

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effective the 23rd day of October, 2014, by and between the CITY OF FRESNO, a California municipal corporation ("CITY"), and ECONOMIC & PLANNING SYSTEMS, INC., a California Corporation ("CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional land economics financial consulting services for several updates to Citywide Development Impact Fee Programs, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a land economics consulting firm and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Public Works Director (hereinafter referred to as "Director") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or March 25 2016, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within five hundred fifty (550) consecutive calendar days from such authorization to proceed.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of One Hundred Forty-Nine Thousand Two Hundred Dollars (\$149,200.00), and a contingency amount not to exceed Twenty Thousand Dollars (\$20,000.00) for any additional work rendered pursuant to Subsection (c) below and authorized in writing by the Director. Such fees include all expenses incurred by CONSULTANT in performance of such services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) seven (7) calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) immediately return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONSULTANT, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Director's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of

common carriers. CONSULTANT shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence.

5. Confidential Information, Ownership of Documents and Copyright License.

(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of CITY. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement or default by CONSULTANT. CONSULTANT grants CITY a copyright license to use such drawings and writings. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. CITY may modify the design including any drawings or writings. Any use by CITY of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by CONSULTANT will be at CITY'S sole risk and without liability or legal exposure to CONSULTANT. CONSULTANT may keep a copy of all drawings and specifications for its sole and exclusive use.

(c) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 5

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents

and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its

officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event CONSULTANT maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONSULTANT at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or his/her designee.

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to

perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

ECONOMIC & PLANNING SYSTEMS, INC.,
A California Corporation

By: _____
Andrew Benelli, P.E.
City Engineer/Assistant Director,
Public Works Department

By: _____

Name: _____

Title: _____
(if corporation or LLC, Board
Chair, Pres. or Vice Pres.)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____

By: _____
Deputy

Name: _____

APPROVED AS TO FORM:
City Attorney's Office

Title: _____
(if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

By: _____
Raj Singh Badhesha,
Deputy City Attorney

Any Applicable Professional License:

Number: _____

Name: _____

Date of Issuance: _____

REVIEWED BY:

David A. Cisneros,
Manager Special Projects,
Public Works Department

Addresses:

CITY:

City of Fresno

Attention: David A. Cisneros,

Manager Special Projects

2600 Fresno Street

Fresno, CA 93721

Phone: (559) 621-8804

FAX: (559) 488-1045]

CONSULTANT:

Economic & Planning Systems, Inc.

Attention: Jamie Gomes,

Managing Principal

2295 Gateway Oaks Drive, Suite 250

Sacramento, CA 95833-4210

Phone: 916 649-8010

FAX: 916 649-2070

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

Exhibit A

SCOPE OF SERVICES
Consultant Service Agreement between City of Fresno ("City")
and Economic & Planning Systems, Inc. ("Consultant")
IMPACT FEE PROGRAM NEXUS STUDY UPDATE
PROJECT TITLE

See attachement "A" Proposed Scope of Work

Attachment A

Proposed Scope of Work

Fresno Development Impact Fee Program Nexus Study Updates

Project Understanding and Approach

The City is initiating a process to prepare nexus study updates for the following citywide Development Impact Fee Programs:

- Regional Streets and New Growth Area Major Streets
- Fire and Police Facilities
- Park Facilities

EPS understands the City is also interested in an evaluation of and recommendations related to the Traffic Signal Impact Fee Program methodology. At the City's request, EPS, in concert with Fehr & Peers and Quad Knopf (collectively the EPS Team), has prepared the enclosed scope of work outlining the proposed work program to complete this work.

In addition, EPS understands the City has completed a significant amount of related analysis as part of its General Plan Update, including population and employment estimates, traffic analysis, and public safety needs assessments. Facility standards established as part of the General Plan update process will provide the basis for developing the respective capital improvement programs for each fee program.

The EPS Team will focus on equity to establish fees, so each user is paying a fee based on that user's impact on the facilities in question (i.e., major streets, fire and police, and parks). EPS will determine development impact fees for these capital improvements by evaluating the needs of the specific community, projected new development, and the provisions of Government Code Section 66000. Each fee program will account for and carry forward cash balances and any reimbursements due for developer-constructed infrastructure. For each fee program, EPS will also evaluate the fee program methodology and rates for the urban core area versus the new growth areas, taking into consideration whether reduced rates for the core area may be appropriate. EPS will also evaluate other approaches to reducing the impact fee burden on development in the core areas.

