

AN ORDINANCE

2019-04-04-0264

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ECONOMIC & PLANNING SYSTEMS, INC. TO PROVIDE A COMPREHENSIVE STUDY OF LOCAL AD VALOREM PROPERTY TAX APPRAISAL FOR A ONE (1) YEAR TERM COMMENCING NOT LATER THAN APRIL 8, 2019, WITH COMPENSATION NOT TO EXCEED \$79,780 TO BE FUNDED FROM THE GENERAL FUND.

* * * * *

WHEREAS, on June 20, 2018, pursuant to a Council Consideration Request ("CCR") submitted on March 13, 2018, for a comprehensive study to examine how ad valorem valuation practices in Bexar County compare to other Texas counties, the City's Governance Committee directed the Finance Department to move forward with a Request for Proposals ("RFP") to select a consultant to perform the study; and

WHEREAS, on August 23, 2018, the Finance Department issued the RFP with a proposal due date of September 24, 2018; and

WHEREAS, the proposal due date was subsequently extended to October 9, 2018 to allow for additional outreach to potential respondents; and

WHEREAS, one proposal was received in response to the RFP; however, the proposal was insufficient to meet the City's project requirements and the RFP was canceled; and

WHEREAS, City staff reached out directly to several firms that would be qualified to perform the study and received a proposal from Economic and Planning Systems, Inc. ("EPS"), which firm has provided economic studies to the City in the past; and

WHEREAS, upon review of the EPS Proposal and subsequent discussions with EPS, City Staff determined that EPS would be able to perform the study and that its Proposal meets the needs of the City in this matter; and

WHEREAS, City Staff has recommended that the EPS Proposal be accepted and that a Professional Services Agreement with EPS be approved; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The Proposal submitted by Economic & Planning Services, Inc. ("EPS") to provide a comprehensive study of local ad valorem property tax appraisal, is hereby accepted.

SECTION 2. The Deputy Chief Financial Officer or his designee is hereby authorized to complete negotiations on and execute a *Professional Services Agreement For Ad Valorem Property Tax Services* ("Agreement") with EPS that is substantially in accordance with the terms and conditions

set forth in **Exhibit 1**. The City and EPS shall have fifteen (15) business days after the effective date of this Ordinance to complete negotiation of the final terms of the Agreement and execute the Agreement. The final terms of the Agreement shall be substantially in accordance with those set forth in **Exhibit 1**, with such revisions as are approved by the City Attorney or his designee. If the Agreement has not been fully negotiated and executed by the time set out above, the Agreement must be brought back to City Council for further approval.


SECTION 3. Funding for this Ordinance is available in Fund 11001000, Cost Center 8002060026 and General Ledger 5201040 as part of the Fiscal Year 2019 Budget.

SECTION 4. Payment not to exceed the budgeted amount is authorized to Economic & Planning Systems, Inc. to provide a comprehensive study of local ad valorem property tax appraisal for a one (1) year term commencing not later than April 8, 2019.

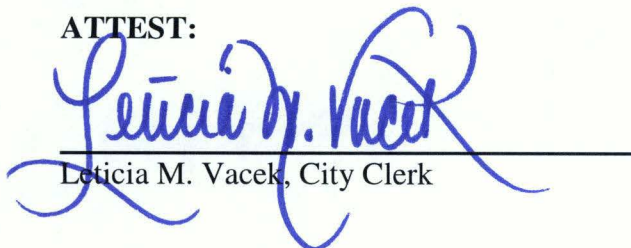
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage hereof.

