

AGREEMENT FOR CONSULTING SERVICES

EPS #223121

1. Parties

The parties to this Agreement are:

CLIENT: Colorado Springs Urban Renewal Authority

CONSULTANT: Economic & Planning Systems, Inc.

2. Scope of Service

CONSULTANT shall prepare a Financial Evaluation and County Impact Report for the Lowell-Bristol URA for CLIENT in conformance with the Scope of Services attached as **Attachment A**.

3. Budget

CONSULTANT shall be entitled to fees and expenses set forth in **Attachment A** provided that CONSULTANT shall complete its work for an amount not to exceed \$27,980. CLIENT agrees that in the event of a delay or work stoppage of 90 days or more, EPS, in its sole discretion, may submit a revised budget to CLIENT for its approval and that the parties shall negotiate the terms of any such revised budget in good faith.

4. Payment

CONSULTANT shall be compensated in the manner indicated in **Attachment A**. Invoices are due and payable upon receipt.

5. Time for Performance

CONSULTANT shall commence work upon mutual approval of this agreement. Thereafter the work shall be completed as specified in **Attachment A** unless the time is extended by mutual agreement.

6. Standard Terms and Conditions

Attachment B is the Standard Terms and Conditions that are incorporated by reference as though set out in full.

7. *Approved: Dated this _____ day of _____, 2023.*

Executed as of the day stated above.

Accepted:

Colorado Springs Urban Renewal Authority

Economic & Planning Systems
A California Corporation

Jarlah Walker, Executive Director

Andrew M. Knudtsen, Managing Principal

Daniel R. Guimond, Principal

The Economics of Land Use



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Economic & Planning Systems, Inc.
Attachment A

Project Understanding

The Lowell-Draper Bristow housing developments will be constructed in the southeast subarea of Downtown Colorado Springs, shown in **Figure 1**. Lowell Commons will be construction on parcels 1, 2, and 3 in the northwest portion of the proposed Plan Area. It will include between 180 to 250 residential units for households earning between 80 to 120 percent of Area Median Income (AMI). Draper Commons Bristow House will be located on parcels 4, 5, and 6 in the southeastern portion of the proposed Plan Area. It will include approximately 185 residential units for households earning between 80 and 120 percent of AMI. Significant public improvements include the construction of streets, public parks, a dog park, and trail connections. Another significant civic benefit is the affordability of the proposed developments.

Figure 1. Lowell-Draper Bristow Project Location



EPS has been requested to provide a financial feasibility evaluation of the project to identify the financial gap and the degree to which City investment is warranted. The financial evaluation is to determine the amount of public subsidy the City is comfortable providing in relation to the public and community benefit generated by development. In addition to this feasibility analysis, EPS will provide a county impact report.

The elements of this assignment include:

1. An evaluation of the financial feasibility of the project, including a “But For” analysis. The material EPS will provide will test the assumption that the project cannot proceed ‘but for’ the investment of public funds.
2. An El Paso County Impact Report, required as part of any URA approval.

Scope of Work

The following Scope of Work provides an outline of the tasks and corresponding budget necessary to complete the financial evaluation of the project and county impact report.

Task 1: Financial Evaluation

Task 1.1 – Financial Evaluation Initiation

EPS will meet with staff and the development team to discuss the basic framework of the analysis related to the financial evaluation of the project. The purpose of this meeting will be to outline key issues, project details, project performance, and the project’s need for TIF.

Task 1.2 – “But-for” Analysis

In order to complete an evaluation of the project, the Developer will need to provide an up-to-date development program, detailed estimates of construction costs, anticipated rental rates, and other pertinent information necessary to complete an evaluation of the performance of the project with and without TIF. EPS will use this information to develop a baseline feasibility model that will provide the basis for beginning to define a project gap and a reasonable level of public investment. In other words, this analysis will answer the question: “but-for” the investment of public revenues, will the project be able to move forward?

