

**RESOLUTION NO. 2018- \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA, CALIFORNIA  
AMENDING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SELMA  
AND PUBLIC WORKS EMPLOYEES FOR THE PERIOD OF JULY 1, 2017  
THROUGH JUNE 30, 2019**

**WHEREAS**, on or about April 3, 2017, the City Council adopted a Memorandum of Understanding ("MOU") between the City and the City's Public Works Employees, for the period of July 1, 2017, through June 30, 2019; and

**WHEREAS**, the MOU provides for the terms and conditions of employment for the Public Works Employees; and

**WHEREAS**, the City desires to work with the Fresno County Rural Transit Agency ("FCRTA") to perform fleet maintenance services for FCRTA's vehicles; and

**WHEREAS**, it is necessary to hire additional employees to perform the fleet maintenance services; and

**WHEREAS**, the City desires to amend the MOU to revise the name of the Unit to reflect the addition of the transit maintenance employees, to include additional position classifications to accommodate the employees, and to amend the salary schedule to reflect the salary ranges for the new positions.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**Section 1.** The above recitals are true and correct and are incorporated herein by reference.

**Section 2.** The City Council hereby adopts Amendment No. 1 to the MOU; attached hereto as Exhibit A, and incorporated herein by reference.

**Section 3. Severability.** The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

**Section 4. Effective Date.** That the City Clerk shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

**(RECORD OF VOTE AND SIGNATURES ON FOLLOWING PAGE)**

PASSED, APPROVED AND ADOPTED at a Special Meeting of the City Council of the City of Selma on this 29<sup>th</sup> day of August 2018 by the following roll call vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

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Jim Avalos, Mayor

ATTEST:

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Reyna Rivera, City Clerk

AMENDMENT NO. 1 TO THE  
MEMORANDUM OF UNDERSTANDING  
BETWEEN CITY OF SELMA AND  
PUBLIC WORKS EMPLOYEES  
FOR THE PERIOD  
JULY 1, 2017 THROUGH JUNE 30, 2019

This Amendment No. 1 to the Memorandum of Understanding ("MOU") Between the City of Selma ("City") and Public Works Employees ("Unit") for the period July 1, 2017 through June 30, 2019 is made and entered into this \_\_\_\_ day of August 2018 ("Effective Date"), by and between the City, and the Unit.

**RECITALS**

**WHEREAS**, on or about April 3, 2017, the City Council adopted Resolution No. 2017-19R, approving the MOU; and

**WHEREAS**, the MOU provides for the terms and conditions of employment for the Public Works Employees; and

**WHEREAS**, the City desires to work with the Fresno County Rural Transit Agency ("FCRTA") to perform fleet maintenance services for FCRTA's vehicles; and

**WHEREAS**, it is necessary to hire additional employees to perform the fleet maintenance services; and

**WHEREAS**, the City desires to amend the MOU to include additional position classifications to accommodate the employees, and to amend the salary schedule to reflect the salary ranges for the new positions; and

**WHEREAS**, on or about August 27, 2018, the Acting City Manager in his capacity as the Municipal Employees Relations Officer, and the Human Resources Manager, met and conferred with the Unit Representatives regarding the proposed amendments to the MOU.

**AMENDMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid MOU, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided:

1. The name of the Unit, shall be amended to read in its entirety as follows, in all instances "Public Works and Transit Maintenance Employees".

2. **Article 1-RECOGNITION**

Article 1-Recognition, shall be amended to reflect the complete list of Position Classifications as follows:

**Custodian  
Equipment Mechanic III**

August 29, 2018 Council Packet

**Maintenance Worker I  
Maintenance Worker II  
Maintenance Worker III  
Transit Mechanic III  
Transit Shuttle Driver**

**3. Article 2—SALARIES**

Section C., Article 2—Salaries-The salary ranges set forth in Exhibit A are hereby revised in their entirety as set forth in Attachment 1, attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed as of the Effective Date.

CITY OF SELMA

PUBLIC WORKS AND COMMUNITY SERVICES  
EMPLOYEES

By: \_\_\_\_\_  
Isaac Moreno, Acting City Manager/  
Municipal Employees Relations Officer

By: \_\_\_\_\_  
Unit Representative

By: \_\_\_\_\_  
Unit Representative

ATTEST:

\_\_\_\_\_  
Reyna Rivera, City Clerk

Approved as to Form:

\_\_\_\_\_  
Bianca Sparks Rojas, City Attorney



Agenda Item 2  
**RESOLUTION NO. 2018- \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA, CALIFORNIA  
AMENDING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SELMA  
AND MISCELLANEOUS MID-MANAGEMENT EMPLOYEES FOR THE PERIOD OF  
JULY 1, 2017 THROUGH JUNE 30, 2019**

**WHEREAS**, on or about April 3, 2017, the City Council adopted a Memorandum of Understanding ("MOU") between the City and the City's Miscellaneous Mid-Management Employees ("Unit"), for the period of July 1, 2017, through June 30, 2019; and

**WHEREAS**, the MOU sets forth the terms and conditions of employment for the Unit, including establishing the position classifications which belong in the Unit; and

**WHEREAS**, on or about September 15, 2017, the City Council approved an Addendum to the MOU concerning the vehicle take-home provisions for Public Works Supervisors; and

**WHEREAS**, the City desires to work with the Fresno County Rural Transit Agency ("FCRTA") to perform fleet maintenance services for FCRTA's vehicles; and

**WHEREAS**, it is necessary to hire additional employees to perform the fleet maintenance services; and

**WHEREAS**, the City desires to amend the MOU to include additional position classifications to accommodate the employees, to allow for the provision of uniforms and safety equipment for the new employees, and to amend the salary schedule to reflect the salary ranges for the new positions; and

**WHEREAS**, on or about August 27, 2018, the Acting City Manager in his capacity as the Municipal Employees Relations Officer, and the Human Resources Manager, met and conferred with the Unit Representatives regarding the proposed amendments to the MOU.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**Section 1.** The above recitals are true and correct and are incorporated herein by reference.

**Section 2.** The City Council hereby adopts Amendment No. 2 to the MOU, attached hereto as Exhibit A, and incorporated herein by reference.

**Section 3. Severability.** The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

**Section 4. Effective Date.** That the City Clerk shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

**(RECORD OF VOTE AND SIGNATURES ON FOLLOWING PAGE)**

PASSED, APPROVED AND ADOPTED at a Special Meeting of the City Council of the City of Selma on this 29<sup>th</sup> day of August 2018 by the following roll call vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

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Jim Avalos, Mayor

ATTEST:

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Reyna Rivera, City Clerk

AMENDMENT NO. 2 TO THE  
MEMORANDUM OF UNDERSTANDING  
BETWEEN CITY OF SELMA AND  
MISCELLANEOUS MID-MANAGEMENT EMPLOYEES  
FOR THE PERIOD  
JULY 1, 2017 THROUGH JUNE 30, 2019

This Amendment No. 2 to the Memorandum of Understanding (“MOU”) Between the City of Selma and Miscellaneous Mid-Management Employees (“Unit”) for the period July 1, 2017 through June 30, 2019 is made and entered into this \_\_\_\_\_ day of August 2018 (“Effective Date”), by and between the City, and the Unit.

**RECITALS**

**WHEREAS**, on or about April 3, 2017, the City Council adopted Resolution No. 2017-18R, approving the MOU; and

**WHEREAS**, the MOU provides for the terms and conditions of employment for the Miscellaneous Mid Management Employees; and

**WHEREAS**, on or about September 15, 2017, the City Council approved an Addendum to the MOU concerning the vehicle take-home provisions for Public Works Supervisors; and

**WHEREAS**, the City desires to work with the Fresno County Rural Transit Agency (“FCRTA”) to perform fleet maintenance services for FCRTA’s vehicles; and

**WHEREAS**, it is necessary to hire additional employees to perform the fleet maintenance services; and

**WHEREAS**, the City desires to amend the MOU to include additional position classifications to accommodate the employees, to allow for the provision of uniforms and safety equipment for the new employees, and to amend the salary schedule to reflect the salary ranges for the new positions; and

**WHEREAS**, on or about August 27, 2018, the Acting City Manager in his capacity as the Municipal Employees Relations Officer, and the Human Resources Manager, met and conferred with the Unit Representatives regarding the proposed amendments to the MOU.

**AMENDMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid MOU, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided:

**1. ARTICLE 1 – RECOGNITION:**

Article 1-Recognition, shall be amended to reflect the complete list of Position Classifications as

follows:

**MANGERIAL**

Finance Department Manager  
**Transit Maintenance Manager**

**SUPERVISORY**

Accountant

**Fleet Maintenance Supervisor**

Information Systems/GIS Supervisor (unfilled as of 03/17/17)

Police Records Supervisor (unfilled as of 08/01/09)

Principal Planner (unfilled as of 01/01/08)

Public Works Supervisor      Recreation Supervisor (unfilled as of 07/01/13)

**CONFIDENTIAL**

Administrative Analyst

City Clerk

Human Resources Analyst

**2. ARTICLE 2—SALARIES**

Section E., Article 2—Salaries-The salary ranges set forth in Exhibit A are hereby revised in their entirety as set forth in Attachment 1, attached hereto and incorporated herein by reference.

**3. ARTICLE 11 - UNIFORM ALLOWANCE:**

Section C. Article 11—Uniform Allowance, shall be revised to read in its entirety as follows:

C. City shall provide uniform articles of clothing and safety equipment to the Public Works Supervisors, **Fleet Maintenance Supervisor and Transit Maintenance Manager** in the same manner as provided Public Works **and Transit Maintenance** employees under the terms of the current MOU between City and Public Works **and Transit Maintenance Employees** (see Articles 15 and 16).

1. Public Works Supervisors whose positions are covered by this MOU shall be allowed to work in regular street clothes on occasion.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 2 to be executed the Effective Date.

CITY OF SELMA

MISCELLANEOUS  
EMPLOYEES

MID-MANAGEMENT

By: \_\_\_\_\_  
Isaac Moreno, Acting City Manager/  
Municipal Employees Relations Officer

By: \_\_\_\_\_  
Unit Representative

By: \_\_\_\_\_  
Unit Representative

ATTEST:

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Reyna Rivera, City Clerk

Approved as to Form:

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Bianca Sparks Rojas, City Attorney

2018-2021

**MEMBER AGENCY SERVICES AGREEMENT BETWEEN THE FRESNO COUNTY  
RURAL TRANSIT AGENCY AND THE CITY OF SELMA**

This agreement is made and entered into this \_\_\_\_ day of August, 2018 ("Effective Date") by and between the City of Selma, a municipal corporation, hereinafter referred to as "City", and the Fresno County Rural Transit Agency, hereinafter referred to as "FCRTA" a Joint Powers Agency (together sometimes referred to as the "Parties").

WITNESSETH:

WHEREAS, the Parties have mutually negotiated this Fleet Vehicle Maintenance Agreement (the "Agreement" or "Contract") to service and maintain FCRTA's vehicle fleet.

NOW THEREFORE, and in consideration of the foregoing and of the mutual promises hereafter expressed, and intended to be legally bound thereby, the Parties do mutually agree as follows:

**SECTION 1. GENERAL.**

- 1.1 Subject to the terms and conditions set forth in this Agreement, and as authorized by controlling law, the City shall provide to FCRTA the services described and incorporated herein, at the time and place and in the manner specified therein, in order to promptly and professionally maintain the FCRTA's vehicle fleet.
- 1.2 The FCRTA hereby agrees to engage the City to provide, and/or coordinate the necessary provisions to service and maintain the Fleet Vehicle Maintenance Services for FCRTA's alternatively powered (electric, compressed natural gas, and unleaded fueled) vehicles.
- 1.3 The vehicle maintenance shall comply with all requirements set forth in the California Vehicle Code, and California Administrative Code for General Public, Paratransit Vehicles ("GPPV") and scheduled fixed route general public transit vehicles. The City shall be responsible for maintaining the physical appearance of the interior and exterior of the vehicles, which shall include periodic washing, cleaning, and waxing.
- 1.4 The FCRTA Fleet Maintenance and Repair Facility ("Maintenance Facility") shall be located at FCRTA's temporary maintenance site located at 1870 Dockery, Selma CA 93662; and then relocated to 1821 Pacific Avenue, Selma CA 93662 after completion of construction of FCRTA's permanent maintenance site.
- 1.5 The FCRTA vehicles and Maintenance Facility shall be subject to annual inspection by designated representatives of the California Highway Patrol, in accordance with applicable law and regulations.