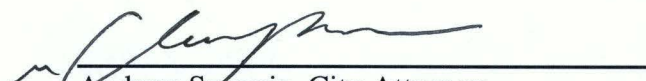
PASSED AND APPROVED this 4th day of April, 2019.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney

| | | | | | | | |
|---------------------|--|--------------------|------------|------------|----------------|---------------|---------------|
| Agenda Item: | 6 | | | | | | |
| Date: | 04/04/2019 | | | | | | |
| Time: | 11:40:27 AM | | | | | | |
| Vote Type: | Motion to Approve | | | | | | |
| Description: | Ordinance approving an Agreement with Economic & Planning Systems, Inc. to provide a comprehensive study of local ad valorem property tax appraisal for a one year term commencing not later than April 8, 2019, in an amount not to exceed \$79,780.00. Funding for this contract is included and available in the FY 2019 General Fund Budget. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer, Finance] | | | | | | |
| Result: | Passed | | | | | | |
| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
| Ron Nirenberg | Mayor | | x | | | | |
| Roberto C. Treviño | District 1 | | | | x | | |
| Art A. Hall | District 2 | | x | | | | x |
| Rebecca Viagran | District 3 | | x | | | | |
| Rey Saldaña | District 4 | x | | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Greg Brockhouse | District 6 | | x | | | | |
| Ana E. Sandoval | District 7 | | x | | | | |
| Manny Pelaez | District 8 | | x | | | x | |
| John Courage | District 9 | | x | | | | |
| Clayton H. Perry | District 10 | | x | | | | |

RKN
04/04/19
Item No. 6

E X H I B I T 1

**PROFESSIONAL SERVICES AGREEMENT
FOR
AD VALOREM PROPERTY TAX STUDY SERVICES**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This *Professional Services Agreement For Ad Valorem Property Tax Study Services* ("Agreement") is entered into by and between the **CITY OF SAN ANTONIO**, a Texas Home Rule Municipal Corporation ("City") acting by and through its Deputy Chief Financial Officer, pursuant to Ordinance No. 2019-04-04-____, passed and approved on the 4th day of April, 2019 and **ECONOMIC & PLANNING SERVICES, INC.**, a corporation chartered under the laws of the State of _____, acting by and through its Executive Vice President ("Consultant"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Consultant" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the Deputy Chief Financial Officer of the City, the director of City's Finance Department.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on the **last** to occur of (a) April 8, 2019 or (b) the date of approval and adoption by the San Antonio City Council of the Ordinance approving this Agreement ("Commencement Date"); and shall terminate on the **first** to occur of (i) July 1, 2019 or (ii) the date on which the Director executes his written approval and acceptance of the Consultant's Final Technical Memorandum delivered to City pursuant to Task 6 under this Agreement.

2.2 The Parties may agree in writing to extend the term of this Agreement for up to three (3) additional months if necessary to complete the Scope of Services under this Agreement. Such written agreement must be fully executed by both Parties prior to May 1, 2019.

2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any additional contract period beyond the initial term set forth in Section 2.1 above or an extended term pursuant to Section 2.2 above is subject to and contingent upon subsequent appropriation.

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services as more fully set forth in with specificity in **Exhibit 1**, which is incorporated herein by reference for all purposes, in exchange for the compensation described in Article IV. Compensation.

All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

Consultant's services provided under this Agreement shall be performed by the following persons, each of whom will perform not less than the number of hours specified in **Exhibit 1** to compete the Scope of Services:

Andrew Knudtsen, Principal in Charge;
David Schwartz, Executive Vice President; and
Julia Jones, Research Analyst II

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed \$79,780 as total compensation, to be paid to Consultant as follows: upon completion of each complete Task identified with specificity in **Exhibit 2**, which is incorporated herein by reference for all purposes.

4.2 Upon completion of each Task specified in **Exhibit 1**, Consultant shall submit an invoice to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O.

Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Financial Management Division, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.3 In the event this Agreement is terminated by written agreement of the Parties pursuant to Task 4 in Exhibit 1, Consultant shall be entitled to total compensation in the amount of the amounts payable for Tasks 1 through 3, inclusive, plus a pro rata compensation for Task 4 based upon billable hours at the billable rate performed by each Staff Person of Consultant as identified in Exhibit 1, **plus** the amount of reimbursement (if any) for approved travel and related expenses incurred pursuant to Section 4.3 below.