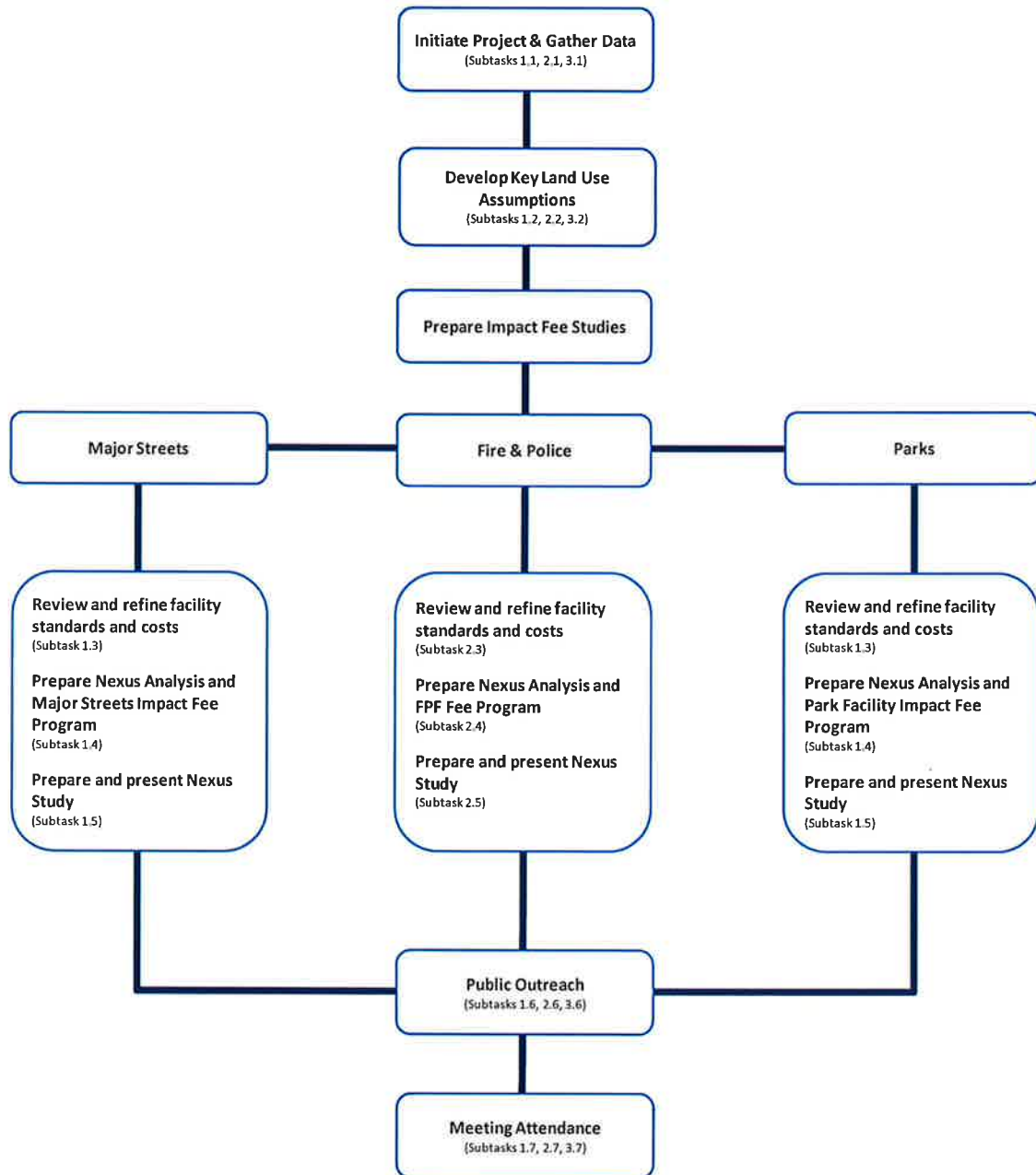
The specific tasks and subtasks EPS proposes to complete the work program are outlined below and discussed in detail in the sections to follow:

- **Task 1: Update Regional Street and New Growth Area Major Streets Impact Fees**
 - **Subtask 1.1:** Initiate Project and Gather Data
 - **Subtask 1.2:** Develop Key Land Use Assumptions
 - **Subtask 1.3:** Review and Refine Facility Standards and Costs
 - **Subtask 1.4:** Prepare Nexus Analysis and Major Streets Impact Fee Program

- **Subtask 1.5:** Prepare and Present Nexus Study
- **Subtask 1.6:** Conduct Public Outreach Process
- **Subtask 1.7:** Attend Meetings
- **Task 2: Update Fire and Police Facilities Impact Fees**
 - **Subtask 2.1:** Initiate Project and Gather Background Information and Data
 - **Subtask 2.2:** Develop Key Land Use Assumptions
 - **Subtask 2.3:** Review and Refine Facility Standards and Costs
 - **Subtask 2.4:** Prepare Nexus Analysis and Fire and Police Facilities Impact Fee Program
 - **Subtask 2.5:** Prepare and Present Nexus Study
 - **Subtask 2.6:** Conduct Public Outreach Process
 - **Subtask 2.7:** Attend Meetings
- **Task 3: Update Park Facilities Impact Fees**
 - **Subtask 3.1:** Initiate Project and Gather Data
 - **Subtask 3.2:** Develop Key Land Use Assumptions
 - **Subtask 3.3:** Review and Refine Facility Standards and Costs
 - **Subtask 3.4:** Prepare Nexus Analysis and Park Facilities Impact Fee Program
 - **Subtask 3.5:** Prepare and Present Nexus Study
 - **Subtask 3.6:** Conduct Public Outreach Process
 - **Subtask 3.7:** Attend Meetings

Please note that several of the tasks required to complete each Nexus Study will be completed on parallel tracks, as demonstrated by Figure 1 below. Specifically, EPS assumes a single project initiation meeting will be held for all three fee programs; land use assumptions and growth forecasts will be developed once and used for each fee program; and other public outreach, meeting attendance, and City Council presentations can be conducted simultaneously for the three Nexus Study Updates.

Figure 1
Fresno DIF Work Program Structure



Task 1: Update Regional Street and New Growth Area Major Streets Impact Fees

The existing Regional Street and New Growth Area Major Streets Impact Fee Program (Major Streets Impact Fee Program) includes two fee zones:

- **Urban Core Zone.** Payable by new development in the City's urban core.
- **New-Growth Zone.** Payable by new City development located in "new growth" areas as determined by the City.

In addition, the Major Streets Impact Fee Program funds two categories of roads:

- **Regional Roads.** Regional-serving citywide roadways.
- **New-Growth Roads.** Primarily new growth-serving roadways.

EPS will review the current fee program methodology and will provide an updated development impact fee program that takes into consideration updated land use, vehicle miles traveled (VMT), and growth assumptions and street facility needs provided by the City to calculate impact fees scaled to each user's impact on major streets. The updated Nexus Study will provide the City with the technical documentation necessary to implement the proposed fees.

Subtask 1.1: Initiate Project and Gather Data

EPS will meet with the City to finalize the expected work product, scope of services, and project schedule. At this kickoff meeting, EPS and the City should discuss the general approach to updating the fees, key aspects of the fee program methodology, and any key issues that need to be addressed as part of the Nexus Study Update. EPS will work with the City to obtain and review the following data and information:

- General Plan Traffic Analysis
- Major Streets Capital Improvement Program
- Existing Fee Program Fund Balance
- Outstanding Developer Credits and Reimbursements

The initial scoping refinement, data gathering, and discussion will focus subsequent technical efforts.

Subtask 1.2: Develop Key Land Use Assumptions

As part of this subtask, EPS will assemble land use capacity and development forecasts. In coordination with the City, EPS will research, assemble, and analyze the City's existing housing inventory and land use and demographic data to estimate the amount of existing development in each land use category. This estimate may include the use of industry standards for population and employment densities, floor-to-area ratios, and planning documents, as available. The City will assist in providing a summary of the existing land use and development base; needed City planning documents; and other appropriate maps, documents, or data.

