

**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

April 20, 2020

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**ITEM NO:**

1.a.

**SUBJECT:** Consideration on Resolution Certifying Results of Election on Measure "L" from Election Consolidated with Presidential Primary Election on March 3, 2020

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**RECOMMENDATION:** Adopt Resolution Declaring Results of Election of March 3, 2020, on Measure "L" the City of Selma Licensed Gambling Establishment Measure.

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**DISCUSSION:** At the Consolidated Presidential Primary Election that was conducted on March 3, 2020, Measure "L" appeared on the ballot and if passed would have allowed for a licensed gambling establishment in the City of Selma. The County Registrar of Voters issued its certification of the election on April 3, 2020. Pursuant to Elections Code §10264 as soon as the results of an election is declared, including a consolidated election in which the election results are declared by the County Registrar of Voters, the governing board of the City is required to enter in its records a statement of the result containing specified information, all of which appear in the Certificate of the Election issued by the County Registrar of Voters.

To conform to the requirements of Election Code §10264 the Council is required to adopt a resolution which serves as a permanent record of the election results on a municipal measure that appeared on the ballot.


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**RECOMMENDATION:** Adopt Resolution Declaring Results of Election of March 3, 2020, on Measure "L" the City of Selma Licensed Gambling Establishment Measure.

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

4-14-2020  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Neal E. Costanzo, City Attorney

04/14/2020  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Teresa Gallavan, City Manager

4-14-20  
\_\_\_\_\_  
Date

**RESOLUTION NO. 2020-\_\_\_\_R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SELMA CERTIFYING RESULTS OF CONSOLIDATED PRESIDENTIAL  
PRIMARY ELECTION OF MARCH 3, 2020, ON MEASURE "L" THE CITY  
OF SELMA LICENSED GAMBLING ESTABLISHMENT MEASURE**

**WHEREAS**, on March 3, 2020, the Consolidated Presidential Primary Election, was conducted which included on the ballot for registered voters within the City of Selma, Measure "L", the City of Selma License Gambling Establishment Measure (hereinafter the "Measure"); and

**WHEREAS**, the County Registrar of Voters has certified the results of the election to the City of Selma and copies of that certification are attached and incorporated by reference as Exhibit A and show the total number of votes cast in the City on Measure L; the Measure voted upon, the number of votes given at each precinct for and against Measure L and the number of votes given in the City for and against the Measure; and

**WHEREAS**, Election Code §1264 provides that as soon as the result of an election is declared, the governing body must enter in its records a statement of the results which is required to contain specific information concerning the vote on a measure within a city and the certification of the election results for the March 3, 2020, Presidential Primary Election, Exhibit A, identify the measure voted on, the whole number of votes cast in the City, the number of votes given at each precinct for and against the measure and the number of votes given in the City for and against the Measure.

**NOW, THEREFORE**, the City Council resolves as follows:

1. The foregoing recitals are true and correct.
2. The certification of the Election results on Measure L the Gambling Establishment Measure and the information called for by the provisions of Election Code §10264 are contained in the attached Exhibit A which is expressly adopted by the City Council as reflecting the whole number of votes cast in the City, the Measure voted upon in the City, the number of votes at each precinct for and against the Measure and the total number of votes given in the City for and against the Measure.
3. The number of votes given at the City for and against Measure L the Licensed Gambling Establishment Measure are as follows:

	<u>YES</u>	<u>PERCENTAGE</u>	<u>NO</u>	<u>PERCENTAGE</u>
TOTAL	1082	33.21%	2176	66.79%

The foregoing resolution was duly approved by the Selma City Council at a regular meeting held on the 20<sup>th</sup> day of April, 2020 by the following vote, to wit:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSTAIN: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:

ATTEST:

\_\_\_\_\_  
Louis Franco, Mayor

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



# CERTIFICATE OF COUNTY CLERK TO RESULTS OF THE CANVASS

I, BRANDI L. ORTH, County Clerk/Registrar of Voters of the County of Fresno, State of California, do hereby certify that pursuant to the provisions of Section 15301 et seq of the Elections Code of the State of California, I did canvass the returns of the votes cast in the City of Selma, County of Fresno, at the election held on March 3, 2020, for the Local Measure submitted to the vote of the voters, and that the Statement of the Vote Cast, to which this certificate is attached, shows the whole number of votes cast in the said city and in each of the respective precincts therein, and that the totals of the respective columns and the totals shown for the measure are full, true and correct.

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**COUNTY OF FRESNO**  
**CONSOLIDATED PRESIDENTIAL PRIMARY ELECTION**  
**MARCH 3, 2020**  
**STATEMENT OF VOTE**  
**CITY OF SELMA**

Precinct	Registered Voters	Voters Cast	% Turnout
<b>Countywide</b>			
<b>Electionwide</b>			
0000280			
Polling	0	0	N/A
Vote by Mail	0	0	N/A
Total	0	0	N/A
0000281			
Polling	5	0	0.00%
Vote by Mail	5	4	80.00%
Total	5	4	80.00%
0000282			
Polling	1,881	104	5.53%
Vote by Mail	1,881	428	22.75%
Total	1,881	532	28.28%
0000283			
Polling	2,095	109	5.20%
Vote by Mail	2,095	710	33.89%
Total	2,095	819	39.09%
0000284			
Polling	2,424	122	5.03%
Vote by Mail	2,424	848	34.98%
Total	2,424	970	40.02%
0000285			
Polling	1,830	84	4.59%
Vote by Mail	1,830	536	29.29%
Total	1,830	620	33.88%



Precinct	Registered Voters	Voters Cast	% Turnout
0000286			
Polling	1,689	72	4.26%
Vote by Mail	1,689	358	21.20%
Total	1,689	430	25.46%
Electionwide - Total	9,924	3,375	34.01%
Countywide - Total	9,924	3,375	34.01%
Polling	9,924	491	4.95%
Vote by Mail	9,924	2,884	29.06%

## L - City Of Selma License Gaming Establishment (50% +1 required to pass) (Vote for 1)

Precinct	Countywide Electionwide	Times Cast	Registered Voters	Undervotes	Overvotes	Precinct	Countywide Electionwide	YES	NO	Total Votes
0000280	Polling	0	0	0	0	0000280	Polling	0	0	0
	Vote by Mail	0	0	0	0		Vote by Mail	0	0	0
	Total	0	0	0	0		Total	0	0	0
0000281	Polling	0	5	0	0	0000281	Polling	0	0	0
	Vote by Mail	4	5	0	0		Vote by Mail	1	25.00%	4
	Total	4	5	0	0		Total	1	25.00%	4
0000282	Polling	104	1,881	11	0	0000282	Polling	42	45.16%	93
	Vote by Mail	428	1,881	28	0		Vote by Mail	123	30.75%	400
	Total	532	1,881	39	0		Total	165	33.47%	493
0000283	Polling	109	2,095	3	0	0000283	Polling	37	34.91%	106
	Vote by Mail	710	2,095	21	0		Vote by Mail	203	29.46%	689
	Total	819	2,095	24	0		Total	240	30.19%	795
0000284	Polling	122	2,424	4	0	0000284	Polling	46	38.98%	118
	Vote by Mail	848	2,424	19	0		Vote by Mail	271	32.69%	829
	Total	970	2,424	23	0		Total	317	33.47%	947
0000285	Polling	84	1,830	3	0	0000285	Polling	43	53.09%	81
	Vote by Mail	536	1,830	11	0		Vote by Mail	163	31.05%	525
	Total	620	1,830	14	0		Total	206	33.99%	606
0000286	Polling	72	1,689	5	0	0000286	Polling	32	47.76%	67



Precinct	Countywide Electionwide	Unresolved Write-In
0000280	Polling	0
	Vote by Mail	0
	Total	0
0000281	Polling	0
	Vote by Mail	0
	Total	0
0000282	Polling	0
	Vote by Mail	0
	Total	0
0000283	Polling	0
	Vote by Mail	0
	Total	0
0000284	Polling	0
	Vote by Mail	0
	Total	0
0000285	Polling	0
	Vote by Mail	0
	Total	0
0000286	Polling	0

Precinct	Vote by Mail	Times Cast	Registered Voters	Undervotes	Overvotes
	358		1,689	12	0
	Total	430	1,689	17	0
Electionwide - Total	3,375	3,375	9,924	117	0
Countywide - Total	3,375	3,375	9,924	117	0

Precinct	Vote by Mail	YES	NO	Total Votes
		121	225	346
	Total	153	260	413
Electionwide - Total		1,082	2,176	3,258
Countywide - Total		1,082	2,176	3,258



Precinct	Vote by Mail	Unresolved Write-In
	Total	
	Electionwide - Total	
	Countywide - Total	
	0	0
	0	0
	0	0

**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

April 20, 2020

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**ITEM NO:** 1.b.

**SUBJECT:** Consideration of a Resolution Approving the Project List for Senate Bill (SB) 1 Funding for FY 20/21

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**BACKGROUND:** On April 28, 2017, the Governor signed Senate Bill ("SB") 1 to address basic road maintenance, rehabilitation and critical safety needs on the state highway and local road system. SB1 established requirements for holding local governments accountable for the efficient use of public funds to maintain public streets and roads. Under the provisions of SB1, funds from the Road Maintenance and Rehabilitation Account ("RMRA") may be used for City projects that meet certain criteria and requires that eligible cities submit a list of proposed projects to be funded with these funds pursuant to an adopted city budget.

Cities are allocated RMRA funds based on population, and in order to use the RMRA funds, projects must be the following qualifications: considered basic road maintenance and road rehabilitation projects, and or critical safety projects.

**DISCUSSION:** The projects being submitted for the 2020-2021 funding cycle are:

1. Nebraska Avenue Improvement Project:

Located in Selma on Nebraska Avenue from Highway 43 to Mitchell Avenue, reconstruct the existing 2-lane rural roadway including widening the westbound roadway to the ultimate width, providing enhanced access in and out of downtown Selma and congestion relief at the Thompson/Highland intersection.

The Engineer's estimate for this project is \$542,800. The estimated useful life of the project is 20-25 Years. Estimated completion date is December 2020.

2. Arterial Street Rehabilitation:

Patch longitudinal cracking with Hot Mix Asphalt (HMA) in 4' strips along Arterials and Major Collectors using a 4' wide paving machine. Crack seal all joints and cracks, place Caltrans type II slurry seal.

The Engineer's estimate for this project is \$850,000. The estimated useful life of the project is 20-25 Years. Estimated completion date is December 2025.



3. Alphabet Streets (A through E) Reconstruction:

Reconstruction of roadway structural sections, replacement of damaged sidewalks, construction of sidewalks to provide a continuous path of travel through neighborhoods, and upgrades to curb ramps to current ADA standards in the Alphabet Streets.

The Engineer's estimate for this project is \$2,000,000. The estimated useful life of the project is 20-25 Years. Estimated completion date is December 2025.

The projects are scalable depending on the remaining funds available from SB1.

<b><u>COST:</u></b> <i>(Enter cost of item to be purchased)</i>		<b><u>BUDGET IMPACT:</u></b> <i>(Enter amount this non-budgeted item will impact this years' budget – if budgeted, enter NONE).</i>
Cost will depend on scalability of the project and funds available		None
<b><u>FUNDING:</u></b> <i>(Enter the funding source for this item – if fund exists, enter the balance in the fund).</i>		<b><u>ON-GOING COST:</u></b> <i>(Enter the amount that will need to be budgeted each year – if one-time cost, enter NONE).</i>
Funding Source: SB1- Road Maintenance and Rehab		None

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**RECOMMENDATION:** Adopt the Resolution approving the project list for SB 1 funding for Fiscal Year 20/21.

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<u>/s/</u>	<u>04/16/2020</u>
Isaac Moreno, Assistant City Manager	Date
 <u>/s/</u>	 <u>04/16/2020</u>
Teresa Gallavan, City Manager	Date

**RESOLUTION NO. 2020 – \_\_\_\_ R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA  
APPROVING THE PROJECT LIST FOR SENATE BILL (SB) 1 FUNDING FOR  
FISCAL YEAR 2020-2021**

**WHEREAS**, Senate Bill (“SB”) 1, the Road Repair and Accountability Act of 2017 was adopted by the State Legislature and signed into law by the Governor in April 2017, in order to address the significant multi-modal transportation funding shortfalls statewide; and

**WHEREAS**, the City must adopt a list of all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (“RMRA”), created by SB 1 by Resolution, which must include a description and the location of each proposed project, a proposed schedule for the project’s completion, and the estimated useful life of the improvement; and

**WHEREAS**, the City is applying for SB1 funding for fiscal year 2020-2021 from the California Transportation Commission for the following proposed project(s):

	<u>Project Location and Description</u>	<u>Estimated Completion Date</u>		
		<u>Pre-Construction</u>	<u>Construction</u>	<u>Estimated Useful Life</u>
1.	Nebraska Avenue Improvement Project: Located in Selma on Nebraska Avenue from Highway 43 to Mitchell Avenue, reconstruct the existing 2-lane rural roadway including widening the westbound roadway to the ultimate width, providing enhanced access in and out of downtown Selma and congestion relief at the Thompson/Highland intersection.	01/2020	07/2020	20-25 Years
2.	Arterial Street Rehabilitation: Patch longitudinal cracking with Hot Mix Asphalt (HMA) in 4' strips along Arterials and Major Collectors using a 4' wide paving machine. Crack seal all joints and cracks, place Caltrans type II slurry seal over entire road width and restripe.	01/2021	05/2021	20-25 Years
3.	Alphabet Streets (A through E) Reconstruction Project: Reconstruction of roadway structural sections, replacement of damaged sidewalks, construction of sidewalks to provide a continuous path of travel through neighborhoods, and upgrades to curb ramps to current ADA standards in the Alphabet Streets.	01/2021	06/2021	20-25 Years

and



**WHEREAS**, the City, will receive an estimated \$473,021 in RMRA funding in Fiscal Year 2020-21 from SB 1; and

**WHEREAS**, the SB 1 project list and overall investment in our local streets and roads infrastructure, will have significant benefits statewide.