This task includes an evaluation of the performance of the project under alternative scenarios and EPS will evaluate project feasibility with and without TIF revenues. At a minimum, EPS will run two versions of the model that will include the following:

- **Baseline Scenario** – The Baseline Scenario will reflect assumptions and estimates provided by the Developer. These will be used to ensure that there are no technical model inaccuracies in the Developer’s request for TIF. This model will also be used to determine a baseline from which to test alternative assumptions.
- **Alternative Scenario(s)** – Based on EPS’ review of the project assumptions and Developer’s pro forma, along with discussions with staff, EPS may develop one to two alternative scenarios that reflect any potential revisions to key model inputs. The

results of this model will be used to estimate potential project funding gaps and determine project sensitivities to various model inputs, lease rates, vacancy rates, operating costs, and other key variables. This analysis will help the URA determine if the level of TIF is appropriate or if there are excess returns generated by any portion of the project, potentially justifying a lower amount of public investment through TIF.

Task 1.3 – Summary Model

The analysis outlined in this scope of work will be detailed in a comprehensive financial model that will include a summary of key project components, TIF revenue estimates, project feasibility with and without TIF revenues, and a range of sensitivity analyses.

Task 1.4 – Meetings and Presentation

EPS anticipates attending a URA meeting to present the analysis outlined in this scope of work and any recommendations to be considered in the term sheet. This presentation will provide CSURA with an overview of the methodology used to estimate the need for public financing, a summary of the initial assumptions used by the Developer, any changes that are recommended by EPS, and the final estimated public financing that the project requires in order to move forward. Any additional meetings and presentations will be billed as an additional cost item.

Task 2: El Paso County Impact Report

The impact report will include a summary of forecasted property tax revenues as well as El Paso County fiscal and service impacts associated with development in accordance with the Urban Renewal Plan. It specifically responds to the requirements outlined in C.R.S. 31-25-107 (3.5). These standards state that:

(3.5) “Prior to the approval of an urban renewal plan, the governing body shall submit such plan to the board of county commissioners, which shall include, at a minimum, the following information concerning the impact of such plan:

- I. The estimated duration of time to complete the urban renewal project;
- II. The estimated annual property tax increment to be generated by the urban renewal project and the portion of such property tax increment to be allocated during this period to fund the urban renewal project;
- III. An estimate of the impact of the urban renewal project on county revenues and on the cost and extent of additional county infrastructure and services required to serve development within the proposed urban renewal area, and the benefit of improvements within the urban renewal area to existing county infrastructure;
- IV. A statement setting forth the method under which the authority or the municipality will finance, or that agreements are in place to finance, any additional county infrastructure and services required to serve development in the urban renewal area for the period in which all or any portion of the property taxes described in subparagraph (ii) of paragraph (a) of subsection (9) of this section and levied by a county are paid to the authority; and

- V. Any other estimated impacts of the urban renewal project on county services or revenues.”

Budget

EPS agrees to complete the above work program on a time and charges basis up to a maximum of \$27,980. Additional meetings and presentations are not included in this estimate and will be billed on a time and materials basis. The approximate breakdown of level of effort by task and staff level is shown in **Table 1**.

Table 1. Budget by Task

Description	Principal	Project Manager	Production	Total
Billing Rate	\$270	\$165	\$95	
Task 1: Financial Analysis				
Task 1.1: Project Initiation	4	4	0	\$1,740
Task 1.2: Financial Feasibility Analysis	16	24	0	\$8,280
Task 1.3: Summary Model	8	24	4	\$6,500
Task 1.4: Meetings and Presentations	<u>8</u>	<u>12</u>	<u>4</u>	<u>\$4,520</u>
Subtotal	36	64	8	\$21,040
Task 2: County Impact Report	8	24	6	\$6,690
Totals Hours	44	88	14	146
Dollars by Person	\$11,880	\$14,520	\$1,330	\$27,730
Direct Costs				
Travel & Data Acquisition				<u>\$250</u>
Total Direct Costs				\$250
Total Project Budget				\$27,980

Source: Economic & Planning Systems

Economic & Planning Systems, Inc.
Attachment B Standard Terms and Conditions for Consulting Services

1. Authority

Each party has full power and authority to enter into and perform this contract, and the person signing this contract on behalf of each has been properly authorized and empowered to enter into this contract. Each party further acknowledges that it has read this agreement, understands it, and agrees to be bound by it.