EPS also will review prior nexus studies, current City General Plan documents, existing and proposed specific plan documents, development capacity, regional growth forecasts in the current version of Fresno Council of Government (Fresno COG) travel demand model, and City data on planned and proposed development. In addition, other published demographic data sources may be used to provide additional support (e.g., Claritas, California Department of Finance, and California Employment Development Department [EDD]).

Once the land use categories are defined and land use data are available, EPS will prepare a growth forecast for each land use category, using growth projections completed as part of the General Plan update process as necessary and appropriate. EPS will prepare a table set summarizing preliminary land use growth forecasts for City staff review.

Following review and subsequent input from City staff, EPS will prepare a technical memorandum summarizing the key initial land use assumptions developed for use in the Nexus Study Report. Before developing the Nexus Study in **Subtask 1.5**, EPS and the City will examine changes in existing and potential land uses and adjust key land use assumptions as necessary to ensure the most relevant growth forecast.

Subtask 1.2 Deliverables

- Table Set—Preliminary Land Use Assumptions
- Technical Memorandum—Summary of City's Land Uses and Demographics

Subtask 1.3: Review and Refine Facility Standards and Costs

The City will determine and provide the capital improvement program for the two categories of major streets as described above: regional (citywide) streets and new-growth area major streets. This information will include the analysis used to determine the need for each capital improvement program (CIP) project. The City will determine whether the entire cost or a portion thereof can be fairly allocated to citywide or new-growth areas. This review also will take into consideration implications associated with transferring the funding of trail facilities from the Park Facilities Fee Program to the Major Streets Impact Fee Program, particularly where trail facilities are located adjacent to arterial or other major street facilities.

Quad Knopf will review the available construction cost estimates and offer a professional opinion regarding the validity of the costs estimates for use in the fee update. EPS and Quad Knopf will meet with City staff and work to reach agreement on updated unit costs where necessary. It is assumed the review will be limited to unit costs and contingencies and will not include verifying unit quantities.

Subtask 1.3 Deliverables

- Table Set—Major Streets CIP Assumptions

Subtask 1.4: Prepare Nexus Analysis and Major Streets Impact Fee Program

Using the validated cost data determined in **Subtask 1.3** above, EPS will prepare the Major Streets Impact Fee Program calculations and nexus analysis. The development impact fees will

be segregated by land use type, based on the nexus requirements of Assembly Bill (AB) 1600 and on standard methods of allocating costs. EPS will use the following methodology:

- **Review/Revise Dwelling Unit Equivalent (DUE) Factors.** Development impact fees typically are based on DUEs for various land uses. DUEs convert the demand for public facilities into similar measurement units for various land uses. These DUEs measure the demand for facilities that are generated by each land use type. DUEs for the Major Streets Impact Fee Program will be established based on VMT estimates by land use for the urban core and new growth areas. Fehr & Peers will develop the VMT estimates for the same land uses contained in the current fee program with updated information, including the California Household Travel Survey and the Fresno COG model.
- **Distribute Infrastructure Costs by Land Use.** Based on forecasts of new development developed in **Subtask 1.2**, EPS will determine the new units served that will benefit from the capital improvements proposed for each fee component. Major Streets improvement costs then are distributed to each land use based on their relative demand for or benefit from each infrastructure component. As such, the maximum justifiable major streets impact fee per DUE is established.
- **Apply DUE Factors to Determine Fee.** The DUE factors multiplied by the cost-per-unit-served establish the maximum justifiable major streets development impact fee by land use. The City will include an administrative cost component to the fee, which would allow the City to recover administrative costs in administering the fee program. EPS will develop a methodology to automatically update and increase the fee on an annual basis for each fee. EPS will summarize the fees by infrastructure group for the City's review.
- **Review Ordinances and Resolutions.** EPS will review current ordinances and resolutions and propose revisions as necessary to address the City's implementation of the fees. Issues to be reviewed include timing of fee collection, fee credits, and reimbursement policies.

Using the above-described approach, EPS will prepare a draft set of major streets impact fee calculations for the City's review and feedback. EPS will revise the draft tables as necessary to prepare the final Major Streets Impact Fee Program calculations.

Subtask 1.5: Prepare and Present Nexus Study

Based on a review of the key assumptions, the subsequent public input, and the analysis prepared in **Subtask 1.4**, EPS will prepare an Administrative Draft Report documenting the maximum justifiable development impact fees for City staff review and comment. The report will state the maximum justifiable development impact fees for each land use and the necessary supporting analysis and findings. The report will also take into consideration and will evaluate the implications of implementing economic incentives for certain fee program areas (e.g., the urban-core zone) or land uses. Following the internal review, EPS will prepare a Public Review Draft Report for stakeholder review (described under **Subtask 1.6** below). With the feedback and comments obtained from these reviews, EPS will prepare a Draft Hearing Report for City Council review and will seek approval or direction. **Subtask 1.7** includes EPS's attendance at one City Council meeting.

The presentation with the City Council and workshops with the community are included in the budget that follows. If additional meetings or presentations are required, EPS will request the City's consideration for authorization of additional budget.

Task 1.5 Deliverables

- Administrative Draft Major Streets Impact Fee Program Nexus Study Update
- Public Review Draft Major Streets Impact Fee Program Nexus Study Update
- Draft Hearing Report

Subtask 1.6: Conduct Public Outreach Process

The success of the Major Streets Impact Fee Program depends on the involvement and collaboration of stakeholders and the public. To ensure that the outcome of the Major Streets Impact Fee Program reflects community values and input, EPS proposes a transparent public outreach program. This proposed program is based on previous successful projects completed by EPS. The proposed public outreach program includes stakeholder updates at critical milestones and the use of public workshops to encourage community participation. EPS suggests a series of additional outreach efforts by City staff to inform and update stakeholders such as e-mail or Web site updates.