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

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

**SECTION 2.** The City Council hereby approves the following project list for SB 1 funding for Fiscal Year 2020-21, and directs that it be sent to the California Transportation Commission.

	<u>Project Location and Description</u>	<u>Estimated Completion Date</u>		<u>Estimated Useful Life</u>
		<u>Pre-Construction</u>	<u>Construction</u>	
1.	Nebraska Avenue Improvement Project: Rehabilitate and widen roadway from 2-lane rural roadway to a 4-lane arterial with bike lanes and sidewalks.	01/2020	05/2020	20-25 Years
2.	Arterial Street Rehabilitation: Patch longitudinal cracking with Hot Mix Asphalt (HMA) in 4' strips along Arterials and Major Collectors using a 4' wide paving machine. Crack seal all joints and cracks, place Caltrans type II slurry seal over entire road width and restripe.	01/2021	05/2021	20-25 Years
3.	Alphabet Streets (A through E) Reconstruction Project: Pavement rehabilitation and ADA upgrade of the alphabet streets between Rose and Floral Avenues.	01/2021	06/2021	20-25 Years

**SECTION 3.** 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.** That the City Clerk shall certify to the adoption of this Resolution and that the same shall be in full force and effect.

**PASSED, APPROVED and ADOPTED** by the City Council of the City of Selma at a regular meeting this 20<sup>th</sup> day of April, 2020, by the following vote:

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

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Louis Franco  
Mayor

ATTEST:

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Reyna Rivera  
City Clerk

# CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
74512	03/12/2020	Printed	AIRGAS USA LLC	OXYGEN CYLINDER RENTAL		111.92
74513	03/12/2020	Printed	ALLIED STORAGE CONTAINERS INC	MOVE CONTAINERS -CITY YARD		3,422.39
74514	03/12/2020	Printed	MARK ALVES / ALVES ELECTRIC	RELOCATE SHAFER PARK LIGHTS TO CONCESSION STAND		780.00
74515	03/12/2020	Printed	AMERICAN AMBULANCE	AMBULANCE-TRI COUNTY FIRE MED REIMB		200.00
74516	03/12/2020	Printed	ERIK ANDERSEN	PUFFS SET SUPPLIES REIMB.		557.30
74517	03/12/2020	Printed	ARAMARK UNIFORM	UNIFORMS/TOWELS/FIRST AID KITS		727.51
74518	03/12/2020	Printed	CHRISTINA ARIAS	CALPERS TRAINING MILEAGE 2/25		28.87
74519	03/12/2020	Printed	AT&T	TELEPHONE 2/1/20-2/29/20		244.20
74520	03/12/2020	Printed	AT&T	TELEPHONE 2/4/20-3/3/20		1,402.22
74521	03/12/2020	Printed	AT&T	TELEPHONE 2/4/20-3/3/20		152.17
74522	03/12/2020	Printed	AT&T	TELEPHONE 2/4/20-3/3/20		146.31
74523	03/12/2020	Printed	DON & ANN BLOODWORTH	SENIOR TRIP REFUND HARD ROCK CASINO		90.00
74524	03/12/2020	Printed	BOB MURRAY & ASSOCIATES	CHIEF OF POLICE RECRUITMENT		11,785.74
74525	03/12/2020	Printed	JAY WESLEY BROCK / TOP DOG TRAINING CENTER	MONTHLY K9 MAINTENANCE		540.00
74526	03/12/2020	Printed	CASCADE FIRE EQUIPMENT COMPANY	STATION BOOTS	PARTIAL R	620.08
74527	03/12/2020	Printed	CDCE INCORPORATED	MDT MONTHLY LEASE -PD		1,555.00
74528	03/12/2020	Printed	CENTRAL VALLEY CHAPTER OF MAINTENANCE SUPERINTENDENTS	CVC MSA 2020 MEMBERSHIP		100.00
74529	03/12/2020	Printed	COMCAST	INTERNET SERVICE-MAR 20		821.45
74530	03/12/2020	Printed	COMCAST	PD TO FCSO -MAR 20		684.96
74531	03/12/2020	Printed	CONSOLIDATED IRRIGATION DIST.	ROCKWELL POND FEE 2016 (1/3)		50,000.00
74532	03/12/2020	Printed	CORELOGIC SOLUTIONS LLC	REALQUEST SERVICES-FEB 20		481.25
74533	03/12/2020	Printed	COUNTY OF FRESNO	PRISONER PROCESSING 7/1-12/31/19		343.64
74534	03/12/2020	Printed	COUNTY OF FRESNO TREASURER	GIS TELECOMMUNICATION CHARGES-JAN 20		72.98
74535	03/12/2020	Printed	CPS HR CONSULTING	FIRE CAPTAIN WRITTEN TESTS		394.90
74536	03/12/2020	Printed	DANCING SCHOOL	NUTTY NUTCRACKER TICKETS		6,233.85
74537	03/12/2020	Printed	DATAPATH LLC	NETCARE & ONSITE SUPPORT-MAR 20		13,459.14
74538	03/12/2020	Printed	DEPARTMENT OF JUSTICE	BLOOD ALCOHOL ANALYSIS & FINGERPRINTS-JAN 20		759.00
74539	03/12/2020	Printed	ENTENMANN-ROVIN CO.	CHIEF & LIEUTENANT BADGES		282.47
74540	03/12/2020	Printed	ERENE SOLIMAN, PSY.D.	PRE-EMPLOYMENT PSYCHOLOGICAL EVALUATION		400.00
74541	03/12/2020	Void	PAUL DEREK ESQUIBEL	FTO COURSE PER DIEM 3/30-4/3/20. WILL RETURN & VOID		0.00
74542	03/12/2020	Printed	FINANCIAL PACIFIC LEASING	PD VEHICLES LEASE PAYMENT		52,684.59
74543	03/12/2020	Printed	FRESNO CITY COLLEGE	POST SUPERVISORY SCHOOL		272.00
74544	03/12/2020	Printed	GAR BENNETT LLC	IRRIGATION SUPPLIES-SALAZAR & SHAFER		101.00
74545	03/12/2020	Printed	GATEWAY ENGINEERING, INC.	RSTP-E FLORAL AVE PROJ	G	28,800.00
74546	03/12/2020	Printed	GCS ENVIRONMENTAL EQUIPMENT	BROOM W/ HUB -UNIT#1315		750.94
74547	03/12/2020	Printed	GLACIER REFRIGERATION & AIR	SERVICE ICE MACHINE-CITY YARD		166.25
74548	03/12/2020	Printed	DOMINIC GRIJALVA	REIMBURSEMENT FOR FACEBOOK BOOTS & SEASON ARTWORK		1,860.00
74549	03/12/2020	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 1/29/20		2,766.00
74550	03/12/2020	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 2/5/20		2,456.50
74551	03/12/2020	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 2/12/20		1,546.89
74552	03/12/2020	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 2/19/20		370.11
74553	03/12/2020	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 2/26/20		1,561.20
74554	03/13/2020	Void				
74555	03/12/2020	Printed	HENRY SCHEIN INC.	MEDICAL SUPPLIES		3,575.45
74556	03/12/2020	Printed	HEWLETT-PACKARD FINANCIAL	LEASE FOR SERVERS 3/1-3/31/20		1,347.37
74557	03/12/2020	Printed	ANNA M JAIMES / J&A DRUG & ALCOHO	EMPLOYEE DRUG TESTING -PD		252.00
74558	03/12/2020	Printed	JKK GROUP, INC.	INVESTIGATION SERVICES 11/12-2/22/20		10,271.50



# CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
74559	03/12/2020	Printed	KATCH ENVIRONMENTAL INC.	PROGRESS PAYMENT #7 NEW SELMA POLICE STATION	PDSA	690,691.04
74560	03/12/2020	Printed	KENT M KAWOGOE, PHD	PRE-EMPLOYMENT PSYCHOLOGICAL EXAM-PD		325.00
74561	03/12/2020	Printed	KAITLIN KIRBY	STAGE MANAGEMENT PUFFS		250.00
74562	03/12/2020	Printed	RUSSELL A KULOW / KULOW BROTHERS	PARKING CITATION BOOKS		1,598.64
74563	03/12/2020	Printed	TIM J LAW / LAW & ASSOCIATES	LAW ENFORCEMENT BACKGROUNDS		700.00
74564	03/12/2020	Printed	LEE CENTRAL CALIFORNIA	NOTICES-CDBG 18651 STORM DRAIN, FLORAL IMPROVEMENTS, SHOPPING CART ORD.		319.41
74565	03/12/2020	Printed	LIEBERT, CASSIDY, WHITMORE	LEGAL SERVICES-JAN 20		6,019.50
74566	03/13/2020	Void				
74567	03/12/2020	Printed	LIFE-ASSIST INC.	MEDICAL SUPPLIES		3,286.46
74568	03/12/2020	Printed	LIVE SCAN FRESNO	LIVE SCAN -PD		102.00
74569	03/12/2020	Printed	ADAM LONG	TARZAN PIANO ACCOMPANIMENT		85.00
74570	03/12/2020	Printed	KYLE SEAN LOWE	PUFFS PROMOS, VIDEO & PHOTOS		250.00
74571	03/12/2020	Printed	METRO UNIFORM	FIRE/PD REVOLVING ACCT	R	922.20
74572	03/12/2020	Printed	ISAAC MORENO	HIGH SPEED RAIL MEETING PER DIEM & MILEAGE		226.60
74573	03/12/2020	Printed	NHA ADVISORS LLC	CONTINUING DISCLOSURE & CIDIAC COMPLIANCE		6,300.00
74574	03/12/2020	Printed	ODELL PLANNING & RESEARCH, INC	SELMA GROVE EIR ADDENDUM PLANNING SERVICES	R	13,826.10
74575	03/12/2020	Printed	OFFICE DEPOT, INC.	OFFICE SUPPLIES		281.56
74576	03/12/2020	Printed	DAMEN ROMAN PARDO	TARZAN COSTUME DESIGN FIRST INSTALL.		500.00
74577	03/12/2020	Printed	PG&E	UTILITIES-FEBRUARY 2020		264.92
74578	03/12/2020	Printed	PITNEY BOWES INC.	POSTAGE MACHINE RENTAL-PD 3/16-6/15/20		195.26
74579	03/12/2020	Printed	QUAD KNOFF, INC.	ON-CALL PLANNING SERVICES 1/26-2/22/20		16,623.80
74580	03/12/2020	Printed	ALBERT RODRIGUEZ	GYM MEMBERSHIP REIMBURSEMENT		200.00
74581	03/12/2020	Printed	SAMPSON,SAMPSON, AND PATTERSON	ACCOUNTING SERVICES-FEB 20		19,635.00
74582	03/12/2020	Printed	SAN JOAQUIN VALLEY AIR	ANNUAL PERMIT -A ST GENERATOR		98.00
74583	03/12/2020	Printed	SCOTT SANDERS	MEDICAL PREMIUM REIMB-JAN, FEB, MAR 20		3,633.45
74584	03/12/2020	Printed	SELMA BANDIT CHEER	KAISER GRANT	G	400.00
74585	03/12/2020	Printed	SOUTH COUNTY VETERINARY	MONTHLY FREEZER USE-FEB 20		175.00
74586	03/12/2020	Printed	SPARKLETTS	WATER SERVICE		144.85
74587	03/12/2020	Printed	STERICYCLE, INC.	STERI-SAFE OSHA COMPLIANCE-MAR 20		164.86
74588	03/12/2020	Printed	STERLING CODIFIERS INC.	ORDINANCE CODIFICATION		356.32
74589	03/12/2020	Printed	STRYKER SALES CORPORATION	MEDICAL SUPPLIES & EQUIPMENT		848.94
74590	03/12/2020	Printed	SUNCREST BANK	KATCH ENVIRONMENTAL RETENTION	PDSA	36,352.16
74591	03/12/2020	Printed	SUPERIOR VISION INSURANCE INC	VISION INSURANCE -MAR 20		1,979.56
74592	03/12/2020	Printed	SURVEILLANCE INTEGRATION INC.	VIDEO SURVEILLANCE PROTECTION PLAN		5,678.00
74593	03/12/2020	Void	RYAN SWAIN	FTO COURSE PER DIEM 3/30-4/3/20		0.00
74594	03/12/2020	Printed	TAG-AMS, INC.	EMPLOYEE DRUG TESTING		65.00
74595	03/12/2020	Printed	TOWNSEND PUBLIC AFFAIRS, INC.	CONSULTING FEES-MARCH 2020		3,500.00
74596	03/12/2020	Printed	TRANS UNION CORPORATION	PRE-EMPLOYMENT CREDIT CHECK		14.06
74597	03/12/2020	Printed	U.S. BANK EQUIPMENT FINANCE	COPY MACHINE LEASES -MAR 20		2,466.49
74598	03/12/2020	Printed	VALLEY SHREDDING LLC	DOCUMENT DESTRUCTION SERVICE		20.00
74599	03/12/2020	Printed	RACHEL VEGA	PIONEER VILLAGE RENTAL REIMBURSEMENT		340.00
74600	03/12/2020	Printed	VINCENT COMMUNICATIONS INC	RADIOS		781.02
74601	03/12/2020	Printed	WASTE MANAGEMENT-USA WASTE	GARBAGE-FEBRUARY 2020		118,732.43
74602	03/12/2020	Printed	WILLEMS COMMERCIAL PRINTING	SEUSSICAL POSTERS/POSTCARDS		226.67
74603	03/12/2020	Printed	JEREMY WILSON	VEHICLE WRAP NEW AMBULANCE		3,500.00

# CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
74604	03/13/2020	Void	CESAR F. BEJARANO	FORCE ENCOUNTERS ANALYSIS TRAINING PER DIEM 3/29-4/1/20. RETURNED, WILL VOID CHECK.		0.00
74605	03/13/2020	Void	JOHNNIE CERDA	FORCE ENCOUNTERS ANALYSIS TRAINING PER DIEM 3/29-4/1/20. WILL RETURN		0.00
74606	03/13/2020	Printed	DEPARTMENT OF HEALTH CARE	GEMT QAF 2019/2020 QRT 4		18,744.33
74607	03/13/2020	Printed	DEPARTMENT OF HEALTH CARE SERV	GEMT OVERPAYMENT REFUND		43,058.42
74608	03/13/2020	Void	CASSY FAIN	PERISHABLE SKILLS TRAINING PER DIEM 3/17-3/19/20		0.00
74609	03/13/2020	Void	MICHAEL CALEB GARCIA	PERISHABLE SKILLS TRAINING PER DIEM 3/17-3/19/20		0.00
74610	03/13/2020	Void	JUSTIN HOLT	TRAFFIC COLLISION INVEST. PER DIEM 3/22-3/27/20		0.00
74611	03/13/2020	Void	LANCE PEARCE	TRAFFIC COLLISION INVEST. PER DIEM 3/22-3/27/20		0.00
74612	03/26/2020	Printed	MARK ALVES	REPAIR CONDUITS/WIRES AT PIONEER VILLAGE, CONNECT GENERATOR TO TRAFFIC LIGHTS		1,187.50
74613	03/26/2020	Printed	AMERICAN AMBULANCE	APRIL 2020 PAYMENT		120,000.00
74614	03/26/2020	Printed	AT&T	TELEPHONE-MARCH 2020		20.64
74615	03/26/2020	Printed	AT&T	INTERNET SERVICE 3/11-4/10/20		52.05
74616	03/26/2020	Printed	AT&T	TELEPHONE 2/12-3/11/20		61.84
74617	03/26/2020	Printed	AT&T MOBILITY	TELEPHONE-MDT'S 2/1-2/29/20		438.91
74618	03/26/2020	Printed	AT&T MOBILITY	TELEPHONE-MDT'S 2/12-3/11/20		1,456.58
74619	03/26/2020	Printed	VINCENT BANDA	PICNIC SHELTER REIMBURSEMENT		40.00
74620	03/26/2020	Printed	BANNER PEST CONTROL INC	PEST CONTROL -MARCH 2020		441.00
74621	03/26/2020	Printed	VICTORIA BARAJAS	SENIOR TRIP REIMBURSEMENT		65.00
74622	03/26/2020	Printed	CESAR F. BEJARANO	CLEAN UP ROCKWELL POND		6,400.00
74623	03/26/2020	Printed	BENNETT & BENNETT, INC.	BOND REIMBURSEMENT EP 17-188		5,000.00
74624	03/26/2020	Printed	ELAINE Y BOOKS	POLYGRAPH EXAMS-PD		1,200.00
74625	03/26/2020	Printed	CENDA BRIDGER	SENIOR TRIP REIMBURSEMENT		65.00
74626	03/26/2020	Printed	LIANA J. BRIGHAM	SUMMER SHIRTS		3,306.30
74627	03/26/2020	Printed	JAY WESLEY BROCK / TOP DOG TRAINING CENTER	MONTHLY K9 MAINTENANCE		270.00
74628	03/26/2020	Printed	DONNA BUSHARD	SENIOR TRIP REIMBURSEMENT		130.00
74629	03/26/2020	Printed	CALIFORNIA WATER SERVICE	WATER SERVICE-FEBRUARY 2020		6,795.09
74630	03/26/2020	Printed	ROD CARSEY	PLAN CHECKS-FEBRUARY 2020		3,933.00
74631	03/26/2020	Printed	YOLANDA CASTELLANAS	PICNIC SHELTER REIMBURSEMENT		40.00
74632	03/26/2020	Printed	ANDY CAZARES	PICNIC SHELTER REIMBURSEMENT		40.00
74633	03/26/2020	Printed	CDCE INCORPORATED	MDT MONTHLY LEASE-PD		1,555.00
74634	03/26/2020	Printed	CENTRAL SANITARY SUPPLY	JANITORIAL SUPPLIES		1,584.37
74635	03/26/2020	Printed	ANGELICA CHAVEZ	PICNIC SHELTER REIMBURSEMENT		45.00
74636	03/26/2020	Printed	CISCO SYSTEMS CAPITAL CRP	LEASE-PHONE SYSTEM/BACKUP 3/5-4/14/20		3,280.05
74637	03/26/2020	Printed	COOK'S COMMUNICATION CORP	OUTFIT UNIT# 1007		16,333.29
74638	03/26/2020	Printed	COUNTY OF FRESNO	RMS/JMS/CAD ACCESS FEES-FEB 20		494.84
74639	03/26/2020	Printed	COUNTY OF FRESNO TREASURER	GIS TELECOMMUNICATION CHARGES-FEB 20		72.98
74640	03/26/2020	Printed	COUNTY OF FRESNO-COMM HEALTH D	DISPATCHING SERVICES 1/1-3/31/20		3,622.05
74641	03/26/2020	Printed	CSJVRMA	2019/2020 4TH QTR DEPOSIT		194,983.00
74642	03/26/2020	Printed	DATAPATH LLC	INSTALL SERVERS NIBLE VMWARE		4,200.00
74643	03/26/2020	Printed	DEPARTMENT OF JUSTICE	BLOOD ALCOHOL ANALYSIS & FINGERPRINTS-FEB 20		242.00
74644	03/26/2020	Printed	JEANNETTE DERR	SEUSSICAL COSTUMES REIMB.		901.11
74645	03/26/2020	Printed	DMV	2020 VEHICLE CODE BOOKS		225.86
74646	03/26/2020	Printed	DYSON JANZEN ARCHITECTS, INC.	NEW PD STATION AGREEMENT	PDSA	6,587.59
74647	03/26/2020	Printed	FEDEX	POSTAGE-STATE CONTROLLERS OFFICE		30.65
74648	03/26/2020	Printed	FIVE CITIES EDA	4th QTR PD BOOKS APR-JUN 2020		1,387.72

# CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
74649	03/26/2020	Printed	FRESNO CITY COLLEGE	PC 832 LAWS OF ARREST CLASS REGISTRATION		91.00
74650	03/26/2020	Printed	DONOVAN FULLNER	REIMB.FOR EDGER REPAIR		68.52
74651	03/26/2020	Printed	MAGNOLIA S. JIMENEZ GALLARDO	PHLEBOTOMY SERVICE 20-1099		50.00
74652	03/26/2020	Printed	GAR BENNETT LLC	IRRIGATION SUPPLIES		50.87
74653	03/26/2020	Printed	MARICELA GARCIA	T-BALL REIMBURSEMENT		50.00
74654	03/26/2020	Printed	CYNTHIA GOMEZ	PICNIC SHELTER REIMBURSEMENT		45.00
74655	03/26/2020	Printed	RAY GONZALEZ	SENIOR TRIP REIMBURSEMENT		90.00
74656	03/26/2020	Printed	GOVERNMENT REVENUE SOLUTIONS	STARS SERVICES 3RD QRT 2019		500.00
74657	03/26/2020	Printed	GRID ALTERNATIVES	BUSINESS LIC OVERPAYMENT REIMB		55.00
74658	03/26/2020	Printed	MARY ANN HARP	SENIOR TRIP REIMBURSEMENT		65.00
74659	03/26/2020	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL 3/11/20		854.70
74660	03/26/2020	Printed	HEALTHEDGE ADMINISTRATORS INC.	DENTAL CLAIMS 3/18/20		3,619.10
74661	03/26/2020	Printed	HEALTHEDGE ADMINISTRATORS INC.	ADMINISTRATIVE FEES-APR 20		771.25
74662	03/26/2020	Void	HEALTHWISE SERVICES, LLC.	DENTAL 3/4/20		0.00
74663	03/26/2020	Printed	HENRY SCHEIN INC.	MEDICAL SUPPLIES		2,546.19
74664	03/26/2020	Printed	SARAH HERNANDEZ	PICNIC SHELTER REIMBURSEMENT		45.00
74665	03/26/2020	Printed	HEWLETT-PACKARD FINANCIAL	LEASE FOR SERVERS 4/1-4/30/20		1,347.37
74666	03/26/2020	Printed	J'S COMMUNICATION INC.	RADIO CHARGER		371.06
74667	03/26/2020	Printed	BRENT JENSEN	EMT RECERT. REIMBURSEMENT		248.00
74668	03/26/2020	Printed	JOHNSON CONTROLS SECURITY	ALARM SERVICES 4/1-6/30/20		3,243.66
74669	03/26/2020	Printed	MICHAEL KAIN	MEDICAL PREMIUM REIMB-APR 20		1,211.15
74670	03/26/2020	Printed	KARING 4 KIDS	PICNIC SHELTER REIMBURSEMENT		40.00
74671	03/26/2020	Printed	PRECIOUS KING	SENIOR TRIP REIMBURSEMENT		10.00
74672	03/26/2020	Printed	KINGS INDUSTRIAL OCCUPATION	PRE-EMPLOYMENT PHYSICALS		1,379.09
74673	03/26/2020	Printed	RUBY LARMER	PICNIC SHELTER REIMBURSEMENT		45.00
74674	03/26/2020	Printed	TIM J LAW	RESERVE OFFICER BACKGROUNDS		1,400.00
74675	03/26/2020	Printed	HEATHER ELIZABETH LEMON	INTERPRETING SERVICES		400.00
74676	03/26/2020	Printed	LIFE-ASSIST INC.	MEDICAL SUPPLIES		164.35
74677	03/26/2020	Printed	ADAM LONG	PIANO ACCOMPANIMENT FOR AUDITIONS		108.00
74678	03/26/2020	Printed	MERCY LUNA	SENIOR TRIP REIMBURSEMENT		65.00
74679	03/26/2020	Printed	STEVEN LEE MCINTIRE	MEDICAL PREMIUM REIMB-APR 20		1,687.69
74680	03/26/2020	Printed	METRO UNIFORM	POLICE REVOLVING ACCT	R	1,556.02
74681	03/26/2020	Printed	CARMEN MONSIBAIS	SENIOR TRIP REIMBURSEMENT		65.00
74682	03/26/2020	Printed	OFFICE DEPOT, INC.	OFFICE SUPPLIES		532.45
74683	03/26/2020	Printed	CATHERINE PEREZ	PICNIC SHELTER REIMBURSEMENT		45.00
74684	03/26/2020	Printed	PG&E	UTILITIES-MARCH 2020		41,821.82
74685	03/26/2020	Printed	POSITIVE PROMOTIONS, INC.	BADGE STICKERS		113.85
74686	03/26/2020	Printed	PURCHASE POWER	POSTAGE REFILL-CH		974.70
74687	03/26/2020	Printed	GEORGE RAMIREZ	T-BALL REIMBURSEMENT		50.00
74688	03/26/2020	Printed	RAY MORGAN COMPANY INC	LASERFICHE STD SERVER LICENSING		2,400.00
74689	03/26/2020	Printed	THOMAS R & AIMII REDEMER / REDEMER CONCEPTS	SEUSSICAL PROGRAMS		1,324.48
74690	03/26/2020	Printed	RINCON CONSULTANTS, INC.	SELMA REZONE ASSISTANCE 2/1-2/29/20		1,265.00
74691	03/26/2020	Printed	BLANCA RIOS	PICNIC SHELTER REIMBURSEMENT		40.00
74692	03/26/2020	Printed	MELAINE ROQUE	T-BALL REIMBURSEMENT		50.00
74693	03/26/2020	Printed	ANA SANCHEZ	PICNIC SHELTER REIMBURSEMENT		40.00
74694	03/26/2020	Printed	SCOTT SANDERS	MEDICAL PREMIUM REIMB-APR 20		1,211.15
74695	03/26/2020	Printed	CECILIO SANDOVAL	T-BALL REIMBURSEMENT		50.00
74696	03/26/2020	Printed	AZLINN SARABIA	PICNIC SHELTER REIMBURSEMENT		45.00
74697	03/26/2020	Printed	SECOND CHANCE ANIMAL SHELTER	MONTHLY SUPPORT -APRIL 2020		7,925.80
74698	03/26/2020	Printed	SELMA UNIFIED SCHOOL DISTRICT	FUEL -FEBRUARY 2020		14,161.96
74699	03/26/2020	Printed	STOP STICK	STOP STICK 9' KITS		2,072.73
74700	03/26/2020	Printed	SARA SUAREZ	PIONEER VILLAGE REIMBURSEMENT		340.00
74701	03/26/2020	Printed	SUN BADGE CO	ENGINEER & FIREFIGHTER BADGES		435.16



**CHECK REGISTER REPORT**

<b>CHECK NUMBER</b>	<b>CHECK DATE</b>	<b>STATUS</b>	<b>VENDOR NAME</b>	<b>CHECK DESCRIPTION</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
74702	03/26/2020	Printed	SUN LIFE	EMPLOYEE INSURANCE-APR 20		1,512.48
74703	03/26/2020	Printed	SUPERIOR VISION INSURANCE INC	VISION INSURANCE -APR 20		2,045.00
74704	03/26/2020	Printed	TAG-AMS, INC.	EMPLOYEE DRUG TESTING		27.00
74705	03/26/2020	Printed	FRANCES TEJEDA	SENIOR TRIP REIMBURSEMENT		65.00
74706	03/26/2020	Printed	THE CALIFORNIA PEACE OFFICERS'	LSP FOR MOORADIAN		500.00
74707	03/26/2020	Printed	THE CRISCOM COMPANY	SEWER INFRASTRUCTURE-APR 20		4,500.00
74708	03/26/2020	Printed	TAMARA THOMAS	T-SHIRTS FOR SEUSSICAL KIDS		1,376.23
<b>TOTAL</b>						<b>1,702,717.45</b>

