

SAN MATEO

**LOCAL AGENCY FORMATION COMMISSION**

455 COUNTY CENTER, 2ND FLOOR • REDWOOD CITY, CA 94063-1663 • PHONE (650) 363-4224 • FAX (650) 363-4849

January 14, 2015

To: LAFCo Commissioners**From:** Martha Poyatos, Executive Officer

A handwritten signature in black ink, appearing to read 'M. Poyatos', written over the printed name.

Subject: Consulting Contract for the Harbor District Municipal Service Review and Sphere of Influence UpdateRecommendation

Adopt a Resolution Authorizing the Executive Officer to execute a contract with Economic & Planning Systems, Inc., to prepare the San Mateo County Harbor District Municipal Service Review and Sphere of Influence update for the term January 22, 2015 through May 28, 2015 in an amount not to exceed \$37,940.

Background

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act) requires that every five years, as necessary, LAFCo review and update the sphere of influence (SOI) of each local agency. In conjunction with the SOI update, LAFCo must prepare a municipal service review (MSR) to determine the range and adequacy of the governmental services provided.

As previously reported, the 2014-15 Civil Grand Jury recommended that the Commission initiate an MSR and SOI update on the San Mateo County Harbor District by December 31, 2014. At your November meeting, the Commission authorized release of a Request for Proposals (RFP) for a consultant-prepared report.

Recruitment Process

On December 4, 2014, LAFCo released an RFP and Scope of Services for the Harbor District MSR. The RFP was sent to 17 firms and posted on the San Mateo LAFCo website. Proposals were submitted by the three firms below (copies of the proposals are available upon request):

- Policy Consulting Associates, LLC
- Economic & Planning Systems, Inc.
- Harvey M. Rose Associates, LLC

The proposals vary in terms of approach, number of team members, and timelines with costs of \$11,599, \$37,940, and \$86,635, respectively.

Following telephone interviews, staff concluded that Economic & Planning Systems would be the best choice to prepare the MSR and SOI update. Follow-up reference calls were made that support this recommendation.

Economic & Planning Systems (EPS)

Richard Berkson, Principal, has over 30 years of experience working on a wide range of LAFCo-related projects that include fiscal analysis and MSRs. Mr. Berkson recently completed a special study of Saratoga Fire District for Santa Clara LAFCo and a governance study of the Mt. Diablo Health Care District for Contra Costa LAFCo.

Budget Impact

The not-to-exceed cost of \$37,940 is within budget resources and adequate funding is included in the Fiscal Year 2015-16 budget to cover costs associated with the MSR/SOI update. The attached resolution authorizes the Executive Officer to execute the contract and to modify the scope of the contract as necessary as long as the modifications do not increase the “not to exceed” amount of the contract.

RESOLUTION NO. 1189

**RESOLUTION OF THE
SAN MATEO LOCAL AGENCY FORMATION COMMISSION
AUTHORIZING AN AGREEMENT WITH
ECONOMIC & PLANNING SYSTEMS, INC.,
FOR PREPARATION OF THE
SAN MATEO COUNTY HARBOR DISTRICT
MUNICIPAL SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE**

RESOLVED, by the Local Agency Formation Commission of the County of San Mateo (LAFCo), State of California, that:

WHEREAS, the Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (Act) provides that LAFCo shall periodically update spheres of influence of cities and special districts; and

WHEREAS, the Act further requires that in conjunction with sphere of influence updates, LAFCo shall prepare municipal service reviews pursuant to Government Code Section 56430; and

WHEREAS, LAFCo may contract for preparation of municipal service reviews and sphere of influence updates; and

WHEREAS, the Executive Officer issued a Request for Proposals, reviewed qualified bidders, and recommends entering into a contract with Economic & Planning Systems, Inc., in the amount of \$37,940 for the period January 22, 2015 through May 28, 2015 to prepare the San Mateo County Harbor District Municipal Service Review and Sphere of Influence Update as detailed in the Scope of Services contained in the attached draft agreement; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Commission hereby authorizes the Executive Officer to execute an agreement with Economic & Planning Systems, Inc., in an amount not to exceed \$37,940 for the period January 22, 2015 through May 28, 2015. The Commission further authorizes the Executive Officer to modify the scope of the contract as necessary as long as the modifications do not increase the “not to exceed” amount of the contract.

Regularly passed and adopted this 21st day of January, 2015.

Ayes and in favor of said resolution:

Commissioners: _____

Noes and against said resolution:

Commissioner(s): _____

Absent and/or Abstentions:

Commissioner(s): _____

 Chair
 Local Agency Formation Commission
 County of San Mateo
 State of California

ATTEST:

 Martha Poyatos
 Executive Officer
 Local Agency Formation Commission

Date: _____

I certify that this is a true and correct copy of the resolution above set forth.