**SECTION 2. TERM OF SERVICES.**

The term of this Agreement shall be for a period of three (3) years commencing on September 4, 2018 through August 31, 2021, but may be extended by written notice between the parties per section 12.14 of this agreement.

### SECTION 3. SCOPE OF SERVICES.

- 3.1 **General - Repairs and Service** The City hereby agrees to perform repairs and maintenance services necessary to maintain the FCRTA's vehicle fleet in good operating condition for use by the FCRTA, in accordance with the requirements set forth by the California Highway Patrol Motor Carriers Divisions ("Services"). City shall preform the Services at the Maintenance Facility. Further, upon specific approval by the FCRTA's Contract Administrator or designee, the City shall provide all emissions certifications for all FCRTA vehicles required to submit verified compliance under California State Law.
- 3.2 **Maintenance Facility Access.** The City, its agents, employees, contractors, representatives and other designees shall have access to the Maintenance Facility to perform the Services set forth in this Agreement. Said access shall be made available 24 hours per day, seven days per week, during the Term of this Agreement.
- 3.3 **Transport of Vehicles** The City shall transport FCRTA vehicles in need of maintenance, repairs, and other related maintenance activities, to the Maintenance Facility. The City will also provide or contract road side services and towing in the event that vehicles are disabled and cannot be safely driven to the repair facility.
- 3.4 **Job Tasks.** The City will provide a list of general job tasks that are to be performed on the FCRTA's Fleet prior to commencing work. These tasks include but are not limited to: periodic preventative maintenance services, emissions testing, roadside services/towing and after hour call-outs.
- 3.5 **Repair Estimates.** It is understood and agreed that the FCRTA will not require prior verbal and/or written approval for any repair or maintenance job up to \$5,000.00 per event. Any amount over \$5,000.00 will require the written authorization from the FCRTA's Contract Administrator or authorized designee.
- 3.6 **Personnel** - The City shall employ, train and/or sub-contract personnel required to perform the Services. Employees responsible for the maintenance of the vehicles shall be qualified to provide such services under applicable laws and regulations. Maintenance personnel, responsible for driving vehicles shall possess the minimum required California Drivers License and be qualified to operate said vehicles without revenue passengers. Personnel responsible for shuttling vehicles shall possess the minimum required California Drivers License and be qualified to operate said vehicles without revenue passengers.

All mechanics and supervisory personnel shall be subjected to drug and alcohol testing in accordance with mandates set forth by the Federal Transit Administration ("FTA") for general public transit operators, and pursuant to 49 CFR Part 655, as set forth in Section 7.16 of this Agreement. Expenditures associated with such compliance shall be the responsibility of the FCRTA. Such testing shall include:

1. Pre-Employment;
2. Reasonable Suspicion;
3. Post-Accident;
4. Random; and
5. Return-to-Duty.

If a City employee fails to pass a drug or alcohol test, he or she shall be prohibited from performing any tasks on FCRTA's vehicle fleet under this Agreement.



#### **SECTION 4. COMPENSATION, BILLING AND PAYMENT FOR SERVICES.**

The compensation to the City for Services under this Agreement shall not exceed \$791,893.71 for FY 2018-19; \$816,082.29 for FY 2019-20; and \$840,936.96 for FY 2020-21, as set forth in Exhibit 1, attached hereto and incorporated herein by reference. City shall bill FCRTA for the Services set forth herein at the rates set forth in Exhibit 1. FCRTA has no responsibility to pay any sums beyond the compensation set forth in this Agreement. This amount may be amended by mutual written agreement between FCRTA and the City. FCRTA shall pay City for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from FCRTA to City for services rendered pursuant to this Agreement. City shall submit all invoices to the FCRTA in the manner specified herein:

- 4.1 Invoices.** Subject to the previous Sections, the City shall submit a summarized monthly service bill to FCRTA within thirty (30) days, following the given month in which services were rendered on the fleet vehicles. The billing statement shall set forth the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
  - 4.1.1** The beginning and ending dates of the billing period.
  - 4.1.2** A detailed billing statement of all personnel, parts, supplies provided by the City during the invoice period with copies of work orders itemizing specific maintenance, or inspection, work performed to each respective vehicle, with a separate accounting of parts and fluids.
  - 4.1.3** The City's Contract Administrator's signature.
- 4.2 Service Fees.** The City will invoice the FCRTA for actual service(s) provided in accordance with the per the attached reimbursement schedule by job class. Invoices and billings by other independent vendors, under the City's direction, shall be coordinated by City maintenance personnel for recordkeeping and accountability requirements.
- 4.3 Parts.** FCRTA shall reimburse City for the cost of all parts, fluids, and all things necessary to perform the required Services (the "Parts"), with the exception of personnel. FCRTA shall purchase and maintain all equipment necessary to provide the Services. The Parts are not included in the costs set forth in Exhibit 1, and are not subject to the dollar limitation set forth in this Section 4. The City shall not include any billing markup on Parts.
- 4.4 Payment by FCRTA.** FCRTA shall make payment within thirty (30) days from receipt of said invoice.

#### **SECTION 5. STATUS OF CITY.**

The City is and shall at all times remain, an independent contractor of FCRTA. The personnel performing the Services under this Agreement on behalf of the City shall at all times be under the City's exclusive direction and control. Neither FCRTA nor any of its officers, employees, or agents shall have control over the conduct of City or any of City's officers, employees, or agents, except as set forth in this Agreement. City shall not incur or have the power to incur any debt, obligation, or liability whatever against FCRTA, or bind FCRTA in any manner.

#### **SECTION 6. GOVERNING LAW.**

The laws of the State of California shall govern this Agreement. This does not waive any obligations to comply with FTA or other applicable federal requirements listed below.



## **SECTION 7. FEDERAL REQUIREMENTS**

### **7.1 Charter Bus Requirements (49 U.S.C. 5323(d) and 49 CFR Part 604)**

The City agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients (Caltrans) and sub-recipients (FCRTA) of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one (1) private charter operator willing and able to provide the service, except under one (1) of the exceptions at 49 CFR 604.9. Any charter service provided under one (1) of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

### **7.2 School Bus Requirements (49 U.S.C. 5323(f) and 49 CFR Part 605)**

Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, Recipients (Caltrans) and sub-recipients (FCRTA) of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients (Caltrans) and sub-recipients (FCRTA) may not use federally funded equipment, vehicles, or facilities.

### **7.3 Energy Conservation Requirements (42 U.S.C. 6321 et seq.)**

Pursuant to 42 U.S.C. 6321 et seq.; the City agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State of California Energy Conservation Plan issued in compliance with the Federal Energy Policy and Conservation Act.

### **7.4 Clean Air Requirements — 42 U.S.C. 7401 et. seq.;**

- A. The City agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The City agrees to report each violation to the FCRTA and understands and agrees that the FCRTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The City shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### **7.5 Clean Water Requirements (33 U.S.C. 1301 et seq.)**

- A. The City shall comply with all applicable standards, orders or, regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1301 et seq. The City agrees to report each violation to the FCRTA and understands and agrees that the FCRTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The City also agrees to include these requirements in each sub-contract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **7.6 Lobbying - 31 U.S.C. 1352; 49 CFR Part 20**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this Contract, the making of the Federal grant associated with this Contract, the entering into of this cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Contract in association with the Federal contract, grant, or cooperative agreement.
- B. If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, the undersigned shall complete and submit separately the Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413.
- C. The undersigned shall be required to include the specific language of this certification clause in all subsequently awarded documents for all sub-awards at all tiers, including subcontracts and that all sub-recipients shall certify and disclose accordingly.

This certification clause is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352(c)(1)-(2)(A), as amended by the Lobbying Disclosure Act of 1995. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The undersigned, the City, certifies or affirms the truthfulness and accuracy of each statement of this certification clause and disclosure, if any. In addition, the City understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification clause and disclosure, if any.

\_\_\_\_\_  
Signature of The City's Authorized Official

Isaac Moreno, City Manager

\_\_\_\_\_  
Date

## **7.7 Access to Records and Reports — 49 U.S.C.5327; 49 CFR 633.15**

The following access to records requirements apply to this Contract:

- A. Due to FCRTA's status as a joint powers authority and FTA sub-recipient or a sub-grantee of the FTA Recipient (Caltrans), the City shall provide the FCRTA,

the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the City which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The City also agrees, pursuant to 49 C. F. R. 633.15, to provide the FTA Administrator or his authorized representatives access to records and constructions sites, as reasonably may be required

- B. The City agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The City agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case The City agrees to maintain same until the FCRTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
- D. FTA does not require the inclusion of these requirements in subcontracts.

#### **7.8 Federal Changes**

The City shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA(11), dated October 1, 2012) between the FCRTA, Caltrans and FTA, as they may be amended or promulgated from time to time during the term of this Contract. The City's failure to so comply shall constitute a material breach of this Contract.

#### **7.9 Contract Work Hours and Safety Standards Act**

- A. Overtime requirements — No contractor or sub-contractor for any part of this contracted work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- B. Violation; liability for unpaid wages liquidated damages - In the event of any violation of the clause set forth in paragraph "A" of this Section, the City and any sub-contractor responsible therefore shall be liable for the unpaid wages. In addition, such The City and sub-contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph "A" of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph "A" of this Section.

- C. Subcontracts - The contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraphs "A" through "C" of this Section and also a clause requiring the sub-contractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs "A" through "C" of this Section.

**7.10 No Government Obligation to Third Parties**

- A. The FCRTA and the City acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the FCRTA, The City, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.
- B. The City shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractors who will be subject to its provisions.

**7.11 Program Fraud and False or Fraudulent Statements and Related Acts - 31 U.S.C. 3801 et. seq.; 49 CFR Part 31; 18 U.S.C. 1001; 49 U.S.C. 5307**

- A. The City acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, the City certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the City further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the City to the extent the Federal Government deems appropriate.
- B. The City also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 on the City, to the extent the Federal Government deems appropriate.
- C. The City agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractors who will be subject to the provisions.

**7.12 Privacy Act - 5 U.S.C. 552**

The City agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a.

Among other things, the City agrees to obtain the express consent of the Federal Government before the City or its employees operate a system of records on behalf of the Federal Government.

The City understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.

The City also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**7.13 Civil Rights Requirements - 29 U.S.C. § 623, 42 U.S.C. § 2000; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332; 29 CFR Part 1630, 41 CFR Parts 60 et seq.**

The following requirements apply to the City:

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the City agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the City agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity — The following equal employment opportunity requirements apply to the City:
  - 1. Race Color Creed National Origin Sex - in accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the City agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal ; Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11306, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11306 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies. The City agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, 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 election for training, including apprenticeship. In addition, the City agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and federal transit law at 49 U.S.C. § 5332, the City agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the City agrees to comply with any implementing requirements FTA may issue.
3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the City agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the City agrees to comply with any implementing requirements FTA may issue.

- C. The City also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**7.14 Transit Employee Protective Agreements - 49 U.S.C. § 5310, § 5311, and § 5333; 29 CFR Part 215**

- A. The City agrees to the comply with applicable transit employee protective requirements as follows:
  1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the City agrees to carry out the transit operations work on the underlying Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto.
  2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - Since this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the City agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- B. The City also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

**7.15 Incorporation of Federal Transit Administration (FTA) Terms – FTA Circular 4220.1E**

Incorporation of Federal Transit Administration (FTA) Terms — The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The City shall not perform any act, fail to perform any act, or refuse to comply with any FCRTA requests which would cause the FCRTA to be in violation of the FTA terms and conditions.

**7.16 Drug and Alcohol Testing - 49 U.S.C. §5331; 49 CFR Part 655**

The City agrees to:

- A. Participate in FCRTA's drug and alcohol program established in compliance with 49 CFR Part 655.

**OR**

- B. Establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the FCRTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The City agrees further to certify annually its compliance with Part 655 before July 1, 2011 and to submit the Management information System I (MIS) reports before March 15th of each year to Caltrans Headquarters. To certify compliance the City shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**SECTION 8. MUTUAL INDEMNIFICATION.**

- 8.1 FCRTA shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized 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) incurred by the City, FCRTA or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly, are a consequence of, or are in any way attributable to, in whole or in part, the performance of the Agreement from the negligent or intentional acts or omissions of FCRTA or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by FCRTA of governmental immunities including California Government Code Section 810 et seq.