Grant: G    PD State Appropriation: PDSA (457)    Reimbursement: R

**CHECK REGISTER REPORT**

<b>CHECK NUMBER</b>	<b>CHECK DATE</b>	<b>STATUS</b>	<b>VENDOR NAME</b>	<b>CHECK DESCRIPTION</b>	<b>CATEGORY</b>	<b>AMOUNT</b>
<b>SUCCESSOR AGENCY</b>						
116	03/12/2020	Printed	NHA ADVISORS LLC	CONTINUING DISCLOSURE & CDIA COMPLIANCE		1,500.00

## **PAYROLL TRANSACTIONS**

### **CHECK REGISTER**

<b>Date</b>	<b>Check No.</b>	<b>Amount</b>
3/20/2020	115969-115979	\$7,901.55
3/27/2020	115989-116012	\$13,132.45
4/3/2020	116013-116021	\$6,972.75
4/10/2020	116029	\$3,395.35

### **Remittance Checks**

<b>Date</b>	<b>Check No.</b>	<b>Amount</b>
3/20/2020	115980-115988	\$18,304.02
4/3/2020	116022-116028	\$17,422.29

### **ACH Payment**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
3/20/2020	PRMAR2020	\$176,823.09
4/3/2020	PR APR0320	\$166,324.69



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**ITEM NO: 2.**

**SUBJECT:** Consideration on Resolution Approving and Authorizing the City Manager to Execute Energy Service Contract with ENGIE Services U.S. and to Secure Financing for Energy Program

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**RECOMMENDATION:** Approve Resolution Authorizing City Manager to execute Energy Service Contract with ENGIE Services U.S. and Financing Agreements necessary to Secure Funding for Project

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**DISCUSSION:** On September 4, 2018, Council authorized entering into an Agreement for Services with ENGIE Services U.S. to perform an integrated energy assessment. This assessment evaluated buildings, parks, and streetlights to purpose items such as solar panels, LED lighting, and more. From this assessment, ENGIE Services U.S. identified measures the City could utilize to reduce energy cost at the following locations:

Facility	Energy Measures To Be Assessed:
Selma Arts Center	LED lighting
Berry Park	LED lighting
Brentlinger Park	Solar, LED lighting
City Hall	Solar, LED lighting, EV charging
Fire Administration Building	LED lighting
Fire Department Station 1	LED lighting
Fire Department Station 2	LED lighting
Maintenance Yard	LED lighting
Ringo Park	LED lighting
Salazar Community Center	LED lighting
Selma Senior Center	LED lighting
Shafer Park	Solar, LED lighting

To install these energy measures a contract with ENGIE Services U.S. will need to be executed in the amount of \$1,517,232. This contract includes the following scope of work:

- Provide installation of solar photovoltaic (PV) systems at three facilities,
- Install new or retrofit lighting fixtures at twelve locations, and
- Provide, install and configure two (2) EV-Box Open Charge Point Protocol (OCPP) B2323-65063-EVC-04 Dual Ports, EV-connect Networked EVC stations or equivalent.

In addition, ENGIE Services U.S. will perform measurement and verification services (M&V Services) to guarantee saving for 20 years. For any measurement period in which there is a guarantee shortfall, ENGIE Services U.S. will pay Selma within thirty (30) calendar days after the acceptance by Selma of the Energy Savings Report for such measurement period, the guarantee payment for that period. If there are additional savings above the guaranteed amount in prior years, the accumulated savings amount could be utilized to offset shortfalls in future years. The guaranteed savings and period contracted amounts are as follows:

<b>Measurement Period</b>	<b>Guaranteed Savings</b>
1	\$95,009
2	\$99,414
3	\$104,024
4	\$108,848
5	\$113,897
6	\$119,180
7	\$124,709
8	\$130,496
9	\$136,551
10	\$142,889
11	\$149,521
12	\$156,462
13	\$163,726
14	\$171,329
15	\$179,285
16	\$187,612
17	\$196,326
18	\$205,447
19	\$214,992
20	\$224,983

Over the projected project life of 30 years, it is estimated that \$3,090,842 will be generated in net savings. This factors in lease payments, measurement and verification cost (first five years only), and solar operations and maintenance cost. Exhibit A calculates the full 30 years of estimated savings and expenditures.

Due to the cost of this project, the City will need to finance the full \$1.5 million via a general fund lease obligation. A majority of energy savings will be captured in the general fund to offset the annual lease payments, but the Streets and Arts Funds will recognize small savings as well. The estimated lease payments will range from year to year for the term of 19 to 20 years to establish a positive cash flow each year. The Finance Department will issue Requests For Proposals (RFP) to capture the best interest rate for the requested term. If Council authorizes the City Manager to execute this Energy Service Contract, it will not be fully binding or effective until financing is secured by the Finance Department.

<b><u>COST:</u></b> (Enter cost of item to be purchased in box below)		<b><u>BUDGET IMPACT:</u></b> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
\$1,534,680 plus financing and interest cost		
<b><u>FUNDING:</u></b> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<b><u>ON-GOING COST:</u></b> (Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).
Funding Source: General Fund  Fund Balance: FYE 2019-20- \$4,566,411		\$70,000 to \$180,000

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**RECOMMENDATION:** Approve Resolution Authorizing City Manager to execute Energy Service Contract with ENGIE Services U.S. and Finance Agreements necessary to secure funding for project

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/s/  
Isaac Moreno, Assistant City Manager

04/16/2020  
Date

/s/  
Teresa Gallavan, City Manager

04/16/2020  
Date

**RESOLUTION NO. 2020-\_\_\_\_R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN ENERGY SERVICES CONTRACT WITH ENGIE SERVICES US INC, A DELAWARE CORPORATION (ENGIE) AND TO PROCURE LEASE OR OTHER FINANCING ARRANGEMENTS FOR PAYMENT OF THE AMOUNTS REQUIRED BY THE ENERGY SERVICES CONTRACT AND TO EXECUTE ALL DOCUMENTS NECESSARY TO SECURE SUCH FINANCING**

**WHEREAS**, on September 4, 2018, the City entered into a Professional Services Agreement (PSA) with ENGIE and, pursuant to that Agreement, ENGIE has provided an Integrated Energy Assessment (the "Assessment"), and report identifying potential Energy Saving Conservation Measures (ECM's) and a Comprehensive Savings Analysis and Projections identifying energy and operations savings and opportunities by implementation of the recommended ECM's; and

**WHEREAS**, the City Council has received, reviewed and accepts the Assessment and Report and recommended ECM's and based thereon, has determined that the anticipated cost to the City of Selma of implementing the recommended ECM's as set forth in the Assessment and Report will be less than the anticipated cost to the City of Selma for thermal, electrical, or other energy, together with anticipated operation, maintenance and finance cost that would be incurred by the City of Selma in the absence of the recommended ECM's, all in compliance with Government Code §4217.10 through 4217.18; and

**WHEREAS**, based on the Assessment and Report by ENGIE, ENGIE has proposed to the City of Selma the Energy Services Contract that is attached and incorporated by reference as Exhibit A and based on the foregoing finding that the anticipated cost to the City for thermal or electrical energy or conservation services provided for by the Energy Services Contract will be less than the anticipated marginal cost to the City of Selma of such energy that would have been consumed by the City of Selma in the absence of that purchase the City Council further determines and finds that entering into the Energy Services Contract is in the best interest of the City of Selma; and

**WHEREAS**, the foregoing determinations are made at a regularly scheduled meeting of the City Council of the City of Selma conducted as a public hearing following the giving of public notice at least two weeks in advance of the hearing.

**NOW, THEREFORE**, the City Council resolves as follows:

1. The foregoing recitals are true and correct and are incorporated in full by this reference.
2. The Energy Services Contract between ENGIE and the City of Selma, Exhibit A to this Resolution, is hereby approved and the City Manager is authorized to execute the Energy Services Contract.
3. The City Manager is further authorized to solicit and secure lease or other financing to fund the contract amount called for by the Energy Services Contract and is further authorized to execute any and all documents necessary to implement such financing and/or the Energy Services Contract.



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The foregoing resolution was duly approved by the Selma City Council at a regular meeting held on the 20<sup>th</sup> day of April, 2020 by the following vote, to wit:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

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Louis Franco, Mayor

ATTEST:

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Reyna Rivera, City Clerk

## ENERGY SERVICES CONTRACT

This **ENERGY SERVICES CONTRACT** (this "Contract") is made and entered into as of April 20, 2020 (the "Contract Effective Date") by and between **ENGIE Services U.S. Inc.**, a Delaware corporation, with California State Contractor's License Number 995037 ("ENGIE Services U.S."), and **City of Selma** ("Selma") and together with ENGIE Services U.S. the "Parties" and each of Selma and ENGIE Services U.S. a "Party".

### CONTRACT RECITALS

WHEREAS, Selma owns and/or operates certain public facilities specifically described in Attachment A (the "Facilities") and Selma wishes to reduce the Facilities' energy consumption and costs and improve the Facilities' energy quality and reliability; and

WHEREAS, ENGIE Services U.S. is a full-service energy services company with the technical capabilities to provide services to Selma including identifying supply-side and/or demand-side energy conservation measures ("ECMs"), engineering, procurement, construction management, installation, construction and training; and

WHEREAS, Selma executed a Program Development Agreement with ENGIE Services U.S. to perform an integrated energy assessment and present Selma with recommendations (the "Recommendations") for the implementation of certain ECMs; and

WHEREAS, in the Recommendations, ENGIE Services U.S. identified potential energy and operational savings opportunities at Selma's Facilities and estimated program costs to implement the recommended ECMs and presented an overall potential energy cost and consumption savings for implementing the ECM recommendations; and

WHEREAS, on November 1, 2018 ENGIE Services U.S. delivered the Recommendations, on an arms' length basis, to personnel of Selma with requisite technical training and experience, for those personnel to make judgments and determinations as to the desired scope of work; and

WHEREAS, Selma has accepted the recommended ECMs and determined that the anticipated cost to Selma to implement the recommended ECMs will be less than the anticipated cost to Selma for thermal, electrical, and other energy, together with anticipated operational, maintenance and other costs, that would have been consumed by Selma in the absence of the recommended ECMs in compliance with California Government Code §§4217.10 through 4217.18; and

WHEREAS, pursuant to California Government Code §4217.12, Selma held a regularly scheduled public hearing on April 20, 2020, of which two weeks advance public notice was given regarding this Contract and its subject matter, and

WHEREAS, at the conclusion of the public hearing, Selma has determined (i) that the anticipated cost to Selma for thermal, electrical, and other energy, together with anticipated operational, maintenance and other costs that would be consumed by Selma in the absence of the recommended ECM's and (ii) that entering into this energy services contract to implement the ECM recommendations is in the best interests of Selma and that California Government Code §4217.10 *et seq.* allows Selma to enter into this Contract; and

WHEREAS, by adoption of Resolution No. \_\_\_\_\_ at the above-referenced meeting, Selma approved this Contract and authorized its execution.

NOW, THEREFORE, Selma and ENGIE Services U.S. hereby agree as follows:

### ARTICLE 1. DEFINITIONS

For purposes of this Contract and its Attachments, defined terms will have the following meanings:

"**Abnormally Severe Weather Conditions**" means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work or Professional Services are then being performed. The term "Abnormally Severe Weather Conditions" specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level

over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

“**Act**” is defined in ARTICLE 14.

“**Affiliate**” means any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise; ownership of fifty percent (50%) or more of the voting securities of another Person creates a rebuttable presumption that such Person controls such other Person.

“**Applicable Law**” means any statute, law, treaty, building code, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, as may be in effect at the time the Work or Professional Services are undertaken.

“**Applicable Permits**” means all permits, approvals, inspections and certifications required to be issued by any Governmental Authority in connection with the Professional Services or the building, installation and start-up of the Work as of the Contract Effective Date.

“**Application for Payment**” means a monthly progress payment as described in Section 8.01.

“**Attachment**” means the following attachments to this Contract, each of which is an “Attachment:”

Attachment A	Selma’s Facilities and Existing Equipment
Attachment B	<i>Not used</i>
Attachment C	Scope of Work
Attachment D	Scope of Monitoring Installation
Attachment E	M&V Services
Attachment F	Maintenance Services

“**Beneficial Use**” means when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are capable of being used for their intended purpose. For purposes of clarity, Beneficial Use includes permission to operate the Generating Facility(ies) from the Utility. Criteria for Beneficial Use of equipment / systems will be established as defined in Attachment C.

“**Business Day**” means any calendar day other than a Saturday, a Sunday or a calendar day on which banking institutions in San Francisco, California, are authorized or obligated by law or executive order to be closed.

“**CEQA**” means the California Environmental Quality Act, codified at California Public Resource Code § 21000 *et seq.*, and the applicable state and local guidelines promulgated thereunder.

“**Certificate of Beneficial Use**” means the certificate, issued by ENGIE Services U.S. to Selma and subcontractor(s), which identifies when Selma took Beneficial Use of the Work or any portion thereof. A Certificate of Beneficial Use may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Certificate of Final Completion**” means the certificate issued by ENGIE Services U.S. to Selma, in accordance with Section 6.03. A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work. The Certificate of Final Completion is separate from a Notice of Completion which is defined below.

“**Certificate of Substantial Completion**” means the certificate issued by ENGIE Services U.S. to Selma, in accordance with Section 6.02. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Change**” means any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work or Professional Services.

“**Change in Law**” means any of the following events or circumstances occurring after the Contract Effective Date: (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker’s compensation, payroll or withholding tax law).

“**Change Order**” means a written document, signed by both ENGIE Services U.S. and Selma, authorizing ENGIE Services U.S. to perform a Change. The Change Order modifies the Scope of Work and should identify: (i) the

applicable Change; (ii) any additional compensation to be paid to ENGIE Services U.S. to perform such Change; and (iii) any extension of time to complete the Project.

**“Construction”** means any and all Work to be performed that involves construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.

**“Construction Documents”** means the final designs, drawings, specifications and submittals that are used for Construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to this Contract.

**“Construction Period”** means the period beginning with the first day of the month in which material or equipment is first installed at the Facilities and continuing until the M&V Commencement Date.