EPS will collaborate with City staff to refine the final program. This scope is based on the assumption the City will develop and distribute meeting notices and agendas jointly produced with EPS before scheduled meetings. EPS recommends sign-in sheets, minutes, and supporting visual aids such as maps and handouts to assist the discussions be made available for distribution at each meeting. Following each public workshop, EPS will prepare meeting minutes summarizing the key items and discussion points from each workshop. All EPS materials will be provided to City staff for review before distribution. Further, EPS will provide hard copies of all presentations and relevant supporting documentation for distribution.

EPS has scoped up to 6 workshops and presentations, assuming the use of materials and presentations generated from other project subtasks. This includes up to 5 meetings with stakeholders. EPS has scoped 3 stakeholder meetings at key junctures: one to discuss key land use and facility cost assumptions, a second to discuss the nexus analysis and proposed fee schedule, and a third to present and discuss a Public Review Draft of the report. EPS also will plan for 2 additional stakeholder workshops to accommodate special issues that may arise during the Nexus Study Update process.

In addition, the scope includes attendance at one City Council meeting. If additional EPS attendance or presentations are requested, additional budget may be required that will be billed on a time-and-materials basis according to current billing rates.

At a minimum, EPS recommends the following outreach elements:

- **Develop Stakeholder Group Database.** The City will provide a list of stakeholders for use during development of the Major Streets Impact Fee Program. The list may include elected officials, City representatives, developers, community leaders, neighborhood and business associations, planning professionals, and other pertinent stakeholders. The City also will

provide all public posting requirements as necessary such as California Environmental Quality Act (CEQA) requirements, AB 1600 posting requirements, and public meeting requirements.

- **Workshop #1: Key Assumption: Growth Forecasts, Land Use, and CIP.** After **Subtasks 1.2** and **1.3**, the City should conduct a public workshop with the stakeholder group to share the resulting key assumptions used in the Nexus Study process. EPS will attend, assisted by Quad Knopf.
- **Workshop #2: Introduce and Discuss Nexus Analysis.** After incorporating key assumptions and developing a nexus methodology (**Subtask 1.4**), EPS recommends a workshop to introduce the proposed methodology and fee schedule. This workshop should be designed to encourage stakeholder comment to allow City staff to identify stakeholder concerns, address known issues, and build consensus. EPS will attend, and Fehr & Peers will assist EPS with this workshop.
- **Workshop #3: Introduce and Discuss Public Review Draft Nexus Study.** With City staff and stakeholder feedback, EPS will produce an Administrative Draft Nexus Study for City staff. Following this review, EPS will prepare a revised Public Review Draft Nexus Study. EPS recommends a workshop with the stakeholder group, including a review of assumptions and analysis and an introduction to the proposed Nexus Study. EPS will attend.
- **Additional Stakeholder Workshops.** As special issues arise related to development of the Major Streets Impact Fee Program, additional stakeholder outreach or meetings may be warranted. EPS will attend up to 2 additional stakeholder workshops to accommodate this possibility.
- **Draft and Distribute Meeting Minutes.** To demonstrate responsiveness and cooperation with the stakeholder group, after each workshop, EPS will summarize and memorialize key concerns or issues that require resolution. These meeting minutes should be distributed to the entire stakeholder group.
- **City Council Meeting.** Following City staff and stakeholder comment, a Draft Hearing Report will be prepared and presented to the City Council. This meeting will be to review the proposed program with the City Council in a public workshop setting and to seek adoption or direction from the City Council. EPS will attend.

Subtask 1.6 Deliverables:

- Stakeholder Group meetings and presentations (up to 5)
- City Council meeting and presentation as shown in **Subtask 1.5** (1)

Subtask 1.7: Attend Meetings

In addition to the project initiation meeting described in **Subtask 1.1**, EPS and Quad Knopf will be available for up to 2 additional in-person meetings with City staff or the City Manager, for a total of 3 in-person meetings with City staff. Fehr & Peers will be available for one in-person meeting. As necessary, EPS also will be available to meet with City staff via teleconference. This scope of work is based on the assumption that up to 5 additional 1-hour teleconferences will be necessary over the course of the project.

Task 2: Update Fire and Police Facilities Impact Fees

EPS proposes the following subtasks to prepare the updated Fire and Police Facilities (FPF) Fee Program and Nexus Report for the City. This proposed scope of work is consistent with EPS's current understanding of the City's needs. The City currently charges separate fire and police facilities fees on a citywide basis. Drawing on industry best practices, EPS will review the current fee program methodology and will provide an updated development impact fee program that takes into consideration updated land use and growth assumptions and public safety facility needs to calculate impact fees scaled to each user's impact on police and fire facilities.

Subtask 2.1: Initiate Project and Gather Background Information and Data

EPS will meet with the City to finalize the expected work product, scope of services, and project schedule. At this meeting, EPS and the City should review the existing documentation and fee program methodology and discuss any necessary changes or other major issues that should be considered as part of the Nexus Study Update. EPS will obtain (if not already in EPS's possession) and review the following data and information:

- Updated Fire and Police Department Needs Assessment
- City of Fresno General Plan 2035 Update
- Fire and Police Department Calls for Service Data
- Current Citywide Fire and Police Facilities Fee Nexus Study
- Existing Fee Program Account Balances
- Any Outstanding Debt Service for Existing Fee-Funded Public Safety Facilities
- Any Outstanding Developer Credits or Reimbursements Owed

The initial scoping refinement, data gathering, and discussion will focus subsequent technical efforts.

Subtask 2.2: Develop Key Land Use Assumptions

As part of this subtask, EPS will assemble land use capacity and development forecasts, which will be used to estimate new facility needs. In coordination with the City, EPS will research, assemble, and analyze the City's existing housing inventory and land use and demographic data to estimate the amount of existing development in each land use category. This estimate may include the use of industry standards for population and employment densities, floor-to-area ratios, and planning documents, as available. The City will assist in providing a summary of the existing land use and development base; needed City planning documents; and other appropriate maps, documents, or data.

EPS also will review prior nexus studies, current City General Plan documents, existing and proposed specific plan documents, development capacity, regional growth forecasts in the current version of Fresno COG travel demand model, and City data on planned and proposed development. In addition, other published demographic data sources may be used to provide additional support (e.g., Claritas, California Department of Finance, and California EDD).