2. Independent Contractor

It is specifically understood and agreed that in the creation and performance of this Agreement, CONSULTANT is an independent contractor, and is not and shall not be construed to be an employee or agent of the CLIENT.

3. Insurance

CONSULTANT shall maintain the following insurance:

- 3.1. Workers Compensation as required by law.
- 3.2. General Liability insurance policy of \$1,000,000, \$3,000,000 in aggregate, for personal injury and property damage.
- 3.3. Auto Liability insurance of \$1,000,000, combined single limit for bodily injury and property damage covering all vehicles including hired, owned and non-owned vehicles.
- 3.4. Errors and Omissions/Professional Services Liability and Personal and Advertising Injury insurance in the amount of \$2,000,000.
- 3.5. Excess/Umbrella Liability insurance in the amount of \$1,000,000.

4. Personnel

The CONSULTANT represents that it is an equal opportunity employer and has, or will secure at its expense, all personnel required in performing the services under this Agreement. All personnel engaged in the work shall be authorized or permitted under State and Local law to perform such services.

5. Interest of CONSULTANT

CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

6. Publication, Reproduction, and Use of Material

CLIENT may publish, distribute, or otherwise use any data, information, reports, or other materials prepared under this Agreement by EPS (EPS Work Product), in whole or in part, for purposes of this project. This authority does not apply to any computer models or software used or developed as a result of this contract, unless a separate agreement is signed concerning the disposition of such materials. CLIENT acknowledges that EPS Work Product was prepared by EPS solely for contemporaneous use by CLIENT for this Project and that it is not intended for use at any other time, location, purpose or by any other party. Accordingly, CLIENT shall not, without the prior written consent of EPS (which EPS may withhold in its sole discretion), (i) use EPS Work Product for purposes unrelated to the Project, (ii) modify EPS Work Product, or (iii) disclose or distribute any EPS Work Product to any other person, firm, or entity. EPS shall be entitled to indemnification by CLIENT, pursuant to paragraph 13 hereof, if CLIENT breaches this provision, in addition to all other available remedies at law or in equity.

7. Confidentiality

Any reports, information, or data given to or prepared or assembled by the CONSULTANT under this Agreement shall not be made available to any individual or organization by the CONSULTANT without the prior written approval of the CLIENT. CONSULTANT is entitled to retain copies of all data, working papers, interim documents, memoranda, and reports produced under this Agreement. However, nothing contained herein shall prevent the disclosure of such information if compelled by legal process, and in the event thereof, only after notice to CLIENT.

8. Amendments to the Contract

No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of both parties.

9. Disputed Invoices

In the event that CLIENT disputes any item on an invoice, CLIENT shall notify the CONSULTANT of this disputed item within five working days of receipt of the invoice. CLIENT will approve payment of items on an invoice that are not in dispute and CLIENT and CONSULTANT will proceed to negotiate or arbitrate the disputed items as specified elsewhere in this Agreement.

10. Audits and Inspections

On reasonable notice, CLIENT may inspect any books, records, or other materials that pertain directly to this Agreement.

11. Compensation for Testimony and Preparation Thereof

If any legal action is brought in connection with the Agreement, other than an action that is solely the result of the incompetence or malfeasance by CONSULTANT, by or against a third party, and CLIENT requests that CONSULTANT or a SUBCONSULTANT, (or if CONSULTANT or a SUBCONSULTANT is otherwise required) to testify, provide information, produce materials, or otherwise spend time on such action, then CLIENT shall pay CONSULTANT or SUBCONSULTANT

for time expended at their standard rates then in effect, plus advance all related expenses and costs, including, but not limited to, reasonable attorneys' fees. Such compensation shall be in addition to the maximum charge for services defined in the Agreement.