**“Contract”** is defined in the Preamble, and includes all Attachments hereto (all of which are incorporated herein by this reference), as well as all Change Orders, amendments, restatements, supplements and other modifications hereto which are mutually approved by the Parties.

**“Contract Amount”** means One Million Five Hundred Seventeen Thousand Two Hundred Thirty-Two Dollars (\$1,517,232.00), which is inclusive of the assessment fee for the Recommendations and the mobilization payment, as set forth in Section 8.01, but exclusive of any fees for Professional Services.

**“Contract Bonds”** is defined in Section 12.02.

**“Contract Effective Date”** is defined in the Preamble.

**“Delay”** means any circumstances involving delay, disruption, hindrance or interference affecting the time of performance of the Work or the Professional Services.

**“Dispute”** is defined in Section 19.02.

**“DOE Guidelines”** is defined in Section 13.01.

**“ECM”** is defined in the Recitals.

**“EMS”** means an energy management system.

**“Energy Delivery Point”** means, for each Generating Facility, the point at which Utility meter energy is being delivered, as designated in the Interconnection Agreement.

**“Energy Usage Data”** is defined in Section 2.05.

**“ENGIE Services U.S.”** is defined in the Preamble.

**“ENGIE Services U.S. Warranty”** is defined in Section 9.01.

**“Event of Default”** is defined in ARTICLE 16.

**“Excusable Event”** means an act, event, occurrence, condition or cause beyond the control of ENGIE Services U.S., which causes it a delay of more than three (3) days in the performance of its obligations under this Contract including, but not limited to, the following: (i) unreasonable delays caused by Selma; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection), or Delays caused by Changes and/or modifications to the Scope of Work required by a Governmental Authority, subject to documented evidence that ENGIE Services U.S. diligently and timely made all reasonable efforts to secure such Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority and that the action or inaction of ENGIE Services U.S. did not contribute to or cause such failures or delays; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or Selma; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) the failure to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, other than a failure caused by the action or inaction of ENGIE Services U.S.; (vi) information provided to ENGIE Services U.S. by any Selma or Utility is later found to be inaccurate or incomplete; (vii) any Change in Law; (viii) acts of God; (ix) acts of the public enemy or terrorist acts; (x) work by Utility unless the delay is attributable to ENGIE Services U.S.; (xi) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (xii) sabotage, vandalism, riots or civil disobedience; (xiii) labor disputes or strikes; (xiv) labor or material shortages, delay in manufacturing and deliveries of equipment; (xv) Abnormally Severe Weather Conditions; (xvi) requirement by Utility that any Generating Facility discontinue operation; (xvii) any action by a Governmental Authority that prevents or inhibits the Parties from carrying out their respective obligations under this Contract (including an unstayed order of a court or administrative agency having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); (xviii) any Utility power outage at a Facility; or (xix) epidemic or pandemic.



**"Facilities"** is defined in the Recitals.

**"Final Completion"** means the stage in the progress of the Work at which the Construction Work as identified in the Scope of Work, or a designated portion thereof, has been completed and commissioned, including completion of all Punch List items, completion of all required training, and delivery to Selma of the final documentation (as-built drawings, operation and maintenance manuals, warranty documentation and final submittals).

**"Generating Facility"** means each of the photovoltaic, solar powered generating facilities located at the sites listed in Attachment E, and includes all associated photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wires and other equipment that may be necessary to connect the Generating Facility to the applicable Energy Delivery Point.

**"Governmental Authority"** means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question.

**"Greenhouse Gas"** is defined in Section 13.01.

**"Hazardous Substances"** means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any "hazardous substance" as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; (iii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in 42 U.S.C. §9601 *et seq.*, as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called "superfund" or "superlien" law.

**"Incentive Funds"** is defined in Section 8.06.

**"Installation"** means the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.

**"Instruments of Service"** is defined in Section 10.01(c).

**"Interconnection Agreement"** means the Interconnection Agreement to be entered into between Selma and the Utility with respect to the Generating Facilities.

**"Interconnection Facilities"** is defined in Section 18.02.

**"Interest"** means interest calculated at the lesser of (i) the prime rate plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law. The "prime rate" will be the "Prime Rate" of interest per annum for domestic banks as published in The Wall Street Journal in the "Money Rates" section.

**"Losses"** is defined in Section 11.01.

**"M&V Commencement Date"** means the first day of the month immediately following the later of (i) ENGIE Services U.S.'s receipt of the fully signed Certificate of Final Completion, and (ii) ENGIE Services U.S.'s receipt of the full Contract Amount.

**"M&V Services"** (if any) are defined in Attachment E.

**"Maintenance Services"** (if any) are defined in Attachment F.

**"Measurement Period"** means each one-year period following the M&V Commencement Date.

**"NEC"** means the National Electric Code.

**"Notice of Completion"** means the document adopted by the Selma City Council signifying completion of the Project and filed with the County of Fresno.

**"Notice to Proceed"** is defined in Section 2.04.

**"Party"** and **"Parties"** are defined in the Preamble.

**"Person"** means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

**"Professional Services"** means professional services (such as Maintenance Services and M&V Services) provided by ENGIE Services U.S. to Selma under this Contract.

**"Project"** means the entirety of Work to be performed by ENGIE Services U.S. pursuant to the Scope of Work, and any Change Orders.

**“Project Location”** means the area or areas where the Project materials and equipment and any other energy related equipment, as described in the Scope of Work, are installed, and the general area where the Work is performed.

**“Punch List”** means, with respect to any portion of the Work, a list of minor corrective items which need to be completed or corrected in order to complete such portion of the Work, but do not impair Selma’s ability to beneficially operate and utilize such portion of the Work.

**“Recommendations”** is defined in the Recitals.

**“Retained Items”** is defined in Section 10.02.

**“Retention”** is defined in Section 8.03.

**“Schedule of Values”** is defined in Section 8.01.

**“Scope of Work”** means the Work set forth in Attachments C and D, as modified by any Change Order.

**“Selma”** is defined in the Preamble.

**“Selma Persons”** means Selma, its agents, employees, subcontractors, architects, general contractors, lease/leaseback contractors or other Persons acting on behalf of Selma or for whom Selma is responsible.

**“Substantial Completion”** means the stage in the progress of the Work at which the Work, or a designated portion thereof, is sufficiently complete, in conformance with the Scope of Work, the Construction Documents and any Change Orders, so that Selma can take Beneficial Use thereof.

**“Surety”** means the surety supplying the Contract Bonds, which must be an “admitted surety insurer,” as defined by California Code of Civil Procedure §995.120, authorized to do business in the State of California, and reasonably satisfactory to Selma.

**“Utility”** is defined in Section 18.02.

**“Work”** means the Work to be done by ENGIE Services U.S. pursuant to the Scope of Work, subject to any Change Orders.

## **ARTICLE 2. TERM; PERFORMANCE OF THE WORK**

Section 2.01 Contract Term. The term of this Contract commences on the Contract Effective Date and ends on the last day on which Professional Services are provided, unless terminated earlier as provided in this Contract.

Section 2.02 Performance of Work. The Work and Professional Services to be performed hereunder will be provided in accordance with the terms of this Contract and the applicable standard of care. ENGIE Services U.S. will perform its obligations under this Contract (i) using the degree of skill and care that is required by current, good and sound professional procedures and practices, and (ii) in conformance with (x) generally accepted professional standards prevailing at the time the Work is performed, (y) the covenants, terms and conditions of this Contract, and (z) applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code. ENGIE Services U.S. represents and warrants that it is fully experienced in projects of the nature and scope of the Work and Professional Services, and that it is properly qualified, licensed and equipped to supply and perform the Work and Professional Services. The Work completed herein will be subject to Selma’s general right of inspection and supervision to secure the satisfactory completion thereof in accordance with this Contract.

Section 2.03 Scope of Work.

- (a) The Scope of Work may not exceed that set forth in Attachments C and D, except pursuant to a Change Order.
- (b) The Professional Services may not exceed those set forth in Attachments E, F and G, except pursuant to a Change Order.

Section 2.04 Notice to Proceed. Within ten (10) days after Selma has closed the financing referenced in Section 2.07, Selma will issue to ENGIE Services U.S. a written Notice to Proceed (“Notice to Proceed”). ENGIE Services U.S. will begin Work within thirty (30) calendar days after ENGIE Services U.S.’s receipt of the Notice to Proceed. If Selma fails to issue the Notice to Proceed within twenty (20) calendar days after the financing has closed, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount as a result of such delay.

Section 2.05 Project Schedule. After receipt of the Notice to Proceed, ENGIE Services U.S. will develop, with input from Selma, a master project schedule using Microsoft Project®. ENGIE Services U.S. will establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The project schedule will be updated monthly.

Section 2.06 Selma's Energy and Operational Records and Data. If ENGIE Services U.S. requests, Selma will provide to ENGIE Services U.S., within thirty (30) calendar days after such request, Selma's Energy Usage Data for the twelve (12) months preceding the Contract Effective Date, and will make commercially reasonable efforts to provide the Energy Usage Data for the thirty-six (36) months preceding the Contract Effective Date. "Energy Usage Data" means all of Selma's records and complete data concerning energy usage, energy-related maintenance, and other related costs for the Facilities, and including, without limitation, any existing utility records; occupancy information; descriptions of any past, present or anticipated changes in a building's structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Facilities; applicable building drawings, specifications, existing AutoCAD files, operation and maintenance manuals, and as-builts; bills and records relating to operation and maintenance of systems and equipment within the Facilities, and a description of operation and management procedures currently utilized in Selma's possession. Selma agrees that ENGIE Services U.S. may rely on the foregoing data as being accurate in all respects. If ENGIE Services U.S. requests, Selma will also provide to ENGIE Services U.S., within thirty (30) calendar days after such request, any prior energy audits of the Facilities, and copies of Selma's financial statements and records related to energy usage and operational costs for said time period at the Facilities, and will authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of ENGIE Services U.S.

Section 2.07 Finance Contingency. It is acknowledged and agreed by the Parties that this Contract is expressly contingent upon Selma obtaining financing that will allow it to make the payments to ENGIE Services U.S. required by this Contract. Selma will have sixty (60) calendar days after the Contract Effective Date to close such financing. If the financing is not closed within this time, for any reason, either Party may by written notice to the other Party declare this Contract to be null and void; and the Contract will be null and void as of the other Party's receipt of this notice; *provided* that Selma may not declare this Contract to be null and void after it has issued the Notice to Proceed. It is acknowledged and agreed that ENGIE Services U.S. will have no obligation to commence performance of the Work unless and until the financing has been closed.

Section 2.08 Proof of Financial Arrangements. Prior to the commencement of the Work, Selma will provide ENGIE Services U.S. proof that financial arrangements have been made to fulfill Selma's obligations under this Contract. Selma's requirement to furnish such proof to ENGIE Services U.S. is a condition precedent to commencement of the Work. After commencement of the Work, ENGIE Services U.S. may request such proof if (i) Selma fails to make payments to ENGIE Services U.S. as this Contract requires; (ii) a Change in the Work materially changes the Contract Amount. Selma will furnish such proof as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After Selma furnishes any such proof, Selma will not materially vary such financial arrangements without prior consent of ENGIE Services U.S. If Selma fails to provide ENGIE Services U.S. with such proof within ten (10) calendar days of receiving a demand from ENGIE Services U.S., ENGIE Services U.S. will be entitled to suspend its performance under this Contract until such proof is received.

### **ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL**

#### **Section 3.01 Registrations, Permits and Approvals**

- (a) Prior to issuing the Notice to Proceed, Selma must register the Project with the California Department of Industrial Relations, using Form PWC-100.
- (b) Selma will cooperate fully with and assist ENGIE Services U.S. in obtaining all Applicable Permits required under this Contract. ENGIE Services U.S. is responsible for obtaining (but not paying for) Applicable Permits, except those Applicable Permits to be issued by Selma itself. Selma will be responsible for obtaining and paying for all other inspections, certifications, permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable.
- (c) Selma is responsible for hiring and paying inspectors, and for fees associated with plan checks (including expedited plan checks), permits, inspections, and certifications.

Section 3.02 Coordination. Selma will be responsible for coordinating the activities of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors and suppliers with those of Selma Persons.

Section 3.03 Project Meetings/Status Updates. During the course of the Work, ENGIE Services U.S. will periodically meet with Selma to report on the general status and progress of the Work.

Section 3.04 Project Location Access. Selma hereby grants to ENGIE Services U.S., without cost to ENGIE Services U.S., all rights of ingress and egress at the Project Location, necessary for ENGIE Services U.S. to perform the Work and provide all services contemplated by this Contract. ENGIE Services U.S. will provide twenty-four-hour advance notice to Selma for access to any Selma Facilities. All persons entering the Project Location to which ENGIE Services U.S. is granted access while work or services contemplated by this Contract are being performed including Selma and its employees and agents, must follow ENGIE Services U.S.'s safety procedures. ENGIE Services U.S. may (but is not required to) make transportation available to Selma and Selma's employees and agents between

and within Project Locations, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.05 Consents; Cooperation. Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Contract, and this Contract does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Contract. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Contract in a timely manner so as not to delay the other Party's performance under this Contract.

Section 3.06 Independent Contractor. The Parties hereto agree that ENGIE Services U.S., and any agents and employees of ENGIE Services U.S., its subcontractors and/or consultants, is acting in an independent capacity in the performance of this Contract, and not as a public official, officer, employee, consultant, or agent of Selma for purposes of conflict of interest laws or any other Applicable Law.