Once the land use categories are defined and land use data are available, EPS will prepare a growth forecast for each land use category, using growth projections completed as part of the General Plan update process as necessary and appropriate. EPS will prepare a table set summarizing preliminary land use growth forecasts for City staff review.

Subtask 2.2 Deliverables

- See **Subtask 1.2**

Subtask 2.3: Review and Refine Facility Standards and Costs

EPS will review updated public safety needs assessment documentation and will review and confirm existing standards with the City. In preparation of the Nexus Study, EPS will analyze the value of existing fire and police facilities, taking into consideration any outstanding debt service on existing facilities. Using existing City documents, nexus studies, and other data provided by the City, EPS will review, validate, and confirm the value of existing facilities.

In addition, EPS will work closely with the City to develop and review the existing CIP and projected cost of fire and police facility needs projected to serve future development. As part of this subtask, EPS will meet and coordinate with City staff to understand areas of the police and fire master plans that the City wishes to focus on in infrastructure review (such as an emergency vehicle traffic light pre-emption system to allow safe passage of emergency vehicles through traffic lights at an intersection).

EPS assumes City staff will provide recent fire station and other related cost data. EPS and Quad Knopf will review the available construction cost estimates and offer a professional opinion regarding the validity of those costs. As part of this review, EPS and Quad Knopf will gather updated information on key cost assumptions. Typical police and fire expenditures will be derived from comparable project information supplemented by in-house resources and cost estimation manuals as necessary. In concert with City staff, EPS and Quad Knopf will also consider public safety facility costs attributable to new development in the new growth areas of the City versus development in the City's urban core.

EPS and Quad Knopf then will meet with City staff and work to reach agreement on updated unit costs where necessary. It is assumed the review will be limited to unit costs and contingencies and will not include verifying unit quantities.

Subtask 2.3 Deliverables

- Table Set—Fire and Police Facilities CIP Assumptions

Subtask 2.4: Prepare Nexus Analysis and FPF Fee Program

In this subtask, EPS will calculate the development impact fees for fire and police facilities identified in **Subtask 2.3** above. The development impact fees will be segregated by land use type, based on the nexus requirements of AB 1600 and on standard methods of allocating costs. EPS will use the following methodology:

- **Review Previous Nexus Studies.** EPS will review the existing "Fire & Police Facilities Impact Fees" Nexus Study, which will serve as the basis for the update of the various impact fee programs.
- **Review Prior Technical Analysis.** EPS will review prior technical analysis conducted as part of an effort to update the FPF Fee Program circa 2009.
- **Review/Revise DUE Factors.** Development impact fees typically are based on DUEs for various land uses. DUEs convert the demand for public facilities into similar measurement units for various land uses. These DUEs measure the demand for facilities that are generated by each land use type. For public safety facilities, DUE factors likely will be based on calls for service or other metrics that accurately measure and distinguish the demands generated for public safety services by land use type. In conjunction with City staff, EPS will review and revise, if necessary, the DUE factors for each land use to be charged.
- **Distribute Infrastructure Costs by Land Use.** Based on new development forecasts developed in **Subtask 2.2**, EPS will determine the new units served that will benefit from the capital improvements proposed for each fee component (fire and police). The infrastructure costs then are distributed to each land use, based on their relative demand for or benefit from each infrastructure component. As such, a cost-per-unit-served is established. Public safety facility costs-per-unit-served may vary based on the location of new development, i.e., the urban core area versus the new growth area.
- **Apply DUE Factors to Determine Fee.** The DUE factors multiplied by the cost-per-unit-served establish the development impact fee by infrastructure group and land use. The City will include an administrative cost component to the fee, which would allow the City to recover administrative costs in administering the fee program. EPS will develop a methodology to automatically update and increase the fee on an annual basis for each fee. EPS will summarize the fees by infrastructure group for the City's review.
- **Review Ordinances and Resolutions.** EPS will review current ordinances and resolutions and propose revisions as necessary to address the City's implementation of the fees. Issues to be reviewed include timing of fee collection, fee credits, and reimbursement policies.

Subtask 2.5: Prepare and Present Nexus Study

Based on a review of the key assumptions, the subsequent public input, and the analysis prepared in **2.4**, EPS will prepare an Administrative Draft Report for City staff review and comment. The study will state the maximum justifiable fees for each land use and the necessary supporting analysis and findings. The study will also consider application of economic incentives or other approaches to reduce the impact fee burden for specific fee program areas (e.g., the urban-core) or land uses. Following the internal review, EPS will prepare a Public Review Draft Report for stakeholder review (described under **Subtask 2.6** below). With the feedback and comments obtained from these reviews, EPS will prepare a Draft Hearing Report for the City Council and will seek approval or direction. **Subtask 2.7** includes EPS's attendance at one City Council meeting.

The presentation with the City Council and workshops with the community are included in the budget that follows. If additional meetings or presentations are required, EPS will request the City's consideration for authorization of additional budget.

Task 2.5 Deliverables

- Administrative Draft FPF Nexus Study Update
- Public Review Draft FPF Nexus Study Update
- Draft Hearing Report

Subtask 2.6: Conduct Public Outreach Process

The success of the FPF Fee Program depends on the involvement and collaboration of stakeholders and the public. To ensure the outcome of the FPF Fee Program reflects community values and input, EPS proposes a transparent public outreach program. This proposed program is based on previous successful projects completed by EPS. The proposed public outreach program includes stakeholder updates at critical milestones and the use of public workshops to encourage community participation. EPS suggests a series of additional outreach efforts by City staff to inform and update stakeholders such as e-mail or Web site updates.

EPS will collaborate with City staff to refine the final program. This scope is based on the assumption the City will develop and distribute meeting notices and agendas jointly produced with EPS before scheduled meetings. EPS recommends sign-in sheets, minutes, and supporting visual aids such as maps and handouts to assist the discussions be made available for distribution at each meeting. Following each public workshop, EPS will prepare meeting minutes summarizing the key items and discussion points from each workshop. All EPS materials will be provided to City staff for review before distribution. Further, EPS will provide hard copies of all presentations and relevant supporting documentation for distribution.