4.4 City will reimburse Consultant in an amount not to exceed \$2,000.00 for: air fare or mileage (in a non-rental vehicle) for travel to San Antonio; car rental; parking and toll fees; hotel accommodations; and meals, which are incurred by Consultant in connection with this Agreement. Air fare shall be reimbursed only for economy or coach class. Mileage (in a non-rental vehicle) shall be reimbursed at the rate of __ cents per mile. Rental vehicles shall be Intermediate Class or below. The full cost of fuel for a rental vehicle shall be reimbursed. Hotel accommodations will be reimbursed at the lesser of actual cost or \$125.00 per night. Meals will be reimbursed on a per diem basis at the lesser of actual cost or \$66.00 per day. No administrative or overhead fees may be charged in connection with travel expenses. Consultant shall submit a request for reimbursement to the Director for all expenses incurred. The request shall include receipts and further appropriate documentation of the type and amount of each expense for which reimbursement is requested. Reimbursement for a category of expense not set forth above requires prior written approval of the Director.

4.5 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the Director.

4. Final acceptance of work products and services require written approval by City. The approving official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

IV. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City without limitation; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant's expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents at its sole cost and expense.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City without cause upon sixty (60) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or

7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, *[insert events of default below for which Consultant shall have time to correct]* same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA;

7.4.2 Bankruptcy or selling substantially all of company's assets;

7.4.3 Failing to perform or failing to comply with any covenant herein required; or

7.4.4 Performing unsatisfactorily.

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested by City.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and

all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn.: Finance Department
111 Soledad, 5th Floor
San Antonio, TX 78205

If intended for Consultant, to:

Economic & Planning Systems, Inc.
Attn.: Mr. David Schwartz
730 17th Street, Suite 630
Denver, CO 80202-3511

IX. NON-DISCRIMINATION

Non-Discrimination. As a party to this contract, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "Ad Valorem Property Tax Study" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Finance Department. No officer or employee, other than the City's Risk Manager or her designee, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

| <u>TYPE</u> | <u>AMOUNTS</u> |
|---|--|
| 1. Workers' Compensation 2. Employers' Liability | Statutory \$500,000/\$500,000/\$500,000 |
| 3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you g. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. | For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000 |

| | |
|--|--|
| h. Explosion, collapse, underground | |
| 4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles | <u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence |
| 5. Professional Liability (Claims Made) To be maintained and in effect for no less than two years subsequent to the completion of the professional services | \$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services. |
| 6. Builder's Risk | All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure. |
| <i>Consult w/ RM to amend the insurance table to suit the scope of your contract</i> | |

10.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Consultant shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

10.6 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.8 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

10.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

10.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.4 Employee Litigation – In and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: NONE. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the written approval of the Director. As a condition of such approval, if such approval is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "respondeat superior" shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

Non-discrimination. As a condition of entering into this agreement, Consultant represents and warrants that it will comply with City's Commercial Nondiscrimination Policy, as described under Section IIIC.1 of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. Consultant understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of Consultant from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant shall include this nondiscrimination clause in all subcontracts for the performance of this agreement.

XIV. CONFLICT OF INTEREST

15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business

entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant. The Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by City of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach by Consultant of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of City to insist in any one or more cases upon Consultant's strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by City of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Director. No act or omission by City shall in any manner impair or prejudice any right, power, privilege, or remedy available to City hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

Exhibit 1: Scope of Services

Exhibit 2: Schedule of Compensation

XXV. RESERVED.

Remainder of Page Intentionally Left Blank

Signatures on Page Following

XXVI. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below, to be effective from and after the Commencement Date.

CITY
CITY OF SAN ANTONIO

CONSULTANT
ECONOMIC & PLANNING
SYSTEMS, INC.

Troy Elliott

Printed Name: Troy Elliott
Title: Deputy Chief Financial
Officer
Date: _____

(Signature)

Printed Name: **David Schwartz**
Title: **Executive Vice President**
Date: _____

Approved as to Form:

Assistant City Attorney

E X H I B I T 1

| | Principal in Charge Knudtsen | Executive VP Schwartz | Research Analyst II Jones | Total |
|--|------------------------------------|-----------------------------|---------------------------------|-----------------|
| Billing Rate | \$230 | \$200 | \$100 | |
| Labor Costs | | | | |
| Task 1: Project Initiation | 2 | 2 | 2 | \$1,060 |
| Task 2: Research & Data Collection | | | | |
| Task 2.1: San Antonio Market Data | 6 | 16 | 30 | \$7,580 |
| Task 2.2: Other Market Data | 8 | 20 | 40 | \$9,840 |
| Task 3: Interviews | | | | |
| Task 3.1: Interviews in SA Metro Area | 8 | 18 | 20 | \$7,440 |
| Task 3.2: Interviews Outside SA Metro Area | 10 | 20 | 40 | \$10,300 |
| Task 4: Statistical Analysis of Market & Appraised Valuations | | | | |
| Task 4.1: Analysis of San Antonio Data | 4 | 14 | 28 | \$6,520 |
| Task 4.2: Analysis of Other Geographies | 6 | 20 | 40 | \$9,380 |
| Task 5: Analysis of Protest Outcomes & Timing | | | | |
| Task 5.1: Analysis of Protest Outcomes | 4 | 10 | 16 | \$4,520 |
| Task 5.2: Analysis of Protest Outcome Timing | 2 | 4 | 10 | \$2,260 |
| Task 5.3: Evaluation of Statutory Provisions Impacting Appraisal | 6 | 18 | 28 | \$7,780 |
| Task 6: Technical Memorandum | 10 | 24 | 40 | \$11,100 |
| Subtotal | 66 | 166 | 294 | \$77,780 |
| Total Staff Hours | | | | 526 |
| Direct Costs | | | | |
| Travel and/or Data Acquisition | | | | <u>\$2,000</u> |
| Subtotal | | | | \$2,000 |
| Total Project Cost | | | | \$79,780 |

E X H I B I T 2

Scope of Services

Task 1: Project Initiation

Following a notice to proceed, EPS will conduct a conference call with the client team to discuss the scope of the project, a strategy for obtaining the necessary data, the priority level of tasks, timing of the project deliverables, and milestones.

Task 2: Research & Data Collection

Research and data collection will be among the more critical and potentially time-consuming components of the project. EPS has preliminarily assessed the extent to which we have data in-house from other work with the City, the extent to which data are available publicly (either from other appraisal districts, the Comptroller, and/or subscription real estate datasets). Data will be collected for the City as well as for the other geographies that will be points of comparison:

- Dallas Appraisal District
- Harris Appraisal District
- Tarrant Appraisal District
- Travis Appraisal District

Task 2.1: San Antonio Market Data

EPS will work with various point persons at the City, BCAD, the Comptroller's Office, and the real estate industry to obtain the following data and information for analysis. The objective will be to obtain market and appraisal valuation data for respective geographies with aligning time periods

– e.g. appraisal data from BCAD for 2010 through 2017 and real estate market valuation data for 2010 through 2017 as well.

- Property Valuation Data: Current year (representative of the most recent property valuations) and historical (representative of the preceding set of property valuations) BCAD parcel-level data will be collected from either the City or from BCAD.
- Protest Outcomes Data: EPS will seek to obtain historical data on protest outcomes from the Texas Comptroller and/or from the BCAD with the assistance of City staff.
- Residential Sales Market Data: EPS will seek to obtain real estate market information to identify historical trends in residential property sales.
- Commercial Sales Market Data: EPS will utilize data from our national subscription database to document trends in commercial property sales.

Task 2.2: Other Market Data

EPS will collect data from other markets, such as Houston, Dallas/Ft. Worth, and Austin, to provide a comparison of market and appraised value trends. To the extent possible, EPS will collect data from similar sources as above.

- Property Valuation Data: Current year (representative of the most recent property valuations) and historical (representative of the preceding set of property valuations) Appraisal District parcel-level data will be collected.
- Protest Outcomes Data: EPS will seek to obtain historical data on protest outcomes from the Comptroller's Office.
- Residential Sales Market Data: EPS will seek to obtain permission from real estate industry contacts in each of these markets to acquire historical residential property data (i.e. sales activity).
- Commercial Sales Market Data: EPS will utilize data from our national subscription database to document trends in commercial property sales.