- 8.2** City shall indemnify, hold harmless and defend FCRTA and each of its officers, officials, employees, agents and authorized 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) incurred by City, FCRTA or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly, are a consequence of, or are in any way attributable to, in whole or in part, the performance of the Agreement from negligence or intentional acts or omissions of City or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq.
- 8.3** In the event of concurrent negligence on the part of FCRTA or any of its officers, officials, employees, agents or authorized volunteers, and City or any of its officers, officials, employees, agents or authorized volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.
- 8.4** Environmental Indemnification. In addition to the indemnity obligations set forth in Sections 8.1 and 8.2, from and after the Effective Date, FCRTA and City shall indemnify, defend, and hold harmless each of their officers, officials, employees, agents and volunteers from and against any and all claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation reasonable attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under the Repair Facility in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Maintenance Facility; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Repair Facility. The indemnity provisions in this Section 8.4 shall survive the termination or expiration of this Agreement. The terms "Hazardous Substances" and "Environmental Laws" are defined in Exhibit 2, attached hereto and incorporated herein by reference.
- 8.5** This section shall survive the termination or expiration of this Agreement.

## **SECTION 9. INSURANCE**

- 9.1** The FCRTA shall secure and maintain throughout the term of this Agreement, or extensions thereof, automobile liability (Bodily injury and Property Damage) not less than \$5,000,000 per occurrence for all Fleet Vehicles.
- 9.2** The FCRTA shall provide the City with valid certificates of insurance reflecting the above and further, that said coverage has the following endorsements:
- In that the City and their appointive and elective officers and employees are additionally named insured.
  - That said policy shall not be canceled or terminated except upon thirty (30) days prior written notice to the other parties of this agreement.



- 9.3 Said certificates or other proof of the required insurance, shall be provided before the City commences performance under this Agreement or extensions thereof.
- 9.4 The City shall immediately report any and all accidents to the FCRTA General Manager as they occur. A written report, using FCRTA's Accident Form shall be submitted within twenty-four (24) hours after of the occurrence. The City shall assume any and all liability for non-compliance with this provision.
- 9.5 The City shall pay for "preventable" and "at fault" accidental vehicle damages, up to one thousand dollars (\$1,000.00) deductible amount, as specified in the FCRTA insurance policy, as determined by FCRTA's insurer. Specific financial arrangements shall be resolved between the parties of this Agreement with the fiscal year (July through June) in which the accident occurred, as defined by the period of the Contractual Agreement.
- 9.6 The City shall secure and maintain workers compensation coverage as required by statute. The City shall assume any and all liability for non-compliance with this provision.

#### **SECTION 10. TERMINATION AND MODIFICATION.**

- 10.1 **Termination for Convenience.** Either party, by notice as provided in paragraph 11.13, may terminate this Agreement, in whole or in part, by serving six (6) months written notice to the other party. If this Agreement is terminated under this section, then FCRTA shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination. The City shall promptly submit its termination claim to FCRTA to be paid to the City.
- 10.2 **Termination for Default.** If there is a default by either party to this Agreement, the party claiming a default of any term or condition of this Agreement shall provide the defaulting party with written notice of the default pursuant to the provisions contained in Section 11.3 of this Agreement. After receipt of such notice, the defaulting party shall have 30 days in which to cure any default. The Parties may agree in writing to extend the time to cure. In the event the default is not cured within the 30 day period, or within such time agreed to by the Parties, the non-defaulting party may provide a ten day notice of termination of this Agreement to the defaulting party. In the event the Agreement is terminated by FCRTA, City shall be paid for services rendered before the effective date of termination.
- 10.3 **Preservation of FCRTA Property.** If this Agreement is terminated while the City has any of FCRTA's property in its possession, the City shall promptly return the property to FCRTA. The City shall protect and preserve the property until surrendered to the FCRTA or its agent. The City and FCRTA shall agree on payment for the preservation and protection of FCRTA's property. Failure to agree on an amount will be resolved under the Dispute clause (Section 12.2).
- 10.4 **Payment upon Termination.** In the event that the City or FCRTA terminates this Agreement, FCRTA shall compensate the City for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. City shall maintain adequate documentation to verify costs incurred to that date.

- 10.5 **Survival.** All obligations arising prior to the termination of this Agreement and all indemnity provisions survive the termination of this Agreement.

## **SECTION 11 OPTION TO EXTEND AGREEMENT**

FCRTA may at its option, with approval of the FCRTA Policy Board, and upon written notice to the City, unilaterally extend the term of this Agreement for an additional four (4) year term in one-year increments, at option year prices as submitted by the City, as part of the Proposal response to the RFP.

## **SECTION 12. MISCELLANEOUS PROVISIONS.**

- 12.1 **Breaches, Dispute Resolution and Opportunity to Cure.** Prior to filing suit for any claim under this Agreement for any alleged breach, the aggrieved Party shall first give the other Party an opportunity to cure the alleged breach by sending written notice to the breaching party and giving the breaching party a minimum of thirty (30) days from the receipt of notice to cure the alleged violation.
- 12.2 **Claims and Disputes.** It shall be a condition precedent to any litigation of this Agreement that the Parties mediate any disputed Claim through non-binding mediation prior to initiating litigation. Unless mutually waived in writing by both parties, these provisions apply.
- 12.3 **Performance During Dispute.** Unless otherwise directed by the FCRTA, the City shall continue performance under this Contract while matters in dispute are being resolved.
- 12.4 **Claims for Damages.** Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- 12.5 **Rights and Remedies.** The duties and obligations imposed by the Agreement and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 12.6 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that any such action shall be venued exclusively in Fresno County Superior Court.
- 12.7 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled.
- 12.8 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement. The parties agree that in the event any provision of this Agreement is held by a court of competent jurisdiction to be in contravention of any such laws, then the parties will enter into immediate negotiations to rectify the offending clause or clauses. The remainder of this Agreement shall remain in full force and effect.

- 12.9 Amendments.** The Parties may amend this Agreement only by a writing signed by the FCRTA Policy Board and City of Selma City Council.
- 12.10 Waiver.** The failure of any party to enforce, at any time or for any period of time, the provisions hereof shall not be construed as a waiver of such provisions or of the rights of any party to enforce each and every provision.
- 12.11 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 12.12 Successors and Assigns.** The provisions of this Agreement and inures to the benefit of and shall apply to and bind the successors and assigns of the Parties. The requirements and benefits of this Agreement may not be assigned, transferred or delegated without the written consent of all parties hereto. This agreement does not create any third party rights or interests.
- 12.13 Contract Administration.** The City's City Manager and the FCRTA's General Manager shall be designated as each party's "Contract Administrator". This Agreement shall be administered by and correspondence shall be directed to these Contract Administrators or their authorized designees.
- 12.14 Notices.**

Any notices which either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below or at any other address as that party may later designate by notice:

**FCRTA:**

**Moses Stites  
Fresno County Rural Transit Agency  
2035 Tulare Street, Suite 201  
Fresno CA 93721**

**CITY:**

**City of Selma  
City Manager  
1710 Tucker Street  
Selma, CA 93662**

**With a copy to:  
Bianca Sparks Rojas  
Casso & Sparks, LLP  
13200 Crossroads Parkway North, Suite 345**

City of Industry, CA 91746

- 12.15 Integration and Precedence of Documents.** This Agreement, including the Exhibits attached hereto and incorporated herein, is the entire and integrated agreement between City and FCRTA and supersedes all prior negotiations, representations, or agreements, either written or oral. In event of a conflict, the body of the agreement shall control the Exhibits.
- 12.16 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

///

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**APPROVED:**

FRESNO COUNTY RURAL TRANSIT  
AGENCY, a joint powers authority

By: \_\_\_\_\_

MOSES STITES, General Manager

APPROVED AS TO LEGAL FORM ON BEHALF OF THE FCRTA:

DANIEL C. CEDERBORG, County Counsel

By: \_\_\_\_\_

KYLE R. ROBERSON, Deputy County Counsel

**APPROVED:**  
CITY OF SELMA

By: \_\_\_\_\_  
Jim Avalos, Mayor

**ATTEST:**

\_\_\_\_\_  
REYNA RIVERA, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
BIANCA SPARKS ROJAS, City Attorney

# EXHIBIT 1

## Proposal Form 1.4 Proposed Budget Form (Maintenance)

Summary of FCRTA's Subsystem Individual and Total Contract Budgets for 2018-19  
By Number of Vehicles, Total Service Hours, Hourly Contract Rate and Calculated Contract Budgets

FCRTA				FY 18-19 Hourly Contract Billing Service Rate	FY 18-19 Annual FY Total of Service Contracts	FY 19-20 Hourly Contract Billing Service Rate	FY 19-20 Annual FY Total of Service Contracts	FY 20-21 Hourly Contract Billing Service Rate	FY 20-21 Annual FY Total of Service Contracts
Subsystems	Service Type	Provide	Service						
Maintenance Shuttle	Rural Areas	2	3,968.00	\$ 34.41	\$ 136,538.88	\$ 35.44	\$ 140,635.05	\$ 36.51	\$ 144,854.10
Maintenance Manager	Rural Areas	1	1,984.00	\$ 87.64	\$ 173,877.76	\$ 90.27	\$ 179,094.09	\$ 92.98	\$ 184,466.92
Vehicle Maintenance (2)	Rural Areas	3	5,952.00	\$ 72.20	\$ 429,734.40	\$ 74.37	\$ 442,626.48	\$ 76.60	\$ 455,905.20
Vehicle Detailing (1)	Rural Areas	2	1,984.00	\$ 26.08	\$ 51,742.72	\$ 27.08	\$ 53,726.72	\$ 28.08	\$ 55,710.72
<b>TOTALS</b>		<b>8</b>	<b>13,888.00</b>	<b>--</b>	<b>\$ 791,893.76</b>		<b>\$ 816,082.29</b>		<b>\$ 840,936.96</b>
Fleet Insurance Costs by Fiscal Year (page 13 of RFP)					\$ 0.00		\$ 0.00		\$ 0.00
Annual Totals WITH Contractor-Provided Insurance					\$ 791,893.76		\$ 816,082.29		\$ 840,936.96

### Footnotes:

1. Increase in State minimum wage
2. Budget prepared for 3 employees and FY 2019-20 through FY 2024-15 are subject to negotiation due to MOU renewal.

(All Full Time employees labor rates in FY 2019-20 through FY 2024-15 are subject to negotiation due to MOU renewal)

Equipment shall be purchased by FCRTA and assigned directly to maintenance personnel by FCRTA.

## EXHIBIT 2

### Definitions

"Environmental Laws" means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("RCRA"); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

"Hazardous Substances" means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as "hazardous" or "toxic" under any Environmental Law.



**RESOLUTION NO. 2018 - \_\_SRDA**

**A RESOLUTION OF THE SUCCESSOR AGENCY TO THE CITY OF SELMA REDEVELOPMENT AGENCY APPROVING THE PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS BETWEEN THE AGENCY AND THE FRESNO COUNTY RURAL TRANSIT AGENCY FOR ASSESSOR'S PARCEL NUMBER 390-190-15S, SELMA, CALIFORNIA, AND NOTICE OF EXEMPTION REGARDING SAME**

**WHEREAS**, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos* ("Matosantos"), finding Assembly Bill X1 26 (the "Dissolution Act") largely constitutional; and

**WHEREAS**, under the Dissolution Act and the California Supreme Court's decision in *Matosantos*, all California redevelopment agencies, including the Successor Agency to the City of Selma Redevelopment Agency ("Agency"), were dissolved on February 1, 2012, and successor agencies, including the Agency, were designated and vested with the responsibility of winding down the business and fiscal affairs of the former redevelopment agencies; and

**WHEREAS**, in accordance with the provisions of Health & Safety Code Section 34177(e), the Agency, as directed by the Oversight Board, must dispose of the assets and properties of the former redevelopment agency; and

**WHEREAS**, the Agency owns certain property described as Assessor's Parcel Number 390-190-15S, generally located at **INSERT CROSS STREETS, Selma, California**; and

**WHEREAS**, pursuant to the provisions of the Dissolution Act, the Agency desires to sell the Property at its highest and best use, maximizing its value; and

**WHEREAS**, the Agency desires to sell the Property to the Fresno County Rural Transit Agency ("FCRTA"), pursuant to a Purchase and Sale Agreement (the "Agreement"), attached hereto as Exhibit A, and incorporated herein by reference. The purchase price is \$150,000.00; and

**WHEREAS**, the sale of the property to the FCRTA serves a public purpose in that the FCRTA is a public agency that provides general public transit service to rural communities throughout Fresno County, which allows passengers to travel throughout the Central Valley. Further, FCRTA operates 25 transit subsystems with 80 vehicles that operate in 13 rural incorporated cities throughout the Central Valley. FCRTA's transit services are available to the elderly, disabled, low-income, and general public patrons within each of the 13 rural incorporated cities in Fresno County. The sale of the property to FCRTA will allow FCRTA to continue to provide valuable services to the community; and

**WHEREAS**, the purchase of the Property is exempt from the California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000 *et seq.*), pursuant to Section 15061(b)(3) of the CEQA Guidelines. Section 15061(b)(3) of the CEQA Guidelines exempts



projects covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The sale of the property does not involve any land use entitlements that will allow for development on the property. The sale would not create any public health or safety hazards and would not have a significant impact on the resources or services within the surrounding area, such as water, sanitary services, surrounding roadways and intersections. Any future development at the property will be subject to additional environmental review and independent analysis as required by CEQA; and

**WHEREAS**, the Agency has duly considered all terms and conditions of the proposed Agreement and believes that the redevelopment of the Property in accordance therewith is in the best interests of the Agency and the health, safety and welfare of its residents, maximizes value, and is consistent with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, THE SUCCESSOR AGENCY DOES HEREBY HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:**

**SECTION 1.** The above recitals are true and correct and are incorporated herein by reference.

**SECTION 2.** All necessary public meetings and opportunities for public testimony and comment have been conducted in compliance with State law and the Municipal Code of the City of Selma.