EPS has scoped up to 6 workshops and presentations, assuming the use of materials and presentations generated from other project subtasks. This includes up to 5 meetings with stakeholders. EPS has scoped 3 stakeholder meetings at key junctures: one to discuss key land use and facility cost assumptions, a second to discuss the nexus analysis and proposed fee schedule, and a third to present and discuss a Public Review Draft of the report. EPS also will plan for 2 additional stakeholder workshops to accommodate special issues that may arise during the Nexus Study Update process.

In addition, the scope includes attendance at one City Council meeting. If additional EPS attendance or presentations are requested, additional budget may be required that will be billed on a time-and-materials basis according to current billing rates.

At a minimum, EPS recommends the following outreach elements:

- **Develop Stakeholder Group Database.** The City will provide a list of stakeholders for use during development of the FPF Impact Fee Program. The list may include elected officials, City representatives, developers, community leaders, neighborhood and business associations, planning professionals, and other pertinent stakeholders. The City also will provide all public posting requirements as necessary such as CEQA requirements, AB 1600 posting requirements, and public meeting requirements.

- **Workshop #1: Key Assumption: Growth Forecasts, Land Use, and CIP.** After **Subtasks 2.2** and **2.3**, the City should conduct a public workshop with the stakeholder group to share the resulting key assumptions used in the Nexus Study process. EPS will attend, and Quad Knopf will assist EPS with this workshop.
- **Workshop #2: Introduce and Discuss Nexus Analysis.** After incorporating key assumptions and developing a nexus methodology (**Subtask 2.4**), EPS recommends a workshop to introduce the proposed methodology and fee schedule. This workshop should be designed to encourage stakeholder comment to allow City staff to identify stakeholder concerns, address known issues, and build consensus. EPS will attend.
- **Workshop #3: Introduce and Discuss Public Review Draft Nexus Study.** With City staff and stakeholder feedback, EPS will produce an Administrative Draft Nexus Study for City staff. Following this review, EPS will prepare a revised Public Review Draft Nexus Study. EPS recommends a workshop with the stakeholder group, including a review of assumptions and analysis and an introduction to the proposed Nexus Study. EPS will attend.
- **Additional Stakeholder Workshops.** As special issues arise related to development of the FPF Impact Fee Program, additional stakeholder outreach or meetings may be warranted. EPS will attend up to 2 additional stakeholder workshops to accommodate this possibility.
- **Draft and Distribute Meeting Minutes.** To demonstrate responsiveness and cooperation with the stakeholder group, after each workshop, EPS will summarize and memorialize key concerns or issues that require resolution. These meeting minutes should be distributed to the entire stakeholder group.
- **City Council Meeting.** Following City staff and stakeholder comment, a Draft Hearing Report will be prepared and presented to the City Council. This meeting will be to review the proposed program with the City Council in a public workshop setting and to seek adoption or direction from the City Council. EPS will attend.

Subtask 2.6 Deliverables

- Stakeholder Group meetings and presentations (up to 5)
- City Council meeting and presentation as shown in **Subtask 2.5** (1)

Subtask 2.7: Attend Meetings

In addition to the project initiation meeting described in **Subtasks 1.1** and **2.1**, EPS and Quad Knopf will be available for up to 2 additional in-person meetings with City staff or the City Manager, for a total of 3 in-person meetings with City staff. As necessary, EPS also will be available to meet with City staff via teleconference. This scope of work is based on the assumption that up to 5 additional 1-hour teleconferences will be necessary over the course of the project.

Task 3: Update Park Facilities Impact Fees

The EPS Team proposes the following subtasks to complete an update to the Park Facilities Impact Fee Nexus Study. The Park Facilities Nexus Study document will include the required nexus findings to support City adoption of the updated Park Facilities Impact Fee Program.

The current citywide Park Facilities Impact Fee is computed based on a facility-standard approach that includes funding for community, park, and trail facilities. The existing fee also includes a land (Quimby) component. There are several key issues that the Park Facilities Impact Fee Nexus Study Update should address.

The City has expressed concern that neighborhood park funding pressures are depleting funds available to fund communitywide facilities. This proposed work program will address this issue through an evaluation of the current facility standard approach, whereby the impact fee is set based on an identified level-of-service standard. An alternative approach would be to use a CIP approach that details the specific facilities desired by the City and develops a funding program based on a prioritized set of desired facilities. This approach could assist the City in mitigating tension between neighborhood and community park facilities by identifying a prioritized and programmed set of improvements.

Another approach would include establishing separate park facility fee program components for community and neighborhood park facilities. Credits for developer-constructed facilities could be limited to the neighborhood park facility component, ensuring receipt of fee payments to fund community park facilities.

In addition, the City wishes to evaluate whether or not the trail facility component should continue to be funded as part of the Park Facility Fee Program, or whether it should instead be funded through the Major Streets Impact Fee Program. The EPS Team's proposed work program will evaluate these and other issues through completion of the subtasks identified below. This work program will culminate in presentation of a Park Facilities Nexus Study and fee ordinance for City Council consideration.

Subtask 3.1: Initiate Project and Gather Data

EPS will meet with the City to finalize the expected work product, scope of services, and project schedule. EPS will obtain (if not already in EPS possession) and review the following documentation:

- Available Parks and Recreation Department Master Plan Documents
- City of Fresno Bicycle, Pedestrian, & Trails Master Plan
- Current Citywide Park Facilities Fee Nexus Study

The initial scoping refinement, data gathering, and discussion will focus subsequent technical efforts.

Subtask 3.2: Develop Key Land Use Assumptions

As part of this subtask, EPS will assemble land use capacity and development forecasts, which will be used to estimate new facility needs. In coordination with the City, EPS will research,

assemble, and analyze the City's existing housing inventory and land use and demographic data to estimate the amount of existing development in each land use category. This estimate may include the use of industry standards for population and employment densities, floor-to-area ratios, and planning documents, as available. The City will assist in providing a summary of the existing land use and development base; needed City planning documents; and other appropriate maps, documents, or data.

EPS also will review prior nexus studies, current City General Plan documents, existing and proposed specific plan documents, development capacity, regional growth forecasts in the current version of the Fresno COG travel demand model, and City data on planned and proposed development. In addition, other published demographic data sources may be used to provide additional support (e.g., Claritas, California Department of Finance, and California EDD).

