced construction impacts that result from the direct construction costs associated with the two buildout assumptions for the three scenarios. Summarize the total construction economic impacts (including direct, indirect, and induced activities) in terms of employment, employee compensation, output, and model-derived State and local tax generation (adjusted for consistency with the fiscal analysis).
- Discuss potential synergies resulting from increased investment and opportunities focused on the innovation economy, creation of innovation centers or districts, leveraging university research, improving technology transfer, and growing industry sectors. Discuss qualitative regional benefits of the proposed ARC. Produce a technical memorandum with an executive summary of the findings, descriptions of the quantitative analysis and results, thorough explanations of the assumptions, explanation of the economic impact concept, and provide a discussion of the value of innovation economy growth and development.

Task 3: Prepare Fiscal Impact Analysis

This task involves preparing a Fiscal Impact Analysis reflecting ARC-related fiscal impacts on the City, with its primary purpose being an evaluation of how the project can generate a sustainable revenue flow to the City. The analysis includes identifying existing and potential new sources of revenue that may be necessary to mitigate service cost impacts generated by the project:

- EPS will build on previous work to further evaluate impacts of the ARC on the City's General Fund. This task will focus on and update assumptions (e.g., service levels, business-to-business taxable sales) to reflect potential net fiscal impacts to the City's operating budget at buildout of the proposed innovation center projects.
- EPS will prepare a fiscal model for the City that reflects identified modifications and current Fiscal Year (FY) 2019–20 General Fund revenues and expenditures. EPS will ensure the model reflects the land uses proposed for the ARC, current values and other analysis inputs, and buildout assumptions.
- Housing assumptions will be presented in a range, to be determined based on further discussion with the City and the Applicant.
- Particular attention will be given to scenarios where UC is an early anchor tenant, and potential catalytic and other effects this may have in terms of project economics.
- EPS will summarize, in a concise Fiscal Impact Analysis memorandum with supporting appendices, the research, analysis, and conclusions of the net fiscal impacts of the proposed project. If the project is estimated to produce a net fiscal deficit, EPS will include suggested modifications to the project assumptions or potential fiscal mitigation measures (e.g., assessment district, community facilities district for services). The memorandum will include a qualitative discussion of model components that have the ability to significantly affect net fiscal impacts. EPS will issue a Draft Fiscal Impact Analysis memorandum for City review and attend two Finance and Budget Commission meetings to discuss data, methodology, calculations, and results. After receiving one set of consolidated, nonconflicting comments, EPS will prepare a Final Fiscal Impact Analysis memorandum.

Optional Task: As an optional task, EPS will prepare a Yolo County fiscal model, to be conducted if it should be determined that the ARC could benefit from contribution of Yolo County property tax increment to fund ARC-related infrastructure. The scope and budget associated with this optional task will be provided separately, if requested.

Task 4: Prepare Financial Feasibility Analysis and Public Financing Evaluation

EPS will update the land economics model employed previously, specifically testing a variety of development and market assumptions to understand how possible changes in market conditions and policy stances may influence the overall ability of the Project to achieve required returns. The revenue to the project is assumed to be captured through the sale of land. EPS will work with the Applicant to develop working assumptions regarding infrastructure investments needed to open project subareas over a 25-year period.

Under **Task 4.1**, EPS will prepare a discounted cash flow analysis evaluating the feasibility and infrastructure funding capacity of the project under a range of assumptions. Refined infrastructure costs will be provided by the Applicant and supplemented with in-house information where necessary and appropriate. Ongoing operational responsibilities, such as open space maintenance, will be coordinated with the fiscal analysis described above to account for public versus private roles and responsibilities for funding such actions. The analysis will include an appropriate sensitivity analysis to review effects of key variables on overall results.

Under **Task 4.2**, EPS will evaluate infrastructure funding options for the project to evaluate the potential use, as needed, of land-secured financing instruments (e.g., Community Facilities District [CFD]) and any tax increment funding options sought by the City and development interests (e.g., Enhanced Infrastructure Financing District [EIFD]). This analysis is not intended to provide an exhaustive financing plan for the ARC but will indicate the financial implications of potential funding approaches to serve as a basis for future policy considerations.