**SECTION 3.** The purchase of the Property is exempt from the California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000 *et seq.*), pursuant to Section 15061(b)(3) of the CEQA Guidelines. Section 15061(b)(3) of the CEQA Guidelines exempts projects covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The sale of the property does not involve any land use entitlements that will allow for development on the property. The sale would not create any public health or safety hazards and would not have a significant impact on the resources or services within the surrounding area, such as water, sanitary services, surrounding roadways and intersections. Any future development at the property will be subject to additional environmental review and independent analysis as required by CEQA.

Based on these findings, the Successor Agency adopts the Notice of Exemption and directs staff to file same as required by law and affirm their respective approval of the purchase and sale of the Property.

**SECTION 4.** The Agency Board hereby approves the Purchase and Sale Agreement, attached hereto as Exhibit A.

**SECTION 5.** The Agency hereby directs staff to comply with all applicable statutes regarding the distribution of the sales proceeds.

**SECTION 6.** The Executive Director is hereby authorized to take such further actions as may be necessary to carry out the obligations set forth in this Resolution.

**SECTION 7. Severability.** The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

**Section 8. Effective Date.** That the Agency Secretary shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED at a Special Meeting of the Successor Agency to the City of Selma Redevelopment Agency on this 29<sup>th</sup> day of August 2018 by the following roll call vote:

AYES:            AGENCY BOARD MEMBERS:  
NOES:           AGENCY BOARD MEMBERS:  
ABSENT:        AGENCY BOARD MEMBERS:  
ABSTAIN:       AGENCY BOARD MEMBERS:

\_\_\_\_\_  
Jim Avalos, Chairperson

ATTEST:

\_\_\_\_\_  
Reyna Rivera, Agency Secretary

**PURCHASE AND SALE AGREEMENT**  
**AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this “**Agreement**”) is made and entered into as of August\_\_\_\_\_, 2018 (“Effective Date”), by and between the Successor Agency to the City of Selma Redevelopment Agency (“**Agency**” or “**Seller**”), and Fresno County Rural Transit Agency, a joint powers authority (“**Buyer**”).

**RECITALS**

A. Agency is the owner of that certain real property commonly referred to as Assessor's Parcel Number 390-190-15S, all as more fully described in **Exhibit A**, attached hereto together with all right, title and interest in and to all rights, privileges, easements or appurtenances and improvements thereon or relating thereto (collectively, the “**Property**”).

B. The Property was previously owned by the City of Selma Redevelopment Agency (“**Selma RDA**”). On June 28, 2011, the Governor signed into law ABX1 26, which provided for the dissolution and winding down of redevelopment agencies throughout the State of California. ABX1 26 was subsequently amended by Assembly Bill 1484 (collectively, as amended, “**Dissolution Act**”).

C. Pursuant to the Dissolution Act, the City of Selma elected to be the Successor Agency to the Selma RDA to administer the dissolution and winding down of the Selma RDA. Pursuant to the Dissolution Act, the Selma RDA was dissolved by operation of law, and, upon dissolution, all assets, properties and contracts of the Selma RDA, including the Property, were transferred, by operation of law, to the Agency pursuant to the provisions of Health and Safety Code § 34175(b).

D. Buyer desires to purchase the Property from Seller, and Seller desires to sell the Property to Buyer, on the terms and conditions contained in this Agreement.

IN CONSIDERATION of the respective agreements hereinafter set forth, Seller and Buyer hereby agree as follows:

1. Purchase and Sale of Property. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller the Property, subject to the terms and conditions set forth herein

2. Purchase Price.

(a) The purchase price for the Property (“**Purchase Price**”) shall be one hundred and fifty thousand dollars (\$150,000).

(b) The Purchase Price shall be paid as follows:

(i) Within three (3) days following the Effective Date, Seller and Buyer shall open an escrow in connection herewith ("**Escrow**") at \_\_\_\_\_ ("**Escrow Holder**"), and Buyer shall deposit into Escrow the amount of Seven Thousand Five Hundred Dollars (\$7,500) ("**Initial Deposit**") in cash or other immediately available funds.

(ii) On or before the Closing, if this Agreement has not been earlier terminated, Buyer shall deposit into Escrow cash or other immediately available funds in the amount of the balance of the Purchase Price, less any credits due Buyer hereunder (the "**Closing Amount**"). The Closing Amount shall be applied towards the Purchase Price at the Closing.

3. Leaseback. Buyer wishes to leaseback the Property to the City of Selma for use by its Fire Department for a period of up to two (2) years, for one dollar (\$1.00) per year. The parties shall execute a mutually approved lease as of the Closing date herein.

4. Title to the Property. At the Closing, Seller shall cause to be conveyed to Buyer fee simple title to the Property by duly executed and acknowledged grant deed substantially in the form attached hereto as **Exhibit B** and incorporated herein by this reference (the "**Deed**"). As used in this Agreement, Closing (the "**Closing**") shall be deemed to occur upon the recording of the Deed. Evidence of delivery of fee simple title shall be the issuance by Escrow Holder to Buyer of an ALTA standard coverage owner's policy of title insurance in the amount of the Purchase Price, insuring fee simple title to the Property in Buyer, subject only to such exceptions as Buyer shall have approved as provided below (the "**Title Policy**"). The Title Policy shall provide full coverage against mechanics' and materialmen's liens and shall contain such special endorsements as Buyer may reasonably require, including, without limitation, any endorsements required as a condition to Buyer's approval of any title exceptions (the "**Endorsements**"). Within five (5) business days following the opening of Escrow, Seller shall order the issuance of a preliminary title report with respect to the Property, together with copies of all underlying documents referenced therein and a map containing a plotting of all easements capable of being plotted (collectively, the "**Preliminary Report**"), to be prepared by the Escrow Holder and delivered to Buyer. No later than fifteen (15) days after receipt of the Preliminary Report, Buyer shall give written notice to Seller of any items contained in the Preliminary Report which Buyer disapproves ("**Buyer's Disapproval Notice**"). Failure of Buyer to notify Seller of Buyer's disapproval of all or any item on the Preliminary Report shall be deemed to be an approval by Buyer of such item(s). In any event, Seller covenants to remove as exceptions to title prior to the Closing, any mortgages, deeds of trust, and other monetary encumbrances (collectively, "**Disapproved Liens**") shown on the Preliminary Report except for real property taxes not delinquent. Seller shall notify Buyer no later than five (5) days after receipt of Buyer's Disapproval Notice whether it elects to remove such other items disapproved by Buyer.

5. Seller's Deliveries. Within ten (10) days following the Effective Date, Seller shall deliver to Buyer any and all materials related to the Property in Seller's possession or control, or to which Seller has access such as surveys, Phase I or Phase II reports, plans, geotechnical or soils reports or any other pertinent information that relates to the use, occupancy, zoning or control of the Property (collectively, the "**Seller's Deliveries**"). Seller shall deliver a Natural Hazards Disclosure Report with Seller's Deliveries.

6. Conditions to Seller's Obligations. Seller's obligations hereunder, including, but not limited to, its obligation to consummate the purchase transaction provided for herein, are subject to the satisfaction of each of the following conditions:

(a) Prior to Closing, Seller shall have obtained any and all authorizations and approvals necessary to sell the Property pursuant to the Dissolution Act, including approval by the Fresno County Consolidated Oversight Board, and the State of California Department of Finance, of the sale to Buyer upon the terms and conditions set forth herein.

(b) Buyer shall not be in default under this Agreement.

(c) Each representation and warranty made in this Agreement by Buyer shall be true and correct in all material respects at the time as of which the same is made and as of the Close of Escrow.

If the above conditions have not been satisfied or waived by Seller at or before Closing through no fault of Seller, then Seller may, upon written notice to Buyer, cancel the Escrow, terminate this Agreement, and recover any documents delivered to Escrow Holder pursuant to this Agreement.

7. Conditions Precedent to Closing. The following are conditions precedent to Buyer's obligation to purchase the Property (the "**Conditions Precedent**"). The Conditions Precedent are intended solely for the benefit of Buyer and may be waived only by Buyer in writing in Buyer's sole and absolute discretion. In the event any Condition Precedent is not satisfied, Buyer may, upon written notice to Seller, in its sole and absolute discretion, terminate this Agreement, and recover any documents delivered to Escrow Holder pursuant to this Agreement.

(a) Buyer's inspection, review and approval, of all of the following:

(i) The physical characteristics and condition of the Property (including without limitation the condition of the soils);

(ii) Seller's Deliveries; and,

(b) Escrow Holder shall be unconditionally committed to issue the Title Policy to Buyer upon the Closing in the form and with such exceptions and endorsements as have been approved, or are deemed approved, by Buyer as provided in Section 4 above.

(c) Seller shall have complied with all of Seller's duties and obligations contained in this Agreement and all of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

8. LIQUIDATED DAMAGES. IF THE SALE OF THE PROPERTY PURSUANT TO THIS AGREEMENT IS NOT CONSUMMATED SOLELY BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER, THE DEPOSIT SHALL BE RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A DEFAULT BY BUYER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE.



THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE EARNEST MONEY HAVE BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER. SELLER HEREBY WAIVES ANY AND ALL BENEFITS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389. FURTHERMORE, THE PAYMENT AND RETENTION OF SUCH DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 AND 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. UPON BUYER'S DEFAULT, SELLER MAY INSTRUCT ESCROW HOLDER TO CANCEL THE ESCROW, AND PROMPTLY UPON RECEIPT OF SAID INSTRUCTIONS, ESCROW HOLDER SHALL (i) CANCEL THE ESCROW, (ii) PAY ALL OF ESCROW HOLDER'S CHARGES FROM THE DEPOSIT, AND (iii) DISBURSE TO SELLER THE DEPOSIT PURSUANT TO THIS SECTION 8.

INITIALS: Seller \_\_\_\_\_ Buyer \_\_\_\_\_

9. Escrow; Closing, Prorations.

(a) Upon mutual execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with Escrow Holder and this Agreement shall serve as instructions to Escrow Holder for consummation of the purchase contemplated hereby. Seller and Buyer shall execute such supplemental Escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement, provided such supplemental Escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time. In the event of any conflict between the provisions of this Agreement and any supplementary Escrow instructions signed by Buyer and Seller, the terms of this Agreement shall control.

(b) The Closing shall take place (the “**Closing Date**”) on or before the date that is thirty (30) days following the Effective Date of this Agreement, or as may be extended as provided below.

(c) At or before the Closing, Seller shall deliver to Escrow Holder the following:

(i) the duly executed and acknowledged Grant Deed for the Property (Exhibit B);

(ii) a duly executed affidavit that Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986 in the form attached as **Exhibit C** and incorporated herein by this reference together with a duly executed non-foreign person affidavit and evidence that Seller is exempt from the withholding obligations imposed by California Revenue and Taxation Code Sections 18805, 18815, and 26131;

(iii) evidence reasonably acceptable to Escrow Holder that the documents delivered by Seller have been duly authorized and executed on behalf of Seller and constitute valid and binding obligations of Seller.

(iv) any other documents which the Escrow Holder may reasonably require from Seller in order to close Escrow which do not increase Seller's liability or obligations hereunder;

(v) a closing statement in form and content satisfactory to Buyer and Seller (the "**Closing Statement**") duly executed by Seller; and

(vi) any other instruments, records or correspondence called for hereunder which have not previously been delivered.