Once the land use categories are defined and land use data are available, EPS will prepare a growth forecast for each land use category, using growth projections completed as part of the General Plan update process as necessary and appropriate. EPS will prepare a table set summarizing preliminary land use growth forecasts for City staff review.

Subtask 3.2 Deliverables

- See **Subtask 1.2**

Subtask 3.3: Review and Refine Facility Standards and Costs

EPS will work with the City to identify park facility capital requirements that will provide the basis for establishing an impact fee for new development. EPS will review the current Park Facilities Impact Fee Nexus Study and any existing Park master planning documents to determine the full range of park facilities programmed or desired by the City.

EPS and Quad Knopf will review the City's current facility standard approach to computing park facility costs and will evaluate this methodology in terms of the City's ability to fund desired neighborhood and community park facilities. Based on the outcome of this review, EPS and Quad Knopf may work with the City to develop an alternative, CIP-based approach to programming park facilities and will review, comment on, and validate associated cost estimates developed by the City. This review will consider the potential for varying park facility needs between the urban core area and the new growth areas of the City, as well as any outstanding debt services on existing park facilities.

As part of the review of park facility costs, EPS and Quad Knopf will identify the portion of park facility costs attributable to trail facilities to facilitate later analysis of alternative funding strategies for this fee program component.

Subtask 3.3 Deliverables

- Table Set—Park CIP Assumptions

Subtask 3.4: Prepare Nexus Analysis and Park Facilities Impact Fee Program

Using the validated cost data determined in **Subtask 3.3** above, EPS will prepare the Park Facilities Impact Fee Program calculations and Nexus Study. In the process of developing final

fee recommendations, EPS will develop alternative fee levels and methodologies of developing the fees for the City's consideration. Alternatives will include evaluation of the following variables:

- **Total Funding Amount.** Several different levels of revenue to be generated by the park improvements fee will be evaluated, ranging from the amount that would be generated from the current fees to the amount needed to construct all desired improvements. This analysis will include an evaluation of the facility standard approach versus a fully programmed CIP approach and will include an analysis of fee program funding alternatives for the trail component of the Park Facilities Impact Fee Program (i.e., should this component be funded through the Park Facilities Impact Fee Program or should it instead be shifted to the Major Streets Impact Fee Program?).
- **Fee Zones.** EPS will evaluate and develop alternatives to assess the effect of varying park development fees in different zones of the City. The varying fees will be based on different park needs in different parts of the City.
- **Tiered Fee Rates.** EPS will evaluate the viability of establishing a tiered fee program either based on level of service or separating the fee program into multiple components (e.g., one component for community park facilities and another component for neighborhood park facilities).

For all alternatives and for the final fee structure recommendation, EPS will use the following methodology to develop fee calculations:

- **Review/Revise DUE Factors.** Development impact fees typically are based on DUEs for various land uses. DUEs convert the demand for public facilities into similar measurement units for various land uses. These DUEs measure the demand for facilities that are generated by each land use type. In conjunction with City staff, EPS will review and revise, if necessary, the DUE factors for each land use to be charged.
- **Distribute Infrastructure Costs by Land Use.** Based on new development forecasts developed in **Subtask 3.2**, EPS will determine the new units served that will benefit from the capital improvements proposed for each fee component. Park facilities costs then are distributed to each land use based on their relative demand for or benefit from each infrastructure component. As such, a maximum justifiable park improvements fee per DUE is established.
- **Apply DUE Factors to Determine Fee.** The DUE factors multiplied by the cost-per-unit-served establish the maximum justifiable park development impact fee by land use. The City will include an administrative cost component to the fee, which will allow the City to recover administrative costs in administering the fee program. EPS will develop a methodology to automatically update and increase the fee on an annual basis for each fee. EPS will summarize the fees by infrastructure group for the City's review.
- **Review Ordinances and Resolutions.** EPS will review current ordinances and resolutions and propose revisions as necessary to address the City's implementation of the fees. Issues to be reviewed include timing of fee collection, fee credits, and reimbursement policies.

Using the above-described approach, EPS will prepare a draft set of park facilities fee calculations for the City's review and feedback. EPS will revise the draft tables as necessary to prepare the final Park Facilities Impact Fee Program calculations.

Subtask 3.5: Prepare and Present Nexus Study

Based on a review of the key assumptions, the subsequent public input, and the analysis prepared in **Subtask 3.4**, EPS will prepare an Administrative Draft Report for City staff review and comment. The study will state the maximum justifiable fees for each land use and the necessary supporting analysis and findings. The study will also consider application of economic incentives or other approaches to reduce the impact fee burden for specific fee program areas (e.g., the urban-core) or land uses. Following the internal review, EPS will prepare a Public Review Draft Report for stakeholder review (described under **Subtask 3.6** below). With the feedback and comments obtained from these reviews, EPS will prepare a Draft Hearing Report for the City Council and will seek approval or direction. **Subtask 3.7** includes EPS's attendance at one City Council meeting.

The presentation with the City Council and workshops with the community are included in the budget that follows. If additional meetings or presentations are required, EPS will request the City's consideration for authorization of additional budget.

Task 3.5 Deliverables

- Administrative Draft Park Facilities Nexus Study Update
- Public Review Draft Park Facilities Nexus Study Update
- Draft Hearing Report

Subtask 3.6: Conduct Public Outreach Process

The success of the Park Facilities Impact Fee Program depends on the involvement and collaboration of stakeholders and the public. To ensure that the outcome of the Park Facilities Impact Fee Program reflects community values and input, EPS proposes a transparent public outreach program. This proposed program is based on previous successful projects completed by EPS. The proposed public outreach program includes stakeholder updates at critical milestones and the use of public workshops to encourage community participation. EPS suggests a series of additional outreach efforts by City staff to inform and update stakeholders such as e-mail or Web site updates.

EPS will collaborate with City staff to refine the final program. This scope is based on the assumption the City will develop and distribute meeting notices and agendas jointly produced with EPS before scheduled meetings. EPS recommends sign-in sheets, minutes, and supporting visual aids such as maps and handouts to assist the discussions be made available for distribution at each meeting. Following each public workshop, EPS will prepare meeting minutes summarizing the key items and discussion points from each workshop. All EPS materials will be provided to City staff for review before distribution. Further, EPS will provide hard copies of all presentations and relevant supporting documentation for distribution.