Data Availability: To the extent that data are available, EPS will complete the analysis of market versus appraised valuation in San Antonio and other geographies as described below in Task 4. If data are not obtainable or obtainable in a reasonable amount of time, this component of the project will be omitted. If data are available, but of different periods of time or different vintages, EPS will provide an analysis that most closely aligns the same time period for all of the geographies in the analysis.

- **Off Ramp:** In the event that data are not available with sufficiency to complete the project, EPS staff and City staff will mutually agree to not proceed.

Task 3: Interviews & Contextual Information

For context and to provide a counterbalance to the data and analysis that comprise a bulk of this research, this task is tailored to provide contextual and qualitative information about the appraisal process. While it is specifically geared toward documenting perceptions of the process on the ground, it is also more broadly geared toward presenting a framework for conversations about doing business in San Antonio.

Task 3.1: Interviews in SA Metro Area

The objective of this task is to understand and (anonymously) document positive and negative perceptions of the appraisal process for commercial and residential property owners, including developers. EPS will conduct a series of interviews with commercial property

owners and developers to identify positive and negative aspects of the appraisal/appeals process to understand to what extent doing business in the City is positively and/or adversely affected by this process. EPS will also conduct interviews with representatives of neighborhood associations to understand how residents are affected and gather perspectives.

Task 3.2: Interviews Outside SA Metro Area

As with the comparative analysis of market and appraised property in selected districts around the state, EPS will also conduct a selection of three (3) to five (5) interviews in each of the other areas to document the extent to which the experience of local property owners and developers is shared by other entities outside San Antonio.

Task 4: Statistical Analysis of Market vs. Appraised Valuations

Task 4.1: Analysis of San Antonio Data

The purpose of this task is to identify statistical differences between market and appraised valuations of residential and commercial property. EPS will complete the analysis at a Census tract level and for the City as a whole. Data analyzed at the tract level may be aggregated up to the Council district level to the extent it is appropriate. Depending on the availability of historical data, EPS will quantify the statistical differences between market and appraised residential and property valuation in terms of percentage difference as well as other appropriate metrics.

Task 4.2: Analysis of Other Market Data

EPS will also complete a similar analysis of other markets to the extent that data are available. Using information from the Dallas, Harris, Tarrant, and Travis Appraisal Districts, as well as residential and commercial market value trends, EPS will also quantify the extent to which there are citywide variances between market and appraised values.

Task 5: Analysis of Protest Outcomes & Timing

Task 5.1: Analysis of Protest Outcomes

This analysis depends greatly on the ability to obtain parcel-level data from the Texas Comptroller and/or BCAD on 1st and/or 2nd level protest outcomes. Preliminary discussions with state contacts indicate that these data may be possible to obtain from the Comptroller. If data are obtainable, EPS will complete an analysis of the differences in valuation between the different level outcomes for San Antonio as well as the other geographies. The analysis would also demonstrate how the different protest outcomes compare to original appraised valuation as well as to the market information for commercial or residential property, respectively. If data are

not obtainable or obtainable in a reasonable amount of time, this component of the project will be omitted.

Task 5.2: Analysis of Protest Outcome Timing

Depending on the availability of information regarding the timing of protest outcomes for BCAD and the other appraisal districts, EPS will quantify differences in the length of the appeals process distinguishing between period of time, geography, and type of property use.

Task 5.3: Evaluation of Statutory Provisions Impacting Appraisal

EPS will evaluate how local statutes impact BCAD's processes and outcomes, and identify issues that may be resolved through proposed changes in the upcoming legislative session.

Task 6: Technical Memorandum

EPS will prepare a concise technical memorandum of approximately 35 to 45 pages to detail the methodology, data, analysis, summary of interviewee perspectives, and a summary of high-level findings. Given the nature of the data collected and analyzed, findings and analysis will be reported in tabular and graphic format, including tables, charts, and maps. EPS will submit a draft memo to the client team for initial review and comment.

Task 7: Communication Plan (Optional)

Depending on the timing and level of interest at the completion of the above tasks, EPS will discuss with the client team the option of moving forward with the structuring of a communications plan for the City to engage and educate residents and business property owners about the findings and the appraisal and appeals process. At that time, the scope of this effort will be determined based on specific needs.