(d) At or before the Closing, Buyer shall deliver to Escrow Holder or Seller the following:

(i) the duly executed and acknowledged lease agreement

(ii) the Closing Statement, duly executed by Buyer;

(iii) the Closing Amount; and

(iv) evidence reasonably acceptable to Escrow Holder that the documents delivered by Buyer have been duly authorized and executed on behalf of Buyer and constitute valid and binding obligations of Buyer.

(e) Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to close the Escrow and consummate the purchase of the Property in accordance with the terms hereof.

(f) The following are to be paid by Buyer or Seller or apportioned as of the Closing Date, as follows:

(i) Costs and expenses of Escrow incurred in this transaction shall be paid as follows:

(1) Seller is a public entity and exempt from all sales, use and documentary transfer taxes;

(2) Seller shall pay the premium for a standard ALTA coverage owner's policy of title insurance; Buyer shall pay the premium for any extended ALTA coverage if desired;

(3) Seller and Buyer shall each pay one-half (1/2) of the Escrow fees, recording fees and related expenses;

(4) Seller and Buyer are each public entities and exempt from any city or county transfer taxes due;

(5) all other costs of escrow shall be paid equally by Buyer and Seller.

(g) Obligation to Refrain from Discrimination. The Buyer covenants and agrees for itself, its successors and assigns, and for every successor in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, age, handicap, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, and the Buyer (itself or any person claiming under or through the Buyer) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property or any portion thereof. Notwithstanding the foregoing, if and when the Buyer conveys the Property to a third party, the Buyer shall be relieved of any further responsibility under this Section 9.(g) as to the Property, or the portion thereof, so conveyed.

(h) Form of Nondiscrimination and Nonsegregation Clauses. All deeds, leases or contracts for sale for all or any portion of the Property shall contain the following nondiscrimination or nonsegregation clauses:

(i) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the Grantee himself or herself, or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph."

(ii) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group



of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the leasing, subleasing, transferring, use or occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.

Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph.”

(iii) In contracts: “The contracting party or parties hereby covenant by and for himself or herself and their respective successors and assigns, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the contracting party or parties, any subcontracting party or parties, or their respective assigns or transferees, establish or permit any such practice or practices of discrimination or segregation.

Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph.”

10. Representations, Warranties and Covenants of Seller. As of the date hereof and again as of Closing, Seller represents and warrants to Buyer as follows:

(a) Seller is a public entity, duly organized, validly existing and in good standing under the laws of the State of California. This Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are and at the time of Closing will be duly authorized, executed and delivered by Seller, are and at the time of Closing will be legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms. Seller has obtained all necessary authorizations, approvals and consents to the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, Seller shall comply with all provisions of the Dissolution Act, and shall seek all necessary approvals required to sell the Property, in accordance with the provisions set forth in Section 6.(a) of this Agreement.

(b) No Action. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending against Seller, nor are any such proceedings contemplated by Seller;

(c) Title to the Property. Seller has good and marketable title to the Property, subject to the Conditions of Title. There are no outstanding rights of first refusal or first look, options to purchase, rights of reverter, or claim of right relating to the transfer or sale of the Property or any interest therein. To Seller's knowledge, there are no unrecorded or undisclosed documents or other matters which affect title to the Property. No person holding a security interest in the Property or any part thereof has the right to consent or deny consent to the sale of the Property as contemplated herein, and Seller has the right to pay off such person and to remove all such liens as of the Closing Date. Seller has enjoyed the continuous and uninterrupted quiet possession, use and operation of the Property.

(d) Environmental Matters. As used in this Agreement, "**Environmental Law(s)**" "Environmental Law(s)" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq., the Clean Water Act, 33 U.S.C. Sections 1251 et seq., [The Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. H&S Code Sections 25249.5-25249.13), the Carpenter-Preseley-Tanner Hazardous Substance Account Act (Cal. H&S Code Sections 25300 et seq.), and the California Water Code Sections 1300, et seq.], as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance which regulates or proscribes the use, storage, disposal, presence, cleanup, transportation or Release or threatened Release into the environment of Hazardous Material. "**Hazardous Material**" "Hazardous Material" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials or (viii) radioactive materials. "**Release**" means any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping or disposing into the environment of any Hazardous Material (including the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Material).

(i) The Property and all existing uses and conditions of the Property are in compliance with all Environmental Laws, and Seller has not received any written notice of violation issued pursuant to any Environmental Law with respect to the Property or any use or condition thereof.

(ii) Seller has not used, handled, stored, transported, released or disposed of any Hazardous Material on, under or from the Property in violation of any Environmental Law.

(iii) Seller has no actual knowledge of any release of any Hazardous Material on the Property.

(iv) All required permits, licenses and other authorizations required by or issued pursuant to any Environmental Law for the ownership or operation of the Property by Seller have been obtained and are presently maintained in full force and effect.

(v) There exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, claim, proceeding, citation, directive, summons or investigation pending or, to Seller's knowledge, threatened pursuant to any Environmental Law relating to (i) the ownership, occupancy or use of any portion of the Property by Seller or occupant or user of any portion of the Property or any former owner of any portion of the Property, (ii) any alleged violation of any Environmental Law by Seller or occupant or user of any portion of the Property or any former owner of any portion of the Property or (iii) the suspected presence, Release or threatened Release of any Hazardous Material on, under, in or from any portion of the Property.

(vi) There are no above-ground or underground tanks located on the Property used or formerly used for the purpose of storing any Hazardous Material.

(vii) No asbestos abatement or remediation work has been performed on the Property.

(viii) There is no PCB-containing equipment or PCB-containing material located on or in the Property.

11. Representations, Warranties and Covenants of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Buyer is a joint powers authority organized and existing under the laws of the State of California. This Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are and at the time of Closing will be duly authorized, executed and delivered by Buyer, are and at the time of Closing will be legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms, and do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is subject. Buyer has obtained all necessary authorizations, approvals and consents to the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(b) Buyer warrants that Buyer is a sophisticated owner and buyer of real property, familiar and experienced with requirements for the development of real property. Buyer has examined the Property or will have done so by Closing, is or will be familiar with its physical condition, and accepts the Property in an "AS-IS" condition.

12. Continuation and Survival. All representations, warranties and covenants by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall be deemed made as of the date of this Agreement or such writing and again at the Closing, shall be deemed to be material, and unless expressly provided to the contrary shall survive the execution and delivery of this Agreement, the Deed and the Closing.

13. Condemnation.

(a) In the event a governmental entity commences eminent domain proceedings to take any portion of the Property after the date hereof and prior to the Closing, then Buyer shall have the option to terminate this Agreement by written notice to Seller within ten (10) business days after Buyer first learns of such commencement. In the event of any such termination, the Earnest Money, together with all interest, shall be returned to Buyer. Buyer and Seller shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

(b) In the event a governmental entity commences eminent domain proceedings to take any part of the Property after the date hereof and prior to the Closing and this Agreement is not terminated pursuant to Section 14(a), then the Closing shall occur as scheduled notwithstanding such proceeding; provided, however, that Seller's interest in all awards arising out of such proceedings (except for any award attributable to the loss of Seller's business or income, a tenancy on the Property or Seller's personal property) shall be assigned to Buyer as of the Closing or credited to Buyer if previously received by Seller. Seller's obligations pursuant to this Section 14(b) shall survive the Closing.

14. Possession. Possession of the Property shall be delivered to Buyer on the Closing Date free of any occupant or property not being conveyed to Buyer as provided hereunder.

15. Seller's Cooperation with Buyer. At no cost to Seller, Seller shall cooperate and do all acts as may be reasonably required or requested by Buyer, with regard to the fulfillment of any Condition Precedent. Seller hereby authorizes Buyer and its agents to make all inquiries with and applications to any third party, including any governmental authority, as Buyer may reasonably require to complete its due diligence and satisfy the Conditions Precedent.

16. Professional Fees. In the event legal action is commenced to enforce or interpret any of the terms or provisions of this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorney's fees and costs incurred in connection with the prosecution or defense of said action. In addition, the prevailing party shall be entitled to recover any actual accounting, engineering or other professional fees reasonably incurred in said action or proceeding.

17. Miscellaneous.

(a) Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, (iii) upon facsimile transmission (except that if the date of such transmission is not a business day or if such transmission is made after 5:00 p.m. on a business day, then such notice shall be deemed to be given on the first business day following such transmission), or (iv) two business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or such other address as either party may from time to time specify in writing to the other in accordance herewith):

If to Seller: City of Selma  
Attn: City Manager  
1710 Tucker Street  
Selma, CA 93662  
Phone: (559) 891-2200  
Email: IsaacM@cityofselma.com

With a copy to: Casso & Sparks, LLP  
Attn: Bianca Sparks Rojas  
13200 Crossroads Parkway North, Suite 345  
City of Industry, CA 91746  
Phone: (626) 269- 2980  
Email: bsparks@cassosparks.com

If to Buyer: Fresno County Rural Transit Agency  
Attn: General Manager  
2035 Tulare Street, Suite 201  
Fresno, CA 93721  
Phone: (559) 233-6789  
Email: mstites@fresnocog.org

With a copy to: Best Best & Krieger LLP  
Attn: Nancy A. Park  
500 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Phone: (916) 325-4000  
E-Mail: nancy.park@bbklaw.com

To Escrow Holder: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email \_\_\_\_\_

(b) Successors and Assigns. Buyer shall not assign this Agreement without Seller's consent or approval. Any assignment approved by Seller shall assume all obligations of Buyer hereunder; however, Buyer shall remain liable for all obligations hereunder. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

(c) Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.



(e) Construction. Headings at the beginning of each Section and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to Sections and subparagraphs are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

(f) No Joint Venture. This Agreement shall not create a partnership or joint venture relationship between Buyer and Seller.

(g) Merger of Prior Agreements. This Agreement and the exhibits attached hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof, including without limitation, any letters of intent previously executed or submitted by either or both of the parties hereto, which shall be of no further force or effect upon execution of this Agreement.

(h) Time of the Essence. Time is of the essence of this Agreement. As used in this Agreement, a "business day" shall mean a day which is not a Saturday, Sunday or recognized federal or state holiday. If the last date for performance by either party under this Agreement occurs on a day which is not a business day, then the last date for such performance shall be extended to the next occurring business day.

(i) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(j) Further Assurances. Each of the parties shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties.

(k) Exhibits. All exhibits attached hereto and referred to herein are incorporated herein as though set forth at length.

(l) Captions. The captions appearing at the commencement of the sections and paragraphs hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the section at the head of which it appears, the section and paragraph and not such caption shall control and govern in the construction of this Agreement.

(m) No Obligation To Third Parties. Execution and delivery of this Agreement shall not be deemed to confer any rights upon, directly, indirectly or by way of subrogation, nor obligate either of the parties hereto to, any person or entity other than each other.

(n) Brokers. Seller and Buyer hereby represent to each other that there are no brokers, finders, or other persons entitled to a commission, finder's fee or other payment in connection with this Agreement. Buyer and Seller hereby agree to indemnify, defend, protect, and hold the other harmless from and against any claims, liabilities, or damages for commissions or



finder's fees brought by any third party who has dealt or claims to have dealt with the indemnifying party pertaining to the Property.

(o) Waiver. The waiver by any party to this Agreement of the breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or another provision of this Agreement.

(p) Interpretation. This Agreement has been negotiated at arm's length and between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law (including California Civil Code § 1654 and any successor statute) or legal decision that would require interpretation of any ambiguities against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

(q) Counterparts/Facsimile/.PDF Signatures. This Agreement may be executed in counterparts and when so executed by the Parties, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument that shall be binding upon the Parties, notwithstanding that the Parties may not be signatories to the same counterpart or counterparts. The Parties may integrate their respective counterparts by attaching the signature pages of each separate counterpart to a single counterpart. In order to expedite the transaction contemplated herein, facsimile or .pdf signatures may be used in place of original signatures on this Agreement. Seller and Buyer intend to be bound by the signatures on the facsimile or .pdf document, are aware that the other party will rely on the facsimile or .pdf signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**SELLER:**

Successor Agency to the City of Selma  
Redevelopment Agency

By: \_\_\_\_\_  
Jim Avalos, Chairperson

ATTEST:

\_\_\_\_\_  
Reyna Rivera, Agency Secretary

**Approved as to Form**

\_\_\_\_\_  
Bianca Sparks Rojas, Agency General Counsel

**BUYER:**

Fresno County Rural Transit Agency, a joint powers authority

By: \_\_\_\_\_

Name: Moses Stites  
Its: General Manager

APPROVED AS TO LEGAL FORM ON BEHALF OF THE FCRTA:  
DANIEL C. CEDERBORG, County Counsel

By \_\_\_\_\_  
KYLE ROBERSON, Senior Deputy County Counsel

**EXHIBIT A TO PURCHASE AGREEMENT**

**LEGAL DESCRIPTION**

All that real property located in the City of Selma, County of Fresno, California as further described as:

Lot 12 of Tract No. 5429, City of Selma, County of Fresno, State of California, according to the Map recorded in Book 71 Page 3 of Plats, Fresno County Records.