 Jean Brook
 Clerk to the Commission
 Local Agency Formation Commission

Date: _____

**SAN MATEO LAFCO
AGREEMENT WITH INDEPENDENT CONTRACTOR**

Agreement No. _____

Contractor Name and Address (“Contractor”):

Contractor: Upon completion of work or agreed-upon work periods, mail invoice with above Agreement Number to:

Economic & Planning Systems, Inc.

Department: San Mateo LAFCO

One Kaiser Plaza, Suite 1410

Attention: Martha Poyatos

Oakland, CA 94612

Address: 455 County Center, 2nd Floor

Attention: Richard Berkson, Principal

City, State, Zip: Redwood City, CA 94063

It is agreed between San Mateo Local Agency Formation Commission (LAFCo), and Contractor as follows:

1. **Services to be performed by Contractor.** In consideration of the payments hereinafter set forth, Contractor shall perform services for LAFCo in accordance with the terms, conditions, and specifications set forth herein and in Exhibit A attached hereto for LAFCo.
2. **Contract Term.** The term of this Agreement shall be from January 22, 2015, to May 28, 2015, unless terminated earlier by LAFCo.
3. **Payments.** In consideration of the services rendered in accordance with all terms, conditions, and specifications set forth herein and any Exhibit(s) or attachment(s) attached hereto, LAFCo shall make payment to Contractor in the manner specified herein and in Exhibit A. In the event that LAFCo makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by LAFCo at the time of contract termination. LAFCo reserves the right to withhold payment if LAFCo determines that the quantity or quality of the work performed is unacceptable. In no event shall total payment for services under this Agreement exceed thirty seven thousand nine hundred forty dollars (\$37,940).
4. **Relationship of the Parties.** Contractor agrees and understands that the work/services performed under this Agreement are performed as an Independent Contractor and not as an employee of LAFCo and that neither Contractor nor its employees/agents acquires any of the rights, privileges, powers, or advantages of LAFCo employees.
5. **Workers’ Compensation Insurance.** Contractor shall have in effect during the entire term of this Agreement workers’ compensation and employer liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, (a) that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) that it will comply with such provisions before commencing the performance of work under this Agreement.
6. **Other Insurance.** Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor’s operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or by an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount(s) specified below:
 - Comprehensive General Liability \$1,000,000 (applies to all agreements)
 - Motor Vehicle Liability Insurance \$1,000,000 (to be checked if motor vehicle used in performing services)
 - Professional Liability \$1,000,000 (to be checked if Contractor is a licensed professional)
7. **Hold Harmless.** Contractor agrees to indemnify and defend LAFCo and its employees and agents from any and all claims, damages, and liability in any way occasioned by or arising out of the negligence of Contractor and/or its employees/officers/agents in the performance of this Agreement, including any sanctions, penalties, or claims of damages resulting from Contractor’s failure to comply with any law, regulation, or ordinance, including but not limited to those listed in this Agreement.
8. **Confidentiality.** All data produced or compiled by Contractor shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of LAFCo. All financial, statistical, personal, technical, and other data and information relating to LAFCo’s operations which is made available to Contractor in order to carry out this Agreement shall be presumed to be confidential. Contractor shall protect said data and information from unauthorized use and disclosure by the observance of the same or more effective procedures as LAFCo requires of its

own personnel. Contractor shall not, however, be required by this Section to keep confidential any data or information which is or becomes publicly available, is already rightfully in Contractor's possession, is independently developed by Contractor outside the scope of the Agreement, or is rightfully obtained from third parties. The requirements of this Section shall survive termination of this Agreement.

9. **Non-Assignability.** Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of LAFCo, and any attempted assignment without such prior written consent in violation of this Section shall automatically give LAFCo the option to terminate this Agreement without notice.
10. **Termination of Agreement.** LAFCo Purchasing Agent may, at any time after execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of LAFCo by giving written notice specifying the effective date and scope of such termination. Termination shall be effective on a date not less than thirty (30) days from said notice. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials prepared by Contractor under this Agreement shall become the property of LAFCo and shall be promptly delivered to LAFCo. In the event of termination, Contractor shall be paid for all work satisfactorily performed through the date of termination except where the contracting department determines the quality or quantity of the work performed is unacceptable. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement. LAFCo may immediately terminate this Agreement based upon unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after LAFCo learns of said unavailability of funding.
11. **Payment of Permits/Licenses.** Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.
12. **Non-Discrimination.** No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information. Contractor shall ensure full compliance with federal, state, and local laws, directives, and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement. Contractor shall comply fully with the non-discrimination requirements of 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Contractor to penalties, to be determined by the LAFCo Executive Officer, including but not limited to: i) termination of this Agreement; ii) disqualification of Contractor from bidding on or being awarded a LAFCo contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; and/or iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the LAFCo Executive Officer.