#### **ARTICLE 4. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT**

##### **Section 4.01 General Provisions.**

- (a) After receipt of the Notice to Proceed, ENGIE Services U.S. will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) After completion of the design phase and approval of the final plans and specifications by Selma, ENGIE Services U.S. will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule.
- (c) Selma will designate a single-point representative with whom ENGIE Services U.S. may consult on a reasonable, regular basis and who is authorized to act on Selma's behalf with respect to the Project design. Selma's representative will render decisions in a timely manner with regard to any documents submitted by ENGIE Services U.S. and to other requests made by ENGIE Services U.S. in order to avoid delay in the orderly and sequential progress of ENGIE Services U.S.'s design services.
- (d) Within twenty (20) Business Days after ENGIE Services U.S.'s request, Selma will:
  - (i) furnish all surveys or other information in Selma's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
  - (ii) disclose any prior environmental review documentation and all information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location;
  - (iii) supply ENGIE Services U.S. with all relevant information in Selma's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location;
  - (iv) obtain any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location for the execution of the Work; and
- (e) All information furnished pursuant to this Section 4.01 will be supplied at Selma's expense, and ENGIE Services U.S. will be entitled to rely upon the accuracy and completeness of all information provided. If ENGIE Services U.S. is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(d), ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.
- (f) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, ENGIE Services U.S. will notify Selma. The Parties will meet and confer with respect to those Changes, and ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. If the Parties, however, are unable to agree on whether Selma's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with ARTICLE 19.
- (g) ENGIE Services U.S. contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a pre-existing condition by Selma prior to the Contract Effective Date. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the Contract Effective Date will constitute a valid basis for a Change Order.

Section 4.02 Review of Construction Documents. ENGIE Services U.S. will prepare and submit all drawings and specifications to Selma for review. Selma will review the documents and provide any comments in writing

to ENGIE Services U.S. within ten (10) Business Days after receipt of the documents. ENGIE Services U.S. will incorporate appropriate Selma comments into the applicable drawings and specifications. ENGIE Services U.S. reserves the right to issue the drawings and specifications in phases to allow Construction to be performed in phases. If Selma fails to provide written comments within the twenty (20) Business Day period, Selma will be deemed to have no comments regarding the documents.

Section 4.03 Permits. The respective obligations of the Parties in obtaining inspections and permits are as specified in Section 3.01. Selma will agree to any nonmaterial changes to the designs, drawings, and specifications required by any Governmental Authority. The Contract Amount must be increased by any additional cost incurred by ENGIE Services U.S. due to a Change required by a Governmental Authority and the time required to complete the Work must be increased by the number of additional days required to complete the Work because of a Change imposed by a Governmental Authority.

Section 4.04 Changes During Final Design Phase. If during the design phase any Selma Person requests Changes and/or modifications to the Work and/or an Excusable Event occurs, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. Valid bases for additional compensation and/or time extension include, but are not limited to: (i) any Selma Person requests changes and/or modifications to the Project Scope of Work during the Project design phase; (ii) any Selma Person causes delays during ENGIE Services U.S.'s design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date; (iv) the discovery of Hazardous Substances at or impacting the Project Location; (v) changes to the Scope of Work required to obtain Applicable Permits; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any Selma Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any other condition that would not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work, that increases the agreed-upon Contract Amount or increases the time needed to complete the Work.

## **ARTICLE 5. CONSTRUCTION PHASE**

Section 5.01 General Provisions. Upon securing the requisite Applicable Permits pursuant to Section 3.01, and completion of Construction Documents, ENGIE Services U.S. will commence the construction of the Project in accordance with the Construction Documents. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, by ENGIE Services U.S. and/or one or more licensed subcontractors qualified to perform the Work.

### **Section 5.02 ENGIE Services U.S.'s Responsibilities during Construction Phase**

- (a) As an independent contractor to Selma, ENGIE Services U.S. will provide, or cause to be provided by its subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work. ENGIE Services U.S. will purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the project schedule. ENGIE Services U.S. will also be responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.
- (b) ENGIE Services U.S. will make commercially reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to Selma's operations at the Project Location. ENGIE Services U.S. will provide at least fifteen (15) calendar days' written notice to Selma of any planned power outages that will be necessary for the construction. ENGIE Services U.S. will cooperate with Selma in scheduling such outages, and Selma agrees to provide its reasonable approval of any scheduled outage. Planned power outages typically will not exceed eight (8) hours and will be performed on Saturdays.
- (c) ENGIE Services U.S. will initiate and maintain a safety program in connection with its Construction of the Project. ENGIE Services U.S. will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to: (i) employees of ENGIE Services U.S. and subcontractors performing Work under this Contract; (ii) ENGIE Services U.S.'s property and other materials to be incorporated into the Project, under the care, custody, and control of ENGIE Services U.S. or its subcontractors; and (iii) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. ENGIE Services U.S. will not be responsible for Selma's employees' safety unless ENGIE Services U.S.'s negligence in the performance of its Work is the proximate cause of the employee's injury.
- (d) ENGIE Services U.S. will provide notice to Selma of scheduled test(s) of installed equipment, if any, and Selma and/or its designees will have the right to be present at any or all such tests conducted by ENGIE Services U.S., any subcontractor, and/or manufacturers of the equipment.
- (e) Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, ENGIE



Services U.S. will, in advance of excavation, submit to Selma and/or a registered civil or structural engineer, employed by Selma, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by Selma or by the person to whom authority to accept has been delegated by Selma. Pursuant to California Labor Code §6705, nothing in this Section 5.02(e) imposes tort liability on Selma or any of its employees.

- (f) Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:
  - (i) ENGIE Services U.S. will promptly, and before the following conditions are disturbed, notify Selma, in writing, of any:
    - 1) Material that ENGIE Services U.S. believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
    - 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to ENGIE Services U.S. before the Contract Effective Date;
    - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
  - (ii) Selma will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in ENGIE Services U.S.'s cost of, or the time required for, performance of any part of the Work will issue a Change Order under the procedures described in this Contract.
  - (iii) If a dispute arises between Selma and ENGIE Services U.S., whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in ENGIE Services U.S.'s cost of, or time required for, performance of any part of the Work, ENGIE Services U.S. will not be excused from any scheduled completion date provided for by this Contract but will proceed with all Work to be performed under this Contract. ENGIE Services U.S. will retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

**Section 5.03      Selma's Responsibilities during Construction Phase.**

- (a) Selma will designate a single-point representative authorized to act on Selma's behalf with respect to Project construction and/or equipment installation. Selma may from time to time change the designated representative and will provide written notice to ENGIE Services U.S. of such change. Any independent review of the construction will be undertaken at Selma's sole expense, and will be performed in a timely manner so as to not unreasonably delay the orderly progress of ENGIE Services U.S.'s Work.
- (b) Selma will provide a temporary staging area for ENGIE Services U.S., or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed. Selma will provide sufficient space at the Facilities for the performance of the Work and the storage, installation, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. Selma will provide access to the Facilities, including parking permits and identification tags, for ENGIE Services U.S. and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by ENGIE Services U.S. and acceptable to Selma. Selma will also either provide a set or sets of keys to ENGIE Services U.S. and its subcontractors (signed out per Selma policy) or provide a readily available security escort to unlock and lock doors. Selma will not unreasonably restrict ENGIE Services U.S.'s access to Facilities to make emergency repairs or corrections as ENGIE Services U.S. may determine are needed.
- (c) Selma will maintain the portion of the Project Location that is not directly affected by ENGIE Services U.S.'s Work. Selma will keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials within the control of Selma.
- (d) Selma will obtain any required environmental clearance from, and any inspections, including special inspections, or permits required by, any federal, state, and local jurisdictions, including but not limited to any clearances required under CEQA, prior to scheduled construction start date.
- (e) Selma will prepare the Project Location for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances, and utilities. Subsurface conditions

and obstacles (buried pipe, utilities, etc.) that are not otherwise previously and accurately documented by Selma and such documentation made available to ENGIE Services U.S. are the responsibility of Selma. If ENGIE Services U.S. encounters such unforeseen conditions in the performance of the Work, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount.

- (f) Selma will remove any Hazardous Substances either known to Selma prior to the commencement of the Work or encountered by ENGIE Services U.S. during the construction of the Project, if necessary in order for the Work to progress safely, that were not knowingly released or brought to the site by ENGIE Services U.S. ENGIE Services U.S. will respond to the discovery of Hazardous Substances at or around the Project Location during the course of ENGIE Services U.S.'s construction in accordance with Section 5.06.
- (g) Selma will coordinate the Work to be performed by ENGIE Services U.S. with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that ENGIE Services U.S. will coordinate the Interconnection Facilities work, if any, which will be performed by the local utility.
- (h) Selma will, and will cause Selma Persons to, allow ENGIE Services U.S. and its subcontractors access to and reasonable use of necessary quantities of Selma's water and other utilities, including electrical power, as needed for the construction of the Work, at no cost to ENGIE Services U.S.
- (i) Selma will, and will cause Selma Persons to, provide ENGIE Services U.S. and/or its subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to ENGIE Services U.S., access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours.
- (j) Selma will also do the following:
  - (i) Attend the regularly scheduled progress meetings. Participate, with reasonable notice, as needed regarding scheduling of the Work.
  - (ii) When requested by ENGIE Services U.S., participate in the job inspection walk-through with ENGIE Services U.S. to determine Substantial Completion or Beneficial Use of major equipment, and will sign the Certificate(s) of Substantial Completion.
  - (iii) Perform a final walk-through of the Project and, upon receipt of the operation and maintenance manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
  - (iv) Upon the completion of the entire Scope of Work listed in Attachment C, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

#### Section 5.04 Changes.

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work will be authorized by a written Change Order signed by both Parties. The Change Order should state the change and/or modification to the Scope of Work, any additional compensation to be paid, and any applicable extension of time.
- (b) Change Orders Requiring Additional Compensation. If during construction Selma requests material changes and/or modifications to the Work, Selma will pay the extra costs caused by such material modifications and/or changes and ENGIE Services U.S. will be entitled to additional compensation for the following reasons, that include, but are not limited to: (i) Selma requests changes and/or modifications to the Scope of Work during the construction phase of the Project; (ii) Selma causes delays during ENGIE Services U.S.'s construction work; (iii) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (iv) discovery of Hazardous Substances at or impacting the Project Location; (v) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any Governmental Authority; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of Selma; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (viii) any Excusable Event or other condition that would not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work or the Contract Amount.
- (c) Change Orders Requiring Additional Time. If during construction Selma requests material changes and/or modifications to the Scope of Work and/or an Excusable Event occurs, the Parties agree that an equitable extension of time to complete the Work may be necessary. Prior to any extension of time, ENGIE Services U.S. will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided that* Selma has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith.

- (d) Method for Adjustment. An increase or decrease in the Contract Amount and/or time resulting from a Change in the Work and/or Excusable Event must be determined by one or more of the following methods:
- (i) unit prices set forth in this Contract or as subsequently agreed;
  - (ii) a mutually accepted, itemized lump sum; or
  - (iii) costs calculated on a basis agreed upon by Selma and ENGIE Services U.S. plus a fee (either a lump sum or a fee based on a percentage of cost) to which the Parties agree.
- (e) Disagreements. If there is a disagreement between Selma and ENGIE Services U.S. as to whether ENGIE Services U.S. is entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, those disputes are to be resolved in accordance with the provisions of ARTICLE 19.

Section 5.05 Minor Changes to Scope of Work. Selma has the authority to make minor changes that do not change the total Contract Amount or Time to complete the Work and are consistent with the intent of the Construction Documents. ENGIE Services U.S. has the authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the Construction Documents, without prior notice to Selma. ENGIE Services U.S. will either promptly inform Selma, in writing, of any minor changes made during the implementation of the Project, or make available to Selma at the site a set of as-built drawings that will be kept current to show those minor changes.

Section 5.06 Hazardous Substances.

- (a) ENGIE Services U.S. will promptly provide written notice to Selma if ENGIE Services U.S. observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. ENGIE Services U.S. will have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of the Work unless otherwise specified in the Scope of Work. Selma will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Selma will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection will execute all generator manifests with respect thereto.
- (b) ENGIE Services U.S. will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, Selma will provide ENGIE Services U.S., within ten (10) Business Days after the Contract Effective Date, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Project Location, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.
- (c) Selma will indemnify, defend, and hold ENGIE Services U.S. harmless from and against any and all Losses that in any way result from, or arise under, such Selma owned or generated Hazardous Substances, except for liabilities to the extent due to the negligence or willful misconduct of ENGIE Services U.S., or its subcontractors, agents or representatives, in the handling, disturbance or release of Hazardous Substances. This indemnification will survive any termination of this Contract.

Section 5.07 Pre-Existing Conditions. Certain pre-existing conditions may be present within the Facilities that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of ENGIE Services U.S.'s Work, (iii) may cause ENGIE Services U.S.'s completed Work to be non-compliant with applicable codes, (iv) may prevent Selma from realizing the full benefits of ENGIE Services U.S.'s Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of ENGIE Services U.S.'s Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, ENGIE Services U.S. will not be responsible for repairing such pre-existing conditions unless such responsibility is expressly provided for in the Scope of Work or an approved Change Order. ENGIE Services U.S., in its sole discretion, may determine whether it will bring said pre-existing conditions into compliance by agreeing to execute a Change Order with Selma for additional compensation and, if appropriate, an extension of time.

## **ARTICLE 6. PROJECT COMPLETION**

Section 6.01 Occupancy or Use of Work. Selma may take occupancy or use of any completed or partially completed portion of the Work at any stage, whether or not such portion is Substantially Complete, *provided* that such occupancy or use is authorized by Governmental Authority and, *provided further*, that Selma assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. If Substantial Completion of a portion of the Construction Work is not yet achieved, occupancy or use of such portion of the Work will not commence until Selma's insurance company has consented to such occupancy or use. When

occupancy or use of a portion of the Work occurs before Substantial Completion of such portion, Selma and ENGIE Services U.S. will accept in writing the responsibilities assigned to each of them for title to materials and equipment, payments and Retention with respect to such portion.