APN: 390-190-15S

EXHIBIT B TO PURCHASE AGREEMENT

FORM OF DEED

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO, AND  
MAIL TAX STATEMENTS TO:

[buyer address or attorney]

A.P.N.: 390-190-15S

(Space Above Line for Recorder's Use Only)

The Undersigned Grantor(s) Declare(s):

DOCUMENTARY TRANSFER TAX \$ 0; CITY TRANSFER TAX \$ 0; SURVEY MONUMENT FEE \$  
0

[ ] computed on the consideration or full value of property conveyed, OR  
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
[ X ] unincorporated area; [ X ] City of **Selma**, and

[The undersigned declares that this Grant Deed is exempt from Recording Fees pursuant to California Government Code Section 27383. The undersigned declares that this Grant Deed is exempt from Documentary Transfer Tax pursuant to Revenue and Taxation Code Section 11922.]

GRANT DEED

FOR VALUE RECEIVED, Successor Agency to the City of Selma Redevelopment Agency, a public body ("**Grantor**"), hereby grants to the Fresno County Rural Transit Agency, a joint powers authority ("**Grantee**"), all that certain real property situated in the County of Fresno, State of California, described in Exhibit A, attached hereto and incorporated herein by reference (the "**Property**").

1. The Property is conveyed subject to the condition that:

(a) Grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the Grantee himself or herself, or any person claiming under or through him

or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed.

Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph.

2. All deeds, leases or contracts entered into with respect to the Property shall contain or be subject to substantially the following nondiscrimination/nonsegregation clauses:

(a) In deeds: "The Grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the Grantee himself or herself, or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph."

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the leasing, subleasing, transferring, use or occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.

Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph.”

(c) In contracts: “The contracting party or parties hereby covenant by and for himself or herself and their respective successors and assigns, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the contracting party or parties, any subcontracting party or parties, or their respective assigns or transferees, establish or permit any such practice or practices of discrimination or segregation.

Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph.”

3. All covenants and agreements contained in this Grant Deed shall run with the land and shall be binding for the benefit of Grantor and its successors and assigns and such covenants shall run in favor of the Grantor and for the entire period during which the covenants shall be in force and effect as provided in the Agreement, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies provided herein or otherwise available, and to maintain any actions at law or suits in equity or other property proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor and its successors and assigns.

The covenants contained in Paragraphs 1 and 2 of this Grant Deed shall remain in effect in perpetuity except as otherwise expressly set forth therein.



IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of \_\_\_\_\_, 2018.

**GRANTOR:**

SUCCESSOR AGENCY TO THE CITY OF  
SELMA REDEVELOPMENT AGENCY, a public  
body

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



EXHIBIT C TO PURCHASE AGREEMENT

TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS

This form is provided so that the Buyer and/or Seller in this transaction can certify compliance with the Foreign Investment in Real Property Tax Act to the Escrow Agent and/or Buyer. Buyer ("**Transferee**") must retain a copy of this document until after the fifth taxable year following the transfer.

Section 1445 of the Internal Revenue Code of 1986, as amended ("**Code**") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform Transferee that withholding of tax is not required upon the disposition of a U.S. real property interest, the undersigned hereby certifies the following on behalf of \_the Successor Agency to the City of Selma Redevelopment Agency ("**Transferor**"):

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder).
2. The Transferor is not a disregarded entity as defined in Income Tax Regulation Section 1.1445-2(b)(2)(iii).
3. The Transferor's U.S. employer or tax identification number is \_\_\_\_\_.
4. The Transferor's office address is: 1710 Tucker Street, Selma, CA 93662 The Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

Date: \_\_\_\_\_, 20\_\_

TRANSFEROR:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Agenda Item 5  
**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA,  
CALIFORNIA, APPROVING A GROUND LEASE WITH THE FRESNO  
COUNTY RURAL TRANSIT AGENCY, FOR THE PROPERTY  
LOCATED AT 1821 PACIFIC AVENUE, SELMA CALIFORNIA, AND  
NOTICE OF EXEMPTION REGARDING SAME**

**WHEREAS**, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos* (“*Matosantos*”), finding Assembly Bill X1 26 (the “Dissolution Act”) largely constitutional; and

**WHEREAS**, under the Dissolution Act and the California Supreme Court’s decision in *Matosantos*, all California redevelopment agencies, including the Successor Agency to the City of Selma Redevelopment Agency (“Agency”), were dissolved on February 1, 2012, and successor agencies, including the Agency, were designated and vested with the responsibility of winding down the business and fiscal affairs of the former redevelopment agencies; and

**WHEREAS**, in accordance with the provisions of Health & Safety Code Section 34177(e), the Agency, as directed by the Oversight Board, must dispose of the assets and properties of the former redevelopment agency; and

**WHEREAS**, the Agency owns certain property located at 1821 Pacific Avenue, Selma, California (“Property”); and

**WHEREAS**, the Agency currently permits the City to utilize the Property for Fire Department Training activities; and

**WHEREAS**, pursuant to the provisions of the Dissolution Act, the Agency desires to sell the Property at its highest and best use, maximizing its value, to the Fresno County Rural Transit Agency (“FCRTA”); and

**WHEREAS**, under the terms of the purchase and sale agreement with FCRTA, after the close of sale, FCRTA is to lease the Property to the City, to allow the City to continue using the Property for Fire Department Training Activities; and

**WHEREAS**, the lease of the Property is exempt from the California Environmental Quality Act (“CEQA”) (Public Resources Code Section 21000 *et seq.*), pursuant to Section 15301 of the CEQA Guidelines. Section 15301 of the CEQA Guidelines exempts projects which involve the leasing of existing facilities involving negligible or no expansion of the use beyond that existing at the time of the proposed action. The Property is currently being used by the City for Fire Department Training exercises, and will be leased by FCRTA to the City for that same purpose, therefore there is no expansion of the existing use. Therefore, the proposed lease qualifies for the exemption.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELMA HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:**

**SECTION 1.** The above recitals are true and correct and are incorporated herein by reference.

**SECTION 2.** All necessary public meetings and opportunities for public testimony and comment have been conducted in compliance with State law and the Municipal Code of the City of Selma.

**SECTION 3.** The lease of the Property is exempt from the California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000 *et seq.*), pursuant to Section 15301 of the CEQA Guidelines. Section 15301 of the CEQA Guidelines exempts projects which involve the leasing of existing facilities involving negligible or no expansion of the use beyond that existing at the time of the proposed action. The Property is currently being used by the City for Fire Department Training exercises, and will be leased by FCRTA to the City for that same purpose, therefore there is no expansion of the existing use. Therefore, the proposed lease qualifies for the exemption set forth in Section 15301.

Based on these findings, the City Council adopts the Notice of Exemption and directs staff to file same as required by law.

**SECTION 4.** The City Council hereby approves the Ground Lease, attached hereto as Exhibit A.

**SECTION 5. Severability.** The provisions of this Resolution are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Resolution or their applicability to other persons or circumstances.

**Section 6. Effective Date.** That the City Clerk shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

**(RECORD OF VOTE AND SIGNATURES ON FOLLOWING PAGE)**

PASSED, APPROVED AND ADOPTED at a Special Meeting of the City Council of the City of Selma on this 29<sup>th</sup> day of August 2018 by the following roll call vote:

AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:  
ABSTAIN: COUNCILMEMBERS:

---

Jim Avalos, Mayor

ATTEST:

---

Reyna Rivera, City Clerk



## GROUND LEASE

THIS GROUND LEASE (the "**Lease**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the FRESNO COUNTY RURAL TRANSIT AGENCY, a joint powers authority (hereinafter called "**Landlord**"), and CITY OF SELMA, a municipal corporation (hereinafter called "**City**" or "**Tenant**"), who agree as follows:

### ARTICLE 1. PROPERTY AND BACKGROUND.

1.01. The Property. Landlord is the owner of that certain property consisting of approximately 1.0 acres of land located at 1821 Pacific Avenue, Selma 93662, California, currently used for City's fire department training purposes, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "**Property**").

1.02. Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord a portion of the Property to conduct fire department operations (the "**Premises**"). A map of the Premises is attached hereto as Exhibit B, and incorporated herein by reference.

### ARTICLE 2. TERM.

2.01. Term. The initial term of this Lease (the "**Lease Term**") shall be two (2) years and shall expire at 11:59 p.m. on the day before the second anniversary of the Commencement Date (as defined below), unless terminated earlier in accordance with the provisions of this Lease. Tenant may terminate the Lease at any time, with or without cause, upon delivering 30 days' written notice to Landlord.

2.02. Commencement. The Lease Term shall commence on the Closing Date of the purchase by Landlord from Tenant and the recordation of the Grant Deed for such purchase in the office of the County Recorder of Fresno County (the "**Commencement Date**").

### ARTICLE 3. RENT.

3.01. Base Rent. The annual rent (the "**Rent**") for the Premises for the Lease Term shall be one dollar (\$1.00). Rent shall be payable to Landlord on the Commencement date, and on each anniversary thereof, at the address set forth in Section 11.05 of this Lease.

3.02. Net Lease. This Lease is a net lease, and Rent and other payments due and payable hereunder to or on behalf of Landlord shall be paid without notice or demand and without offset, counterclaim, abatement, suspension, deferment, deduction or defense.

### ARTICLE 4. USE, CHARACTER AND OPERATION OF IMPROVEMENTS.

4.01. General. Tenant may only use the Premises as set forth herein:

A. Permitted Uses. Tenant may only use the Premises for the operation of a fire department training facility as herein specified. Tenant may install and use combustibles as

so long as such items are cleared and debris removed after the completion of each exercise. No permanent structures or improvements may be installed during the Lease Term without Landlord's prior written consent.

#### 4.02. Use Obligations.

Landlord herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, that this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the leasing, subleasing, transferring, use or occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.

Notwithstanding the immediately preceding paragraph, with respect to familial status, said paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in said paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall apply to said paragraph.

4.03. Use Prohibitions. Tenant agrees that in connection with the use and operation of the Premises it will not:

- A. Sell or assign its interest in this Lease, including any mortgage, deed of trust or encumbrance; or
  - B. Sublease all or any portion of the Premises and improvements thereon without the express written consent of Landlord; or
  - C. Use or permit the use of any sound projection system such as loudspeakers, public address systems, sound amplifiers, radio or broadcast within the improvements in such manner that any sounds reproduced, transmitted or produced shall reach beyond the Premises boundaries except for equipment needed for fire training purposes.
  - D. Cause or permit substantial and obnoxious odors to emanate or be dispelled from the improvements, unless from burning materials during fire training exercises; or
  - E. Permit undue accumulations of garbage, trash, rubbish or any other refuse;
- or

F. Create, cause, maintain or permit any nuisance (as defined under applicable law) in, on or about the Premises; or

G. Commit or suffer to be committed any waste (as defined under applicable law) in, on or about the Premises; or

H. Knowingly use or allow the Premises to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument which affects the Premises and which is senior in priority to this Lease; or

I. Cause or permit any insurance coverage on the Premises or the improvements thereon to become void or voidable (unless Tenant has previously obtained replacement coverage in the same amounts) or make it impossible to obtain any required insurance at commercially feasible rates; or

J. Violate any law, ordinance or regulation applicable to the Premises and the improvements thereon.

K. Notwithstanding the provisions set forth in Sections 4.03.A.-J., open fires, flames and night trainings shall not constitute a nuisance on the Premises, and neither open fires nor flames shall constitute waste, however all conduct on the Premises must be performed in accordance with all applicable laws.

4.04. Governmental Requirements. Tenant shall at all times comply with, and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with, any and all laws, statutes, ordinances, rules and regulations ("**Laws**") which apply to the operation and use of the Premises on a nondiscriminatory basis, including those requiring alterations or additions to be made to, or safety appliances and devices to be maintained or installed in, on or about the Premises on a nondiscriminatory basis under any Laws now or hereafter adopted, enacted or made and applicable to the Premises, and payment of any fees, charges or assessments arising out of or in any way related to the Premises on a nondiscriminatory basis as a source of adverse environmental impacts or effects.