To effectuate the provisions of this Section, the LAFCo Executive Officer shall have the authority to examine Contractor's employment records with respect to compliance with this Section and/or set off all or any portion of the amount described in this Section against amounts due to Contractor under the Agreement or any other contract with LAFCo.

Contractor shall report to the LAFCo Executive Officer the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide LAFCo with a copy of its response to the Complaint when filed.

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract. This paragraph applies only to contractors who are providing services to members of the public under this Agreement.

13. **Equal Benefits.** With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:
 - Contractor complies with Chapter 2.84 by:
 - offering the same benefits to its employees with spouses and its employees with domestic partners.
 - offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.

- Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- Contractor does not comply with Chapter 2.84, and a waiver must be sought.

14. **History of Discrimination.** Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide LAFCo with a written explanation of the outcome(s) or remedy for the discrimination.

15. **Retention of Records.** Contractor shall maintain all records related to this Agreement for no fewer than three years after LAFCo makes final payment or after termination of this Agreement and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of LAFCo, the State of California, other regulatory agencies, and/or Federal grantor agencies.

16. **Health Insurance Portability and Accountability Act of 1996 (HIPAA).** One of the following responses must be selected by the Department. Is the Contractor a Business Associate? Yes No
 If "Yes" is checked, then the following requirements apply and Attachment H must be included: Contractor shall perform all services in accordance with HIPAA and the Federal regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Attachment H.

17. **Compliance with State, Federal, and Local Laws, Regulations, and Ordinances.** Contractor and all subcontractors shall ensure compliance with all state, federal, and local laws, regulations, or rules applicable to performance of the work required under this Agreement and shall execute all necessary certifications of compliance therewith. Contractor certifies that the Contractor and all of its subcontractors will adhere to and certify compliance with all applicable provisions of San Mateo County Ordinance Code, including, without limitation, Chapter 4.106, which regulates the use of disposable food service ware, and Chapter 2.84, which addresses equal benefits.

18. **Merger Clause.** This Agreement, including all exhibits/attachments attached hereto, which are incorporated herein by this reference, constitutes the sole agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by LAFCo Purchasing Agent. In the event that any term, condition, provision, requirement or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this Agreement, the provisions of the body of this Agreement shall prevail. This Agreement constitutes the entire Agreement between LAFCo and Contractor. Further, liability referenced to in Section 6 is limited to Contractor's negligence during Contractor's performance under this Agreement.

19. **Governing Law.** This Agreement, including any exhibits, and any disputes arising out of this Agreement shall for all purposes be deemed subject to the laws of the State of California without regard to its choice of law rules, and any lawsuit concerning or arising out of this Agreement shall be venued in the County of San Mateo.

20. **Jury Duty Requirements.** Contractor agrees that if this Agreement is amended to a total value exceeding one hundred thousand dollars (\$100,000.00), Contractor shall comply with Chapter 2.85 of the County's Ordinance Code.

21. **Electronic Signature.** If both LAFCo and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and LAFCo's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing written notice to the other party.

For LAFCo: If this box is checked by LAFCo, LAFCo consents to the use of electronic signatures in relation to this Agreement.

For Contractor: If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES.

– Signatures Follow on Next Page –

For Contractor:

Contractor Signature

Date

Contractor Name (please print)

For LAFCo:

I hereby certify that the services requested are necessary, that the selection process documentation is accurate, that all insurance certificates including Workers' Compensation are on file in this office, that County of San Mateo Risk Management has approved any reductions in Contractor's insurance limits below \$1,000,000, and that no work will commence until this document is signed by LAFCo Purchasing Agent.

Contract Requestor Signature
LAFCo

Date

Contract Requestor Name (please print)
LAFCo

Contract Requestor Title (please print)

Purchasing Agent Signature
(Executive Officer or Designee)
LAFCo

Date

Purchasing Agent Name (please print)
(Executive Officer or Designee)
LAFCo

Purchasing Agent Title (please print)

Budget Unit

Distribution: 1 copy to each: Purchasing Agent, Controller, and Contractor

(Revised 7/26/13)

Exhibit A

Agreement between San Mateo LAFCo and Economic & Planning Systems, Inc.