Section 6.02 Substantial Completion. When ENGIE Services U.S. considers the Work, or any portion thereof, to be Substantially Complete, ENGIE Services U.S. will supply to Selma a written Certificate of Substantial Completion with respect to such portion of the Work, including a Punch List to be signed by both Parties of items and the time for their completion or correction. Selma will within ten (10) Business Days of receipt of the Certificate of Substantial Completion, review such portion of the Work for the sole purpose of determining that it is Substantially Complete, and if Selma reasonably determines the work is substantially complete, sign and return the Certificate of Substantial Completion to ENGIE Services U.S. acknowledging and agreeing: (i) that such portion of the Work is Substantially Complete; (ii) the date of such Substantial Completion; (iii) that from the date of Substantial Completion Selma will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. Selma agrees that approval of a Certificate of Substantial Completion will not be unreasonably withheld, delayed or conditioned.

Section 6.03 Final Completion. When ENGIE Services U.S. considers the entirety of the Work to be Finally Complete, ENGIE Services U.S. will notify Selma that the Work is fully complete and ready for final inspection. Selma will inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of ENGIE Services U.S.'s certification that the Work is complete. If Selma disagrees with Engie Service U.S. determination, Selma shall advise Engie Services U.S. in writing. When Selma agrees that the Work is fully completed, ENGIE Services U.S. will issue a Certificate of Final Completion, which Selma must sign. Selma will have sole authority to determine whether a Notice of Completion should be recorded. Selma agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. When it does make that determination, it will provide a copy to Engie Services U.S. and will promptly record a notice of completion in the office of the Fresno County recorder in accordance with California Civil Code §9204.

Section 6.04 Transfer of Title; Risk of Loss. Title to all or a portion of the Project equipment, supplies and other components of the Construction Work will pass to Selma upon Substantial Completion. Transfer of title to Selma will in no way affect Selma's and ENGIE Services U.S.'s rights and obligations as set forth in other provisions of this Contract. Except as provided in this Section 6.04, after the date of Substantial Completion, ENGIE Services U.S. will have no further obligations or liabilities to Selma arising out of or relating to this Contract, except for the obligation to complete any Punch List items, the obligation to perform any warranty service under Section 9.01, and obligations which, pursuant to their terms, survive the termination of this Contract.

## **ARTICLE 7. SUBCONTRACTORS**

Section 7.01 Authority to Subcontract. ENGIE Services U.S. may delegate its duties and performance under this Contract, and has the right to enter into agreements with any subcontractors and other service or material providers as ENGIE Services U.S. may select in its discretion to perform the Work. ENGIE Services U.S. will not be required to enter into any subcontracts with parties whom ENGIE Services U.S. has not selected or subcontractors whom ENGIE Services U.S. has objection to using.

Section 7.02 Prompt Payment of Subcontractors. ENGIE Services U.S. will promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract and will endeavor to prevent any lien or other claim under any provision of Applicable Law from arising against any Selma property, against ENGIE Services U.S.'s rights to payments hereunder, or against Selma.

Section 7.03 Relationship. Nothing in this Contract constitutes or will be deemed to constitute a contractual relationship between any of ENGIE Services U.S.'s subcontractors and Selma, or any obligation on the part of Selma to pay any sums to any of ENGIE Services U.S.'s subcontractors.

Section 7.04 Prevailing Wages. To the extent required by California Labor Code §1771 or other Applicable Law, all employees of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors performing Work at the Project Location will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed. In accordance with California Labor Code §§1773 and 1773.2, Selma will obtain from the Director of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work at the Project Location, and will cause copies of such determinations to be kept on file at its principal office and posted at each Project Location. Selma will promptly notify ENGIE Services U.S. of any changes to any such prevailing wage determination.

## **ARTICLE 8. PAYMENTS**

Section 8.01 Monthly Progress Payments. Promptly after Selma's issuance of Notice to Proceed, ENGIE Services U.S. will invoice Selma a mobilization payment in the amount of Two Hundred Eighty-Three Thousand Four Hundred Forty-Six Dollars (\$283,446.00). These amounts must be paid to ENGIE Services U.S. within thirty (30)

calendar days after Selma's receipt of an invoice for those amounts. In addition, as the Work progresses, ENGIE Services U.S. will submit to Selma its applications for monthly payments based on the progress made on the Project through the date on which ENGIE Services U.S. submits such Application for Payment. Within twenty-one (21) calendar days from the Contract Effective Date, ENGIE Services U.S. will prepare and submit to Selma a schedule of values apportioned to the various divisions or phases of the Work ("Schedule of Values"). Each line item contained in the Schedule of Values will be assigned a value such that the total of all items equals the Contract Amount. All Applications for Payment will be in accordance with the Schedule of Values.

Section 8.02 Materials Stored Off-Site. ENGIE Services U.S. may invoice Selma for materials purchased in advance and not stored at the Project Location. Each such Application for Payment will be accompanied by proof of off-site material purchases, evidence that the materials have been delivered to a warehouse reasonably acceptable to Selma and evidence of appropriate insurance coverage. ENGIE Services U.S. will furnish to Selma written consent from the Surety approving the advance payment for materials stored off site. Selma will pre-pay one hundred percent (100%) of ENGIE Services U.S.'s Application for Payment for the materials delivered, less Retention as indicated in Section 8.03. ENGIE Services U.S. will protect stored materials from damage. Damaged materials, even though paid for, will not be incorporated into the Work.

Section 8.03 Retention. Selma, or its designee, must approve and pay each Application for Payment, less a retention amount ("Retention") of five percent (5%) in accordance with California Public Contract Code §7201, within thirty (30) calendar days after its receipt of the Application for Payment; *provided, however*, that there is to be no Retention with respect to the mobilization payment and any fee for the Recommendations. A failure to approve and pay an Application for Payment in a timely manner is a material default by Selma under this Contract. Selma may make progress payments in full without Retention at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. Upon Substantial Completion, the Retention must be reduced to two percent (2%) of the Contract Amount, and ENGIE Services U.S. may invoice and Selma will pay this amount. Selma will pay ENGIE Services U.S. the remaining two percent (2%) Retention amount upon achieving Final Completion. In lieu of Retention being held by Selma, ENGIE Services U.S. may request that securities be substituted or Retention be held in an escrow account pursuant to California Public Contract Code §22300.

Section 8.04 Final Payment. The final Application for Payment may be submitted after Final Completion. The final payment amount must also include payment to ENGIE Services U.S. for any remaining Retention withheld by Selma.

Section 8.05 Disputed Invoices/Late Payments. Selma may in good faith dispute any Application for Payment, or part thereof, within fifteen (15) calendar days after the date the Application for Payment was received by Selma. If Selma disputes all or a portion of any Application for Payment, Selma will pay the undisputed portion when due and provide ENGIE Services U.S. a written notice and explanation of the basis for the dispute and the amount of the Application for Payment being withheld related to the dispute. Selma will be deemed to have waived and released any dispute known to it with respect to an Application for Payment if such notice and written explanation is not provided within fifteen (15) calendar days after the date the Application for Payment was received by Selma. If any amount disputed by Selma is finally determined to be due to ENGIE Services U.S., either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 19 below, it will be paid to ENGIE Services U.S. within ten (10) Business Days after such final determination.

Section 8.06 Rebate Programs. ENGIE Services U.S. will assist Selma in the preparation and submission to the applicable agencies of applications and documentation necessary for the following energy efficiency rebate, incentive, and/or loan program(s): San Joaquin Valley Air Pollution Control District Charge Up program and Fresno County Incentive Project. ENGIE Services U.S. makes no guarantee that Selma will receive funding from any energy efficiency rebate, incentive, and/or loan program(s), including those listed above (collectively, "Incentive Funds"), or any portion thereof; ENGIE Services U.S. expressly disclaims any liability for Selma's failure to receive any portion of the Incentive Funds, and Selma acknowledges and agrees that ENGIE Services U.S. will have no liability for any failure to receive all or any portion of the Incentive Funds. Procurement, or lack thereof, of the Incentive Funds will not alter the Contract Amount of this Contract or the payment timeline associated with payment of the Contract Amount.

## **ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY**

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, ENGIE SERVICES U.S. MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. Selma WILL HAVE NO REMEDIES AGAINST EITHER ENGIE SERVICES U.S. OR ANY ENGIE SERVICES U.S. SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW. SPECIFICALLY, NEITHER ENGIE SERVICES U.S., NOR ENGIE SERVICES U.S.'s SUBCONTRACTORS OR VENDORS, WILL BE LIABLE TO Selma FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.



Section 9.01      ENGIE Services U.S. warrants to Selma that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. ENGIE Services U.S. further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("ENGIE Services U.S. Warranty"). Notwithstanding the preceding sentence, the date the ENGIE Services U.S. Warranty commences with respect to a specific piece or pieces of equipment may be further defined in Attachment C.

Section 9.02      Equipment and material warranties that exceed the ENGIE Services U.S. Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to Selma, after the one (1) year period. During the ENGIE Services U.S. Warranty period, ENGIE Services U.S. will be Selma's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. If any material defects are discovered within the ENGIE Services U.S. Warranty period, ENGIE Services U.S., or ENGIE Services U.S.'s subcontractors, will correct its defects, and/or ENGIE Services U.S. will work with the equipment or material manufacturer as Selma's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services will be performed in a timely manner and at the reasonable convenience of Selma. If a warranty issue arises on any equipment or material installed after the ENGIE Services U.S. Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, Selma will contact the manufacturer directly to resolve such warranty issues and Selma acknowledges that the manufacturer will have sole responsibility for such issues.

Section 9.03      The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than ENGIE Services U.S. or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized ENGIE Services U.S. subcontractor, improper use or operation, or normal wear and tear under normal usage. ENGIE Services U.S. shall not be responsible for the cost of correcting a breach of warranty or defect to the extent that the manufacturer of the equipment that is the subject of a warranty hereunder does not honor its equipment warranty as a result of its termination of operations, insolvency, liquidation, bankruptcy or similar occurrence. Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the date of Substantial Completion or Beneficial Use; and thereafter, ENGIE Services U.S. will have no liability for breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure §§337.1 and 337.15.

Section 9.04      Selma and ENGIE Services U.S. have discussed the risks and rewards associated with this Project, as well as the Contract Amount to be paid to ENGIE Services U.S. for performance of the Work. Selma and ENGIE Services U.S. agree to allocate certain of the risks so that, to the fullest extent permitted by Applicable Law, ENGIE Services U.S.'s total aggregate liability to Selma and all third parties is limited to the Contract Amount for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Contract from any cause or causes. Such causes include, but are not limited to, negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

## **ARTICLE 10.      OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT**

### **Section 10.01      Ownership of Certain Proprietary Property Rights.**

- (a) Ownership: Except as expressly provided in this Contract, Selma will not acquire, by virtue of this Contract, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. ENGIE Services U.S. will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work, including all intellectual property rights therein.
- (b) License: Solely in connection with the Facilities, ENGIE Services U.S. grants to Selma a limited, perpetual, royalty-free, non-transferrable license for any ENGIE Services U.S. intellectual property rights necessary for Selma to operate, maintain, and repair any modifications or additions to Facilities, or equipment delivered, as a part of the Work.
- (c) Ownership and Use of Instruments of Service. All data, reports, proposals, plans, specifications, flow sheets, drawings, and other products of the Work (the "Instruments of Service") furnished directly or indirectly, in writing or otherwise, to Selma by ENGIE Services U.S. under this Contract will remain ENGIE Services U.S.'s property and may be used by Selma only for the Work. ENGIE Services U.S. will be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service may not be used by Selma or any Selma Person for future additions or alterations to the Project or for other projects, without the prior written agreement of ENGIE Services U.S. Any unauthorized use of the Instruments of Service will be at Selma's sole risk and without liability to ENGIE Services U.S. If Selma uses the Instruments of Service for implementation purposes, including additions to or

completion of the Project, without the written permission of ENGIE Services U.S., Selma agrees to waive and release, and indemnify and hold harmless, ENGIE Services U.S., its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.

Section 10.02 Ownership of any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities on the Contract Effective Date will remain the property of Selma even if such equipment or materials are replaced or their operation made unnecessary by work performed by ENGIE Services U.S. If applicable, ENGIE Services U.S. will advise Selma in writing of all equipment and materials that will be replaced at the Facilities and Selma will, within five (5) Business Days of ENGIE Services U.S.'s notice, designate in writing to ENGIE Services U.S. which replaced equipment and materials should not be disposed of off-site by ENGIE Services U.S. (the "Retained Items"). Selma will be responsible for and designate the location and storage for the Retained Items. ENGIE Services U.S. will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. ENGIE Services U.S. will use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. ENGIE Services U.S. will not be responsible for the removal and/or disposal of any Hazardous Substances except as required by the Scope of Work.

## **ARTICLE 11. INDEMNIFICATION / LIMITATION ON LIABILITY**

### **Section 11.01 Indemnification.**

Indemnity for Professional Liability: When the law establishes a professional standard of care for ENGIE Services U.S.'s Services, to the fullest extent permitted by law, ENGIE Services U.S. shall indemnify, protect, defend, and hold harmless Selma and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the ENGIE Services U.S. (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between ENGIE Services U.S. and Selma in the performance of professional services under this agreement.

Indemnity for Other Than Professional Liability: Other than in the performance of professional services and to the full extent permitted by law, ENGIE Services U.S. shall indemnify, defend, and hold harmless Selma, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual or alleged, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by ENGIE Services U.S. or by any individual for which ENGIE Services U.S. is legally liable, including, but not limited to officers, agents, employees, or subcontractors of ENGIE Services U.S., unless caused by the active negligence, sole negligence or willful misconduct of Selma.

Section 11.02 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party will be limited to direct, actual damages. Except for third party claims subject to indemnification as set forth above in Section 11.01, neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense.

## **ARTICLE 12. INSURANCE / BONDS**

Section 12.01 ENGIE Services U.S. Insurance. ENGIE Services U.S. will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to Selma via an insurance certificate.