## **ARTICLE 5. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS.**

5.01. Required Governmental Permits. Upon request, Tenant shall deliver to Landlord at Tenant's expense evidence of compliance with all then applicable codes, ordinances, regulations and requirements for permits and approvals.

5.02. Premises Conditions. Landlord makes no covenants or warranties respecting any condition of the Premises or the Property. By entering on and accepting the Premises as of the Commencement Date, Tenant accepts the Premises AS IS with no representations and warranties as to condition or fitness for a particular purpose. Tenant acknowledges that there is no water, sewer, electricity, gas or phone service to the Premises as of the Commencement Date.

5.03. Maintenance; Repairs, Alterations; Reconstruction.

A. Tenant Required to Maintain Premises.

(1) Definition of Duty; Compliance with Laws. Throughout the Term, Tenant shall, at Tenant's sole cost and expense, maintain the Premises in neat and orderly condition, and in accordance with all applicable laws, rules, ordinances, orders and regulations of: (a) federal, state, county, municipal and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus and officials; (b) the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction; and (c) all insurance companies insuring all or any part of the Premises or both. Landlord shall have no duty or obligation to insure the Premises.

Tenant shall promptly and diligently repair, restore, and replace the Premises as required to maintain or comply as above. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind on the Premises.

Nothing in this provision defining the duty of maintenance shall be construed as limiting any right given elsewhere in this Lease to alter, modify, demolish, remove or replace any improvement, or as limiting provisions relating to condemnation or to damage or destruction during the final year or years of the Term. No deprivation, impairment or limitation of use resulting from any event or work contemplated by this section shall entitle Tenant to any offset, abatement, or reduction in rent nor to any termination or extension of the Term.

In determining whether Tenant has acted promptly as required under the foregoing paragraph, one of the criteria to be considered is the availability of any applicable insurance proceeds.

If Tenant elects not to restore after damage or destruction, in accordance with the provisions of this Lease, all insurance proceeds received by Tenant as a result of such damage or destruction shall be Tenant's sole property.

5.04. Ownership of Improvements.

A. Ownership of Any New Improvements. Any improvements constructed with permission on the Premises by Tenant as permitted by this Lease shall be owned by Tenant until expiration of the Term or sooner termination of this Lease. Tenant shall not waste, destroy or modify any improvements on the Premises, except as permitted by this Lease.

B. Equipment, Chattel, Trade Fixtures. All articles of personal property, including all chattel and business and trade fixtures, machinery, equipment, furniture and movable partitions owned by Tenant, and which were installed by Tenant on the Premises, shall remain the property of Tenant, and may be removed at any time during the Term or upon termination of this Lease. Tenant shall be responsible for the repair of any damage caused by such removal.

C. Ownership at Termination. Subject to the provisions of Section 5.04.D., all improvements on the Premises at the expiration of the Term or sooner termination of this

Lease shall, without compensation to Tenant, then become Landlord's property free and clear of all claims to or against them by Tenant or any third person, and Tenant shall defend and indemnify Landlord against all liability and loss arising from such claims or from Landlord's exercise of the rights conferred by this paragraph.

D. Tenant's Duty to Remove. At the expiration or sooner termination of the Lease, Landlord may, at Landlord's election, demand the removal from the Premises of all fixtures and Improvements constructed or placed on the Premises by Tenant or of certain fixtures or improvements or both, as specified in the notice provided for below. A demand to take effect at the normal expiration of the Term shall be effected by notice given at least 30 days before the expiration date. A demand to take effect on any other termination of the Lease shall be effected by notice given in or concurrently with notice of such termination or within 15 days after such termination. Tenant shall comply with the notice before the expiration date, for normal termination, and within 30 days after the notice for other terminations. The cost of such removal shall be paid by Tenant. The duty imposed by this provision includes but is not limited to the duty to fill all excavations, return the surface to grade and leave the Premises safe and free from debris and hazards; provided that, after compliance with a demand for removal of less than all fixtures and Improvements, Tenant shall be required to remedy only willful and negligent injuries to the Premises or remaining Improvements or fixtures. The duty imposed by this Section 5.04 shall not include an obligation to remove underground utilities, parking and sidewalk areas and landscaping, if any.

5.05. Relocation. Landlord shall assist Tenant in relocation of its fire department training facility to a new location, up to the amount of One Hundred Thousand Dollars (\$100,000) upon receipt of valid receipts of costs incurred. Landlord's payment to Tenant shall be made within 30 days of Landlord's receipt of invoice and receipts. This Section 5.05 shall survive the termination of this Lease.

5.06. Waiver. The provisions of this Article 5 shall govern the rights of the parties in the event of any full or partial destruction of Improvements on the Premises. Tenant hereby waives the provisions of Civil Code section 1932(2) and Civil Code section 1933(4) with respect to any destruction of any Improvements on the Premises to the extent that such Civil Code sections are inconsistent with the provisions of this Article 5.

## **ARTICLE 6. TAXES AND ASSESSMENTS**

Landlord and Tenant are both public entities and exempt from all taxes, assessments, license fees and other charges that are levied and assessed against the Premises, Tenant's personal property or the real property which may become payable during the term. To the extent any private party or a taxable entity succeeded to Tenant's interest, such party shall be subject to the Revenue and



Taxation Code 107.6 which provides that a possessory interest may be taxed and such party shall be subject to such tax.

#### **ARTICLE 7. UTILITIES.**

Tenant shall pay when due and shall hold Landlord harmless from any liability for all charges for water, gas, sewage, garbage collection, electricity, telephone and other utility service supplied to the Premises.

#### **ARTICLE 8. INSURANCE AND INDEMNITY.**

Indemnity. Tenant agrees to protect and does hereby indemnify and hold Landlord harmless from all demands, claims, actions and damages to any person or property (including reasonable attorneys' fees) arising out of or connected with the use or occupancy of the Premises by Tenant other than those directly attributable (and then to the extent attributable) to the gross negligence or willful misconduct of Landlord or Landlord's agents and their employees.

##### **8.01. Insurance.**

A. General. Without limiting Tenant's indemnification of Landlord, Tenant shall provide and maintain at its own expense during the Lease Term the following programs of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) reasonably satisfactory to Landlord and evidence of such programs satisfactory to Landlord shall be delivered to Landlord on or before the Commencement Date of this Lease. Such evidence shall specifically identify this Lease and shall contain express conditions that Landlord is to be given written notice at least 30 days in advance of any material modification or termination of any program of insurance.

(1) Comprehensive General Liability Insurance endorsed for property-operations, products/completed operations and contractual liability, in the amount of at least \$1,000,000 for any occurrence, \$2,000,000 annual aggregate and \$1,000,000 property damage.

(2) Comprehensive Auto Liability Insurance endorsed for all owned and non-owned vehicles with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence.

(3) Worker's Compensation Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California and which specifically covers all persons providing services on behalf of Tenant under this Lease and all risks to such persons and employer's liability insurance with a limit of no less than \$1,000,000 per employee and \$1,000,000 per occurrence.

8.02. Proof of Coverage. All policies required hereunder shall be with companies having a Best's A/VIII rating (and if Best's no longer exists, an equivalent rating). Executed copies of all policies of insurance or certificates thereof shall be delivered to Landlord. All insurance policies required by this Article 8 shall name Landlord as an additional insured. As often as any such policies shall expire or terminate, renewal or additional policies shall be



procured and maintained in like manner and to like extent. All policies of insurance must contain a provision that the company writing such policy will give all parties 30 days advance written notice of any cancellation or lapse of the effective date or any reduction in the amounts of insurance.

Nothing in this Article 8 shall prevent Tenant from carrying insurance of the kind required of Tenant under a blanket insurance policy or policies which cover other properties owned or operated by Tenant. Tenant shall provide Landlord with certificates of insurance naming Landlord as an additional insured and setting forth the required coverage.

#### 8.03. Environmental Indemnity.

A. Tenant's Indemnity Obligations. Tenant agrees, from and after the Lease Term Commencement Date, to defend, indemnify, protect and hold harmless Landlord and its officers, beneficiaries, public officials, volunteers, employees, agents, attorneys, representatives, legal successors and assigns ("**Landlord Indemnitees**") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein) or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials (as defined herein), at, on, in, beneath or from the Premises and/or the Property during the term of the Lease (sometimes herein collectively referred to as "**Contamination**"), except to the extent caused by the Landlord or its agents, contractors or employees during the Landlord's ownership of the Property prior to the commencement of the Lease or solely caused by the Landlord or its agents, contractors or employees during the term of the Lease. Tenant's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination, at Tenant's sole cost.

B. Release and Waiver. Tenant hereby releases and waives all rights, causes of action and claims Tenant has or may have in the future against the Landlord Indemnitees arising out of or in connection with any Hazardous Materials (as defined herein), at, on, in, beneath or from the Property, except to the extent caused or permitted by Landlord or its contractors, agents, or employees prior to conveyance to the Tenant or caused by Landlord during the term of the Lease.

#### C. Definitions.

(1) As used in this Lease, the term "**Environmental Response Actions**" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by Tenant.

(2) As used in this Lease, the term "**Environmental Response Costs**" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

(3) As used in this Lease, the term "**Hazardous Materials**" means any substance, material or waste which is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum or petroleum products; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. section 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (7) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq. (42 U.S.C. § 6903) or its implementing regulations; (8) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601 et seq. (42 U.S.C. § 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

D. Materiality. Tenant acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of Tenant for the benefit of Landlord set forth in this Lease are a material element of the consideration to Landlord for the performance of its obligations under this Lease, and that Landlord would not have entered this Lease unless Tenant's obligations were as provided for herein.

## ARTICLE 9. CONDEMNATION.

### 9.01. Definitions.

A. "**Condemnation**" means (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. "**Date of taking**" means the date the condemnor has the right to possession of the property being condemned.

C. "**Award**" means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. "**Condemnor**" means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

9.02. Parties' Rights and Obligations to be Governed by Lease. If during the Lease Term there is any taking of all or any part of the Premises, any improvements on the Premises or any interest in this Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 9.

9.03. Total Taking. If the Premises is totally taken by condemnation, this Lease shall terminate on the date of taking.

9.04. Effect of Partial Taking. If any portion of the Premises or the improvements thereon is taken by condemnation, this Lease shall remain in effect, except that Tenant may elect to terminate this Lease if the remaining portion of the Premises is rendered unsuitable (as defined herein) for Tenant's continued use. The remaining portion of the Premises shall be deemed unsuitable for Tenant's continued use if following a reasonable amount of reconstruction, Tenant's facility on the Premises could not be operated in a manner that is comparable to the manner of operation prior to the date of the taking. Tenant must exercise its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this paragraph will result in this Lease continuing in full force and effect.

9.05. Restoration of the Premises. If, in Tenant's judgment, it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use so much of the award as is necessary to restore or to add on to the Premises so that the area and approximate layout of the Premises will be substantially the same after the date of taking as they were before the date of taking. In such a case the remainder of the award shall belong to Landlord. If it is not reasonably possible to so restore the area and layout of the Premises, the remaining provisions of this Article 9 shall govern the rights of the parties.

9.06. Waiver of Code of Civil Procedure Section 1265.130. Each party waives the provisions of the Code of Civil Procedure section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises.

9.07. Award. The award for the Premises and for the improvements shall belong to Landlord, except as hereinafter provided. Tenant shall be entitled to the value of its interest in any personal property and fixtures which it has the right to remove and to any portion of the award specified to apply to Tenant's goodwill, and to be compensated for interruption of or damage to Tenant's business, and compensation based upon the then fair market value of Tenant's interest in this Lease.

## **ARTICLE 10. TENANT DEFAULTS AND LANDLORD'S REMEDIES.**

10.01. Defaults by Tenant. Any of the following occurrences shall constitute a default under this Lease:

A. Tenant shall at any time be in default in the payment of rent or any other monetary sum called for by this Lease for more than 3 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements herein contained, and such other default continues for 10 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 10 days

and Tenant has failed to commence such cure within such 10 days and to thereafter diligently pursue completion of such cure; or

C. Tenant (i) makes a general assignment for the benefit of its creditors or file a petition for bankruptcy or other reorganization, liquidation, dissolution or similar relief; (ii) has a proceeding filed against it seeking any relief mentioned in (i) above which is not discharged within sixty (60) days thereafter; or (iii) has a trustee, receiver or liquidator appointed for Tenant or a substantial part of its property;

D. Vacation or abandonment of the Premises;

E. Tenant assigns (whether or not such assignment is deemed to be effective) this Lease (or any rights therein or herein), or sells, transfers, conveys, assigns or leases the whole or any part of the Property or any improvement constructed thereon in violation of this Lease; or

10.02. Landlord's Remedies. In the event of any such default by Tenant, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder.