1. Description of Services to be Performed by Contractor

In consideration of the payments set forth in Section 2, **Amount and Method of Payment**, Contractor shall provide the following services:

2. *PROJECT SCHEDULE*

EPS will meet with LAFCo staff and discuss schedule during the first project initiation meeting. Key milestones and meeting dates will be delineated. Generally, it is anticipated that the schedule will adhere to the following pattern:

Project Initiation Meeting: Within one to two weeks following contract authorization.

Task 1: Initial Data Collection: To begin immediately upon contract authorization. Total elapsed time is anticipated to be 3 to 6 weeks, depending on the ability to obtain data in a timely manner from LAFCo, the District, and other entities (e.g., the County).

Task 2: Supplemental Information Collection and Verification: This task will begin within approximately two weeks of contract authorization, and following initial review of data. Total elapsed time anticipated is to be three to six weeks. As noted above, the actual time required will depend on the extent and depth of supplemental information required, ability to schedule meetings with the District, and response time from various entities.

Task 3: Working Draft Service Review: This task will begin immediately following the project initiation meeting. An outline for the Service Review will be developed for comment by LAFCo staff, and to guide the data collection and analysis. The outline will also indicate issues that may require comment by LAFCo's legal counsel. It is expected that completion of the Working Draft Service Review will require approximately four weeks following receipt of **Task 2** Supplemental Information Collection and Verification, or about 9 to 12 weeks following contract authorization.

Task 4: Final Draft Service Review: The timing of the Final Draft will depend on the time required to receive review and comment on the Working Draft; however, assuming that two weeks is allowed for review and comment on the Working Draft, it is likely that a Final Draft Service Review can be completed within an additional two weeks following receipt of comments. Assuming the prior timelines described, completion of the Final Draft would occur within 11 to 14 weeks of contract authorization.

Task 5: Final Service Review Report: A final report will be prepared within two weeks following the LAFCo hearing, depending on the extent and nature of required research and revision. Total elapsed time depends on the timing of the LAFCo hearing on the Final Draft.

As noted above, the schedule will be refined at the initial meeting with LAFCo staff, and modified as necessary during the course of the Study.

2. Amount and Method of Payment

In consideration of the services provided by Contractor pursuant to Section 1, **Description of Services to be Performed by Contractor**, and subject to the terms of the Agreement, LAFCo shall pay Contractor based on the following schedule and terms:

8. PROJECT COST

Table 1 includes an estimate of total project cost, and costs by task broken down according to "Fiscal Analysis" and "Management and Governance". The budget allocations are estimates, as much of the research and analysis are applicable to both topic areas.

The total cost is proposed to not exceed **\$37,940** including direct costs.

Table 1
EPS Proposed Budget Estimate
San Mateo Harbor District MSR and SOI Update

Task	R. Berkson Principal	Research Analyst	Production Staff	Staff Subtotal	Staff Costs Subtotal	Direct Costs [1]	Total
Task 1: Initial Data Collection							
Fiscal Analysis	10	16	2	28	\$4,590	\$0	\$4,590
Management and Governance	8	8	2	18	\$3,130	\$0	\$3,130
Subtotal, Task 1	18	24	4	46	\$7,720	\$0	\$7,720
Task 2: Supplemental Information Collection and Verification							
Fiscal Analysis	16	16	2	34	\$6,090	\$0	\$6,090
Management and Governance	12	16	2	30	\$5,090	\$0	\$5,090
Subtotal, Task 2	28	32	4	64	\$11,180	\$0	\$11,180
Task 3: Working Draft Service Review							
Fiscal Analysis	16	24	2	42	\$7,050	\$50	\$7,100
Management and Governance	12	12	2	26	\$4,610	\$50	\$4,660
Subtotal, Task 3	28	36	4	68	\$11,660	\$100	\$11,760
Task 4: Final Draft Service Review							
Fiscal Analysis	4	6	2	12	\$1,890	\$50	\$1,940
Management and Governance	4	6	2	12	\$1,890	\$50	\$1,940
Subtotal, Task 4	8	12	4	24	\$3,780	\$100	\$3,880
Task 5: Final Service Review Report							
Fiscal Analysis	4	4	2	10	\$1,650	\$50	\$1,700
Management and Governance	4	4	2	10	\$1,650	\$50	\$1,700
Subtotal, Task 2	8	8	4	20	\$3,300	\$100	\$3,400
Total Hours and Costs [2]	90	112	20	222	\$37,640	\$300	\$37,940
	\$22,500	\$13,440	\$1,700	\$37,640			
Billing Rates	\$250	\$120	\$85				

[1] Direct costs include data purchases and up to 10 copies each of draft and final reports.

[2] Additional in-person meetings, beyond those identified in the scope of work, to be billed on a "time & materials" basis. Budget allocations are estimates only; actual allocations will vary.