EPS has scoped up to 6 workshops and presentations, assuming the use of materials and presentations generated from other project subtasks. This includes up to 5 meetings with

stakeholders. EPS has scoped 3 stakeholder meetings at key junctures: one to discuss key land use and facility cost assumptions, a second to discuss the nexus analysis and proposed fee schedule, and a third to present and discuss a Public Review Draft of the report. EPS also will plan for 2 additional stakeholder workshops to accommodate special issues that may arise during the Nexus Study Update process.

In addition, the scope includes attendance at one City Council meeting. If additional EPS attendance or presentations are requested, additional budget may be required that will be billed on a time-and-materials basis according to current billing rates.

At a minimum, EPS recommends the following outreach elements:

- **Develop Stakeholder Group Database.** The City will provide a list of stakeholders for use during development of the Park Facilities Impact Fee Program. The list may include elected officials, City representatives, developers, community leaders, neighborhood and business associations, planning professionals, and other pertinent stakeholders. The City also will provide all public posting requirements as necessary such as CEQA requirements, AB 1600 posting requirements, and public meeting requirements.
- **Workshop #1: Key Assumption: Growth Forecasts, Land Use, and CIP.** After **Subtasks 3.2 and 3.3**, the City should conduct a public workshop with the stakeholder group to share the resulting key assumptions used in the Nexus Study process. EPS will attend; Quad Knopf will assist.
- **Workshop #2: Introduce and Discuss Nexus Analysis.** After incorporating key assumptions and developing a nexus methodology (**Subtask 3.4**), EPS recommends a workshop to introduce the proposed methodology and fee schedule. This workshop should be designed to encourage stakeholder comment to allow City staff to identify stakeholder concerns, address known issues, and build consensus. EPS will attend.
- **Workshop #3: Introduce and Discuss Public Review Draft Nexus Study.** With City staff and stakeholder feedback, EPS will produce an Administrative Draft Nexus Study for City staff. Following this review, EPS will prepare a revised Public Review Draft Nexus Study. EPS recommends a workshop with the stakeholder group, including a review of assumptions and analysis and an introduction to the proposed Nexus Study. EPS will attend.
- **Additional Stakeholder Workshops.** As special issues arise related to development of the Park Facilities Impact Fee Program, additional stakeholder outreach or meetings may be warranted. EPS will attend up to 2 additional stakeholder workshops to accommodate this possibility.
- **Draft and Distribute Meeting Minutes.** To demonstrate responsiveness and cooperation with the stakeholder group, after each workshop, EPS will summarize and memorialize key concerns or issues that require resolution. These meeting minutes should be distributed to the entire stakeholder group.
- **City Council Meeting.** Following City staff and stakeholder comment, a Draft Hearing Report will be prepared and presented to the City Council. This meeting will be to review the proposed program with the City Council in a public workshop setting and to seek adoption or direction from the City Council. EPS will attend.

Subtask 3.6 Deliverables

- Stakeholder Group meetings and presentations (up to 5)
- City Council meeting and presentation as shown in **Subtask 3.5** (1)

Subtask 3.7: Attend Meetings

In addition to the project initiation meeting described in **Subtasks 1.1, 2.1, and 3.1**, EPS and Quad Knopf will be available for up to 2 additional in-person meetings with City staff or the City Manager, for a total of 3 in-person meetings with City staff. As necessary, EPS also will be available to meet with City staff via teleconference. This scope of work is based on the assumption that up to 5 additional 1-hour teleconferences will be necessary over the course of the project.

Task 4: Prepare Regional Infrastructure Cost Burden Comparison

Using sample or prototype development projects provided by the City, EPS will provide a comparison of fees, bond debt, and annual special taxes and assessments for residential, commercial, and industrial land uses. The infrastructure cost burden comparison will compare total infrastructure costs for development in the City's urban-core area as well as the new growth areas. In addition, EPS will work with the City to select two to three competitive jurisdictions to provide further basis for comparison. The fee analysis will contain city or county fees, project-specific fees if applicable, other agency fees, and any bond debt or assessments for infrastructure to be levied against the property. The impact fee comparison will include this work:

- Calculating a proposed fee schedule by zone and land use.
- Compiling impact fee comparisons for competitive jurisdictions.
- Collecting ordinance language successfully used by jurisdictions for impact fees based on the report's methodology.

In addition to the City's urban-core and new growth areas, the analysis may include jurisdictions such as the Cities of Bakersfield, Clovis, Merced, Modesto, Selma, Stockton, and Visalia. The initial fee analysis will include two to three jurisdictions per land use, representing the City's major competitors. EPS will work with the City to determine the appropriate competitive jurisdictions by land use category.

Task 4 Deliverables

- Technical Table Set—Infrastructure Cost Burden Comparison

Task 5: Review Traffic Signal Mitigation Impact Fee Methodology

The City is interested in an evaluation of the current methodology used for the ADT-based citywide Traffic Signal Mitigation Impact Fee. EPS and Fehr & Peers will review this methodology and will work to develop recommendations concerning the following items:

- Basis for nexus
- Handling of various land use types
- Considerations for pass-by and internal trip capture

EPS and Fehr & Peers will memorialize the findings of this review in a memorandum for City staff review and comment.

Task 5 Deliverables

- Memorandum—Traffic Signal Mitigation Impact Fee Recommendations

Exhibit B

INSURANCE REQUIREMENTS

**Consultant Service Agreement between City of Fresno ("CITY")
and Economic & Planning Systems, Inc. ("CONSULTANT")**

IMPACT FEE PROGRAM NEXUS STUDY UPDATE

PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

CONSULTANT, or any party the CONSULTANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,

- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

OR*

PERSONAL AUTOMOBILE LIABILITY insurance with limits of liability not less than:

- (i) \$100,000 per person;
- (ii) \$300,000 per accident for bodily injury; and,
- (iii) \$50,000 per accident for property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROFESSIONAL LIABILITY** (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or