Task 5: Attend Meetings

EPS will attend two Finance and Budget Commission meetings and one City Council meeting, in addition to up to four in-person meetings with the Applicant or Staff. EPS will provide periodic progress reports in addition to informal check-ins throughout the project. As needed, additional meeting time may be arranged and billed on a time-and-materials basis.

| | |
|--|------------------------|
| Task 1: Prepare Market Demand Update | \$11,940 |
| Task 2: Prepare Economic Impact Analysis | \$15,150 |
| Task 3: Prepare Fiscal Impact Analysis | \$17,690 |
| Task 4: Prepare Financial Feasibility Analysis and Provide Public Financing Toolkit | \$34,680 |
| Task 5: Attend Meetings | <u>\$10,270</u> |
| TOTAL BUDGET | \$89,730 |

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract, and Consultant shall charge City for services provided in accordance with the rates as set forth below.

| Task/Description | EPS Staff | | | | Production Staff | Staff Cost Subtotal | Direct Costs [1] | Grand Total |
|---|-------------------------------|-----------------------|-----------------|------------------|------------------|---------------------|------------------|-----------------|
| | Managing Principal Zehnder | Executive VP Lapin | VP Martens | Associate TBD | | | | |
| Hourly Billing Rates [2] | \$290 | \$235 | \$210 | \$165 | \$80 | | | |
| Estimated EPS Staff Hours | | | | | | | | |
| Task 1: Prepare Market Demand Update | 10 | 8 | 18 | 18 | 2 | \$11,690 | \$250 | \$11,940 |
| Task 2: Prepare Economic Impact Analysis | 8 | 16 | 34 | 8 | 2 | \$14,700 | \$450 | \$15,150 |
| Task 3: Prepare Fiscal Impact Analysis | 8 | 16 | 40 | 16 | 4 | \$17,440 | \$250 | \$17,690 |
| <u>Task 4: Prepare Financial Feasibility Analysis and Public Financing Evaluation</u> | | | | | | | | |
| Task 4.1: Financial Feasibility Analysis | 16 | 10 | 44 | 16 | 2 | \$19,030 | \$250 | \$19,280 |
| Task 4.2: Public Financing Evaluation | 8 | 16 | 22 | 26 | 2 | \$15,150 | \$250 | \$15,400 |
| Subtotal Task 4 | 24 | 26 | 66 | 42 | 4 | \$34,180 | \$500 | \$34,680 |
| Task 5: Attend Meetings [3] | 16 | 6 | 6 | 16 | 2 | \$10,110 | \$160 | \$10,270 |
| Total Task Hours | 66 | 72 | 164 | 100 | 14 | | | |
| Total Project Costs | \$19,140 | \$16,920 | \$34,440 | \$16,500 | \$1,120 | \$88,120 | \$1,610 | \$89,730 |

[1] Direct costs include costs related to travel, acquiring data, mileage, reproduction, and other non-staff costs.

[2] Billing rates shown are applicable during calendar year 2019 and are subject to change annually.

[3] Assumes one City Council Meeting and 2 meetings with the Finance and Budget Commission (FBC). Additional meetings, if requested, will be billed on a time-and-materials basis.

EXHIBIT C
USE OF RECYCLED PAPER

All paper used for any reports that are required to be submitted under this Agreement shall be produced on recycled paper conforming to the minimum content standards as specified herein. All such reports shall have the front cover labeled in such a way as to clearly identify that the report was produced on recycled paper. Where practicable, the pages of all such reports shall be produced double-sided.

Definitions.

Postconsumer Material means only those paper products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid wastes for the purpose of collection, recycling, and disposition.

Recovered Paper Material means paper waste generated after the completion of a papermaking process, such as postconsumer materials, envelope cuttings, bindery trimmings, printing wastes, cutting and other converting wastes, butt rolls and mill wrappers, obsolete inventories, and rejected unused stock. Recovered paper material, however, shall not include fibrous wastes generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls (mill broke), or fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residues such as bark.

Minimum Content Standard. The following categories of paper must contain the minimum percentages of material listed under both “Recovered Material” and “Postconsumer Material” included within the total “Recovered Material” percentage. When utilizing a category of paper not listed below, the paper shall contain the highest percentage of recycled paper available.

| Article I. Paper Category | Article II. Minimum Percentage of “Recovered Material” | Article III. Minimum Percentage of “Postconsumer Material” |
|------------------------------------|---|---|
| Article IV. High-speed Xerographic | Article V. 50 | Article VI. 10 |
| Article VII. Bond Paper | Article VIII. 50 | Article IX. 10 |
| Article X. Cover Stock | Article XI. 50 | Article XII. 10 |
| Article XIII. Envelopes | Article XIV. 50 | Article XV. 10 |