12. Termination of Agreement

The CLIENT may, at its option, elect to cancel the contract at any time, by notice to CONSULTANT, on completion of any task described in the scope of services. In such event the CLIENT will pay to the CONSULTANT the amount due by virtue of completion of the products therefore delivered. If such cancellation is not based on any claim of CONSULTANT default, such payment shall include any sums withheld pursuant to this Agreement. In addition, the CONSULTANT shall be reimbursed (in addition to the payment) for that portion of the actual out-of-pocket costs not otherwise reimbursed under this Agreement previously incurred by the CONSULTANT during the period of the Agreement, which are directly attributable to the incomplete portion of the services covered by this Agreement.

13. Indemnification/Limitation of Liability

- 13.1. CLIENT agrees to release, indemnify, hold harmless, and defend CONSULTANT and all of its partners, employees, agents, and representatives of all types from and against all claims, liability, loss, cost, damage, expense, or obligation, including, but not limited to reasonable attorneys' and experts' fees and costs, which any of them may hereafter incur, suffer, or be required to pay by reason of any actions in connection with this Agreement or the performance thereof except as to claims which are finally adjudicated or arbitrated to have resulted from the sole negligence or willful misconduct of CONSULTANT.
- 13.2. CLIENT agrees that CONSULTANT is not responsible for the identification of hazardous or toxic substances, waste or materials, or petroleum products and/or petroleum components or constituents, and is not liable for any conditions that stem from contamination from hazardous or toxic substances, waste or materials, or petroleum products and/or petroleum components or constituents.

14. Nondiscrimination and Equal Opportunity

CONSULTANT and its SUBCONSULTANTS shall not unlawfully discriminate against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by CONSULTANT under this Agreement because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age (over 40), gender, or gender orientation. CONSULTANT shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of CONSULTANT thereby.

15. Standard of Performance

All work performed by CONSULTANT for CLIENT pursuant to this Agreement shall be performed by qualified persons, and shall be performed in accordance with standards of performance generally applicable to the work in the community in which the work is performed.

As in all projects of this type, the estimated results are based on the continued competent and efficient management by CLIENT. In addition, the conclusions reached by CONSULTANT are based on the assumption that no significant changes in project conditions will occur beyond those expressly discussed in EPS Work Product. CONSULTANT shall be able to rely on information provided to it by the CLIENT, and CONSULTANT shall have no responsibility to audit or otherwise verify such information.

16. Force Majeure

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, power failures, earthquakes, or other disasters.

17. Arbitration and Attorneys Fees

In the event of a dispute in any manner relating to or arising out of this Agreement, the parties shall meet, confer, and negotiate in good faith in an attempt to resolve the dispute. In the event the parties are unable to resolve the dispute themselves, the dispute shall be resolved through binding arbitration in Denver County, State of Colorado, under the Appropriate Rules of the American Arbitration Association. In arbitrating any issue arising under this Agreement, the power and authority of the arbitrator shall include the power and authority to grant such equitable relief (including injunctive relief) as may be appropriate under the circumstances, in accordance with applicable law. The decision award of the arbitrator shall be binding on the parties and shall be enforceable by judgment entered in a court having jurisdiction. In the event the arbitrator determines there is a prevailing party in the arbitration, the prevailing party shall recover from the losing party all costs of arbitration, including all fees of the arbitrator and all attorneys' fees reasonably incurred by the prevailing party. The arbitrator shall have authority to order such limited discovery as the arbitrator shall deem relevant and appropriate.

18. Governing Law

This contract will be governed by and construed in accordance with the laws of the State of Colorado.

19. Notice

Notice given under the terms of this Agreement shall be in writing and shall be effective the day it is mailed, properly addressed, to the party to receive such notice. Notice delivered other than by mail shall be effective when received. Any change of address of either of the parties shall be effective on receipt of notice of such change by the opposite party.