10.03. Entry. In the event of any such default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to reenter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. No reentry or taking possession of the Premises by Landlord pursuant to this subsection shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

10.04. Rights Cumulative. All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any rent or other payments due hereunder or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in such waiver. The consent or approval of Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent or similar acts by Tenant.

10.05. Landlord's Right to Cure Tenant's Default. Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the maximum rate permitted by law from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

## ARTICLE 11. MISCELLANEOUS.

11.01. Holding Over. If Tenant shall hold over the Premises after the expiration of the term hereof with the consent of Landlord, either express or implied, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Lease. Tenant hereby agrees to pay to Landlord as monthly rental 150% of the Base Rent in effect at the expiration of the term, together with any other monetary sums which are Tenant's obligations to pay under this Lease.

11.02. Attorneys' Fees. In the event that any action is brought by either party hereto as against the other party hereto for the enforcement or declaration of any right or remedies in or under this Lease or for the breach of any covenant or condition of this Lease, then and in that event the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court or arbitrator therein including, but not limited to, reasonable attorneys' fees.

11.03. Quiet Possession. Landlord agrees that Tenant, so long as Tenant is not in default after notice and time to cure under this Lease and is paying the rent and performing the covenants and conditions of this Lease, shall quietly have, hold and enjoy the Premises throughout the term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord; and Landlord warrants to Tenant that as of the Commencement Date of said Lease Term, there were no existing tenancies on the Premises.

11.04. Force Majeure. Except as to the payment of rent, neither of the parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God or the public enemy, action, inaction or interference of governmental authorities or agents, including a City referendum or initiative, war, invasion, insurrection, rebellion, riots, strikes or lockouts or any other cause whether similar or dissimilar to the foregoing which is beyond the reasonable control of such parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performance of this Lease.

### 11.05. Notices.

"Notice" means any notice, demand, request or other communication or document to be provided under this Lease to a party to this Lease. The Notice shall be in writing and shall be given to the party at its address or telecopy number set forth below or such other address as the party may later specify for that purpose by Notice to the other party. Each Notice shall, for all purposes, be deemed given and received: if hand-delivered to a party against receipted copy, when the copy of Notice is receipted; if given by a nationally-recognized and reputable overnight delivery service, the day on which the Notice is actually received by the party; or if given by certified mail, return receipt requested, postage prepaid, two business days after it is deposited with the United States Postal Service. Email be used for convenience only but does not serve as official notice.



If to Tenant: City of Selma  
Attn: City Manager  
1710 Tucker Street  
Selma, CA 93662  
Phone: (559) 891-2200  
Email: IsaacM@cityofselma.com

With a copy to: Casso & Sparks, LLP  
Attn: Bianca Sparks Rojas  
13200 Crossroads Parkway North, Suite 345  
City of Industry, CA 91746  
Phone: (626) 269- 2980  
Email: bsparks@cassosparks.com

If to Landlord: Fresno County Rural Transit Agency  
Attn: General Manager  
2035 Tulare Street, Suite 201  
Fresno, CA 93721  
Phone: (559) 233-6789  
Email: mstites@fresnocog.org

With a copy to: Best Best & Krieger LLP  
Attn: Nancy A. Park  
500 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Phone: (916) 325-4000  
E-Mail: nancy.park@bbklaw.com

A. The provisions above governing the date on which a Notice is deemed to have been received by a party to this Lease shall mean and refer to the date on which a party to this Lease, and not its counsel or other recipient to which a copy of the Notice may be sent, is deemed to have received the Notice.

B. If Notice is tendered under the provisions of this Lease and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been given and shall be effective as of the date provided in this Lease. The contrary notwithstanding, any Notice given to either party in a manner other than that provided in this Lease, that is actually received by the noticed party, shall be effective with respect to such party on receipt of the Notice.

Either party hereto may from time to time by written notice to the other party designate a different address which shall be substituted for the one above specified. Notices shall be effective when received. Any notice or other document sent by certified mail, as aforesaid, shall be deemed received 72 hours after the mailing thereof, as above provided. Notices or other documents sent by personal delivery shall be deemed received on the date of such delivery.



11.06. Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

11.07. Surrender. Upon the expiration or sooner termination of the term of this Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender the Premises to Landlord, together with the improvements then situated thereon, unless specifically exempted by this Lease, in neat and orderly condition.

11.08. Severability. If any provision of this Lease, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Lease and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

11.09. Further Assurances. Each of the parties shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties.

11.10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11.11. Binding. Subject to the restrictions set forth herein regarding assignment of the leasehold estate, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

11.12. Landlord's Right to Enter the Premises. Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times, after giving Tenant three business days prior written notice, for any of the following purposes: to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease; to do any necessary maintenance and to make any restoration to the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Lease; to post "for rent" or "for lease" signs during the last 6 months of the Lease term, or during any period while Tenant is in default; to show the Premises to prospective brokers, agents, buyers, tenants or persons interested in an exchange, at any time during the term; and to do any act or thing necessary for the safety or preservation of the Premises if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street. If practical, Landlord shall make reasonable efforts to enter the Premises during times the portion of the Premises being entered is closed for business.

Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Landlord's entry on the Premises as provided in

this Section other than those caused by Landlord's or its agents or contractors negligence or willful misconduct.

Tenant shall not be entitled to an abatement or reduction of rent if Landlord exercises any rights reserved in this Section.

11.13. Disclaimer of Partnership. The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise.

11.14. Quitclaim. At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord within 30 days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

11.15. Interpretation. The titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

11.16. Covenants and Conditions. Each term and each provision, including, without limitation, the obligation for the payment of rent, to be performed by Tenant or Landlord, as the case may be, shall be construed to be both a covenant and a condition of this Lease.

11.17. Integration. This Lease and the exhibits and documents incorporated by reference, constitutes the entire agreement between the parties and there are no conditions, representations or agreements regarding the matters covered by this Lease which are not expressed herein.

11.18. Estoppel Certificate. Tenant agrees to deliver, within 10 days after written request therefor by Landlord an estoppel certificate in a form reasonably requested by Landlord certifying that this Lease is unmodified and is in full force and effect (if such be the case), certifying the commencement and termination dates of the Lease Term, certifying that there has been no assignment or sublease of this Lease and that there are no defenses or offsets hereto (or stating those claimed by Tenant) and containing such other information as may reasonably be requested by the party to whom such certificate is addressed. Failure to deliver the estoppel certificate within 10 days shall be a default of the Lease, and shall be conclusive that this Lease is in full force and effect and that Tenant has no defenses or offsets against Landlord.

11.19. Landlord's Right to Sell. Landlord shall have the right to sell its fee estate in the Property and assign its interest in this Lease without limitation; provided, however, that any such sale shall be subject to this Lease. Upon any such conveyance, Landlord shall automatically be relieved of any obligations under this Lease. Landlord shall also have the right to mortgage, hypothecate or otherwise pledge its interest in the Property and this Lease.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, we have executed this instrument on this \_\_\_\_ day of \_\_\_\_\_, 2018.

**LANDLORD:**

FRESNO COUNTY RURAL TRANSIT  
AGENCY, a joint powers authority

By: \_\_\_\_\_  
MOSES STITES, General Manager

APPROVED AS TO LEGAL FORM ON BEHALF OF THE FCRTA:  
DANIEL C. CEDERBORG, County Counsel

By \_\_\_\_\_  
KYLE ROBERSON, Senior Deputy County Counsel

**TENANT:**

CITY OF SELMA, a municipality

By: \_\_\_\_\_  
Jim Avalos, Mayor

**ATTEST:**

\_\_\_\_\_  
REYNA RIVERA, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
BIANCA SPARKS ROJAS, City Attorney

EXHIBIT A TO LEASE

DESCRIPTION OF THE PROPERTY

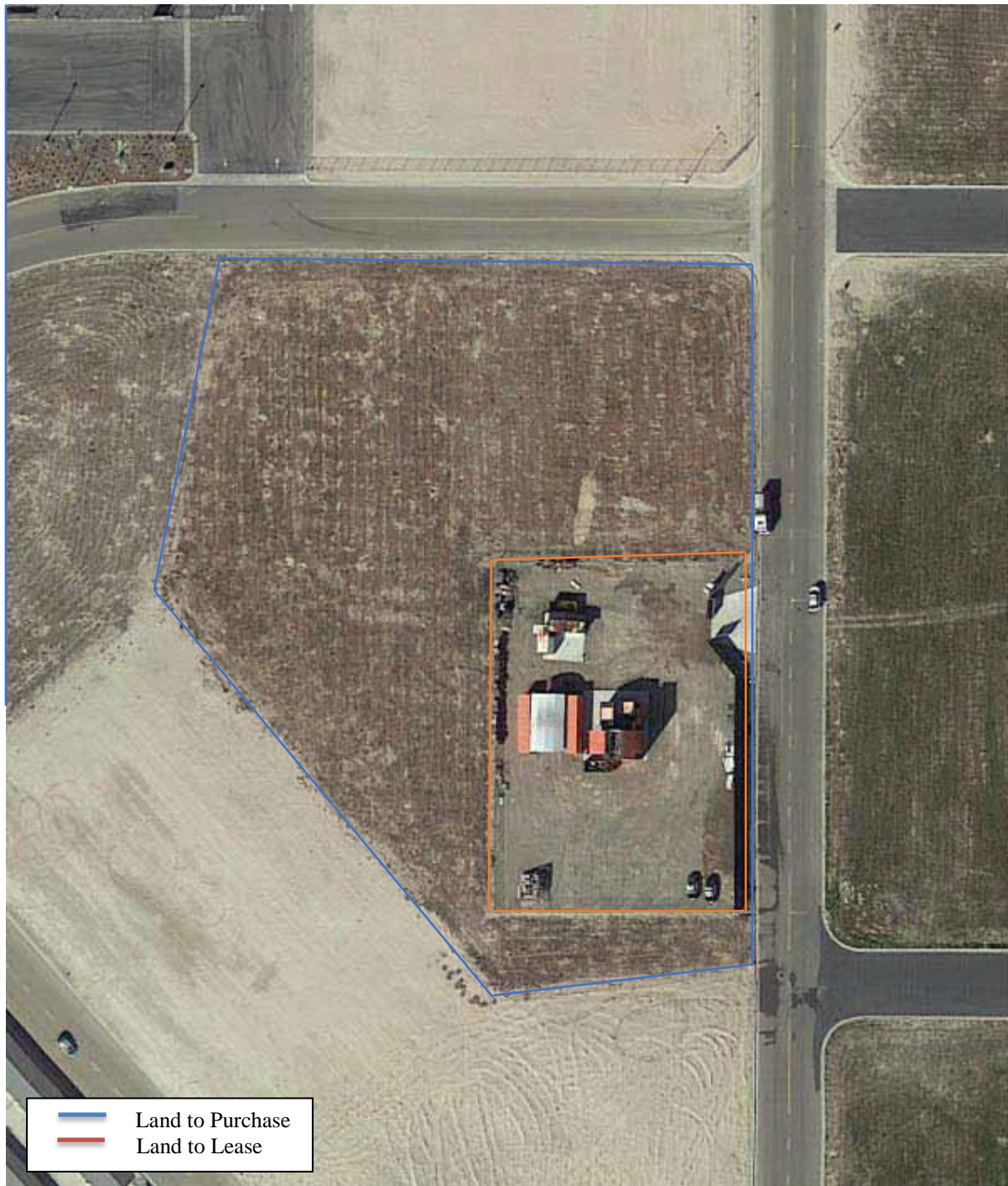
All that real property located in the City of Selma, County of Fresno, California as further described as:

Lot 12 of Tract No. 5429, City of Selma, County of Fresno, State of California, according to the Map recorded in Book 71 Page 3 of Plats, Fresno County Records.

APN: 390-190-15S

EXHIBIT B TO LEASE

MAP OF THE PREMISES



## Agenda Item 6.

Discussion and direction regarding a conditional use permit for a proposed 1.65 megawatt photovoltaic solar power generation facility located at the westside of S. McCall Avenue, approximately 1,915 feet south of Manning Avenue, as requested by the Fresno County Board of Supervisors.

Oral Report Only