- (a) Workers' Compensation/Employers Liability for states in which ENGIE Services U.S. is not a qualified self-insured. Limits as follows:

- \* Workers' Compensation: Statutory
- \* Employers Liability: Bodily Injury by accident \$1,000,000 each accident  
Bodily Injury by disease \$1,000,000 each employee  
Bodily Injury by disease \$1,000,000 policy limit

- (b) Commercial General Liability insurance with limits of:

- \* \$2,000,000 each occurrence for Bodily Injury and Property Damage
- \* \$4,000,000 General Aggregate - other than Products/Completed Operations
- \* \$2,000,000 Products/Completed Operations Aggregate
- \* \$2,000,000 Personal and Advertising Injury
- \* \$ 100,000 Damage to premises rented to ENGIE Services U.S.

Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

(c) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

(d) Professional Liability insurance with limits of:

- \* \$1,000,000 per occurrence
- \* \$1,000,000 aggregate

Coverage to be written on a claims-made form.

(e) Umbrella/Excess Liability Insurance. Limits as follows:

- \* \$1,000,000 each occurrence
- \* \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(f) Policy Endorsements.

- \* The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against Selma, but only to the extent of the indemnity obligations contained in this Contract.
- \* The insurance provided for Commercial General Liability and Auto Liability above will:
  - (i) include Selma as an additional insured with respect to Work performed under this Contract, but only to the extent of the indemnity obligations contained in this Contract, and
  - (ii) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Contract.

Section 12.02 Performance and Payment Bonds. Prior to commencing Work under this Contract, ENGIE Services U.S. will furnish a performance bond, in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds are not being furnished to cover the performance of any Professional Services, including any energy guaranty or guaranteed savings under this Contract, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to Selma.

#### **ARTICLE 13. DOE GUIDELINES; ENERGY POLICY ACT**

Section 13.01 As authorized by §1605(b) of the Energy Policy Act of 1992 (Pub. L. No. 102-486) the U.S. Department of Energy has issued, and may issue in the future, guidelines for the voluntary reporting of Greenhouse Gas emissions ("DOE Guidelines"). "Greenhouse Gases" means those gases and other particles as defined in the DOE Guidelines. Selma hereby assigns and transfers to ENGIE Services U.S., and its Affiliates and assigns, any Greenhouse Gas emission reduction credits that result from the Work.

#### **ARTICLE 14. MUNICIPAL ADVISOR**

Section 14.01 THE PARTIES ACKNOWLEDGE AND AGREE THAT ENGIE SERVICES U.S. IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO SELMA WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT Selma BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. ENGIE SERVICES U.S. IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO SELMA OR THE PROVISION OF INFORMATION TO SELMA. SELMA WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR SELMA'S SITUATION.

#### **ARTICLE 15. TRADE SECRETS**

If any materials or information provided by ENGIE Services U.S. to Selma under this Contract are designated by ENGIE Services U.S. as a "trade secret" or otherwise exempt from disclosure under the Public Records Act (California Government Code §6250 *et seq.*, the "Act") and if a third party makes a request for disclosure of the materials under the Act, as soon as practical (but not later than five (5) calendar days) after receipt of such request, Selma will notify ENGIE Services

U.S. of such request and advise ENGIE Services U.S. whether Selma believes that there is a reasonable possibility that the materials may not be exempt from disclosure. Within ten (10) calendar days after a third party's request for disclosure of materials under the Act, ENGIE Services U.S. will (i) authorize Selma to release the documents or information sought; or (ii) if ENGIE Services U.S. reasonably believes that the information is exempt from disclosure, advise Selma not to release the materials.

## **ARTICLE 16. EVENTS OF DEFAULT**

Section 16.01 Events of Default by ENGIE Services U.S. Each of the following events or conditions will constitute an "Event of Default" by ENGIE Services U.S.:

- (i) any substantial failure by ENGIE Services U.S. to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to ENGIE Services U.S. demanding that such failure to perform be cured; *provided* that such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract, or
- (ii) any representation or warranty furnished by ENGIE Services U.S. in this Contract which was false or misleading in any material respect when made.

Section 16.02 Events of Default by Selma. Each of the following events or conditions will constitute an "Event of Default" by Selma:

- (i) any substantial failure by Selma to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Selma demanding that such failure to perform be cured; *provided* that (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract; or
- (ii) any representation or warranty furnished by Selma in this Contract which was false or misleading in any material respect when made; or
- (iii) any failure by Selma to pay any amount to ENGIE Services U.S. which is not paid within ten (10) calendar days after written notice from ENGIE Services U.S. that the amount is past due except where there is a dispute as to the amount.

## **ARTICLE 17. REMEDIES UPON DEFAULT**

Section 17.01 Termination for Cause. If there is an Event of Default by either Party under this Contract, unless such Event of Default has been cured within the applicable time periods for a cure set forth in ARTICLE 16, the non-defaulting Party may terminate this Contract by providing three (3) Business Days' written notice to the defaulting Party in the case of a monetary default and ten (10) Business Days' written notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Contract. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If this Contract is so terminated, ENGIE Services U.S. will be entitled to payment for Work satisfactorily performed in accordance with this Contract up to the date of termination.

Section 17.02 Remedies Upon Default by ENGIE Services U.S. If an Event of Default by ENGIE Services U.S. occurs, Selma will be entitled to obtain any available legal or equitable remedies including, without limitation, terminating this Contract, or recovering amounts due and unpaid by ENGIE Services U.S. and/or damages, which will include Selma's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 17.03 Remedies upon Default by Selma. If an Event of Default by Selma occurs, ENGIE Services U.S. will be entitled to obtain any available legal or equitable remedies including, without limitation, terminating this Contract or recovering amounts due and unpaid by Selma, and/or damages which will include ENGIE Services U.S.'s reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of the Event of Default and not made, including Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

## ARTICLE 18. CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 18.01 Excusable Events. If any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any Excusable Event, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder and will not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention. Notwithstanding the foregoing, no Party will be excused from any payment obligations under this Contract as a result of an Excusable Event.

Section 18.02 Utility Work. Selma expressly understands and agrees that Excusable Events may occur due to Interconnection Facilities work that may need to be performed by the local electric utility ("Utility") in order for ENGIE Services U.S. to fully implement the Project. "Interconnection Facilities" means any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under the Interconnection Agreement.

Section 18.03 COVID-19. Selma acknowledges and agrees that, as of the Effective Date of this Agreement, the coronavirus COVID-19 ("COVID-19") is a global epidemic which may affect the production, supply and transportation of materials and equipment, as well as the ability for workers to perform the activities contemplated under this Contract. Selma further acknowledges and agrees that (i) COVID-19 qualifies as a Force Majeure Event under this Agreement, (ii) this provision shall serve as the written notice of such Force Majeure Event required under this Article 18, and (iii) no separate or additional notice from ENGIE Services U.S. is required with respect to apprising Selma of the existence of COVID-19. As of the Effective Date, ENGIE Services U.S. is unable to determine the full extent of COVID-19's impact on its performance hereunder. ENGIE Services U.S. will (1) proceed with the Work in accordance with the terms and conditions of this Contract, including off-site and on-site portions of the Work (in each instance, to the extent allowed and reasonably practicable under the circumstances), (2) continue to monitor the COVID-19 situation closely and (3) provide additional information to Selma as it becomes available. Within ten (10) business days after the COVID-19 Force Majeure Event ends, Owner and Contractor shall meet and confer in good faith to establish the scope and duration of the COVID-19 Force Majeure Event, and Contractor shall be entitled to a Change Order granting an equitable adjustment to the Contract Price, and Project Schedule, as applicable.

## ARTICLE 19. GOVERNING LAW AND RESOLUTION OF DISPUTES

Section 19.01 Governing Law. This Contract is governed by and must be interpreted under the laws of the State of California.

Section 19.02 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract, the transaction contemplated by this Contract, or the breach of this Contract (a "Dispute"), either Party may initiate the dispute resolution process set forth in this ARTICLE 19 by giving notice to the other Party. The Parties will endeavor to settle the Dispute as follows:

- (i) *Field Representatives' Meeting*: Within fifteen (15) Business Days after notice of the Dispute, ENGIE Services U.S.'s senior project management personnel will meet with Selma's project representative in a good faith attempt to resolve the Dispute.
- (ii) *Management Representatives' Meeting*: If ENGIE Services U.S.'s and Selma's project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for ENGIE Services U.S. and for Selma, neither of whom have had day-to-day management responsibilities for the Project, will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives of ENGIE Services U.S. and Selma are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may pursue available legal remedies.

## ARTICLE 20. REPRESENTATIONS AND WARRANTIES

Section 20.01 Each Party warrants and represents to the other that:

- (i) it has all requisite power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (ii) the execution, delivery, and performance of this Contract have been duly authorized by its governing body, or are in accordance with its organizational documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and constitutes its legal, valid, and binding obligation;

- (iii) the execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under, its organizational documents or any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, awards or permits which would materially and adversely affect its ability to perform hereunder.

#### **ARTICLE 21. NOTICE**

Any notice required or permitted hereunder will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ENGIE SERVICES U.S.:                      ENGIE Services U.S. Inc.  
4020 Moorpark Ave., Suite 100  
San Jose, CA 95117  
Tel:        (415) 685-0417  
Attention: Chris Kintner, Project Manager

With a COPY TO:                                Legal Department  
ENGIE Services U.S. Inc.  
150 East Colorado Boulevard, Suite 360  
Pasadena, CA 91105-3711  
Tel:        626-377-4948  
Attention: Contract Administrator

TO Selma:    City of Selma  
City Hall  
1710 Tucker St.  
Selma, CA 93662  
Attention: Isaac Moreno, Assistant City Manager

With a COPY TO:                                Costanzo & Associates  
575 E. Locust Avenue, Suite 115  
Fresno, CA 93720  
Tel:        559-261-0163  
Attention: Neal Costanzo

#### **ARTICLE 22. CONSTRUCTION OF CONTRACT**

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it will not be construed for or against either Party, but will be construed in a manner that most accurately reflects the intent of the Parties as of the Contract Effective Date. Each of the Parties acknowledges and agrees that neither Party has provided the other with any legal, accounting, regulatory, financial, or tax advice with respect to any of the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate.

#### **ARTICLE 23. BINDING EFFECT**

Except as otherwise provided herein, the terms and provisions of this Contract will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

#### **ARTICLE 24. NO WAIVER**

The failure of ENGIE Services U.S. or Selma to insist upon the strict performance of this Contract will not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of ENGIE Services U.S. or Selma.

#### **ARTICLE 25. SEVERABILITY**

If any clause or provision of this Contract or any part thereof becomes or is declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract will continue in full force and effect without said provisions; *provided that* no such severability will be effective if it materially changes the benefits or obligations of either Party hereunder.



**ARTICLE 26. HEADINGS**

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle will modify or be used to interpret the text of any section.

**ARTICLE 27. COUNTERPARTS; INTEGRATION**

This Contract may be executed in counterparts (and by different Parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Contract constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Contract cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto. Delivery of an executed counterpart of a signature page of this Contract by email will be effective as delivery of a manually executed counterpart of this Contract.

*[the Parties' signatures appear on the following page]*

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers as of the Contract Effective Date.

**ENGIE SERVICES U.S.:**

ENGIE Services U.S. Inc.

**SELMA:**

City of Selma

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name: Teresa Gallavan  
Title: City Manager

**ATTACHMENT A**

**FACILITIES and EXISTING EQUIPMENT**

The following Selma Facilities are included under the Scope of Work as listed below:

Facility	Address	Square Feet	Energy Measures To Be Assessed:
Selma Arts Center	1935 High St, Selma, CA 93662	6,330	LED lighting
Berry Park	1814 Tucker St, Selma, CA 93662	NA	LED lighting
Brentlinger Park	Orange Ave and Rose Ave, S/W Corner, Selma, CA 93662	NA	Solar, LED lighting
City Hall	1710 Tucker St, Selma, CA 93662	7,525	Solar, LED lighting, EV charging
Fire Administration Building	1711 Tucker St, CA 93662	3,909	LED lighting
Fire Department Station 1	1927 W Front St, Selma, CA 93662	4,290	LED lighting
Fire Department Station 2	2857 A St, Selma, CA 93662	4,639	LED lighting
Maintenance Yard	1325 Nebraska Ave, Selma, CA 93662	NA	LED lighting
Ringo Park	2099 Mitchell Avenue, Selma, CA 93662	750	LED lighting
Salazar Community Center	1800 Sheridan St, Selma, CA 93662	5,429	LED lighting
Selma Senior Center	2301 Selma St, Selma, CA 93662	6,937	LED lighting
Shafer Park	Floral Ave & Thompson Ave, Selma, CA 93662	NA	Solar, LED lighting

**ATTACHMENT B**

*Not used.*

## ATTACHMENT C

### SCOPE OF WORK

California State Contractor's License Number 995037  
California Public Works Contractor Registration Number 1000001498

#### Energy Conservation Measures to Be Implemented

ECM #	Description
1	Solar PV
2	Facilities Lighting (interior & exterior)
3	EV Charging

ENGIE Services will provide:

1. Design, engineering and plan preparation for the Project.
2. Construction management: An ENGIE Services construction manager will be assigned to the Project and will oversee, coordinate and monitor the on-site construction and safety of the Project.
3. Construction of the Project: ENGIE Services installation includes detailed engineering, equipment procurement, labor and material, interconnection to utility, system start up and commissioning services.
4. Trash dumpsters, as needed, as well as cleanup and disposal of refuse generated by construction of the Project.
5. Temporary fencing as required for access control to certain areas of the Project for the duration of the Project.
6. Cranes, lifts and rigging necessary for the Scope of Work.
7. Upon Owner's request, provide up to four (4) hours of training to designated staff regarding the proper operation, maintenance, and/or monitoring of the Project.
8. Safety program and training of ENGIE Services' employees and subcontractors.
9. Start up, training and O&M manuals on systems provided under this Contract.
10. Record documentation, drawings and O&M manuals (two copies).
11. All labor is included at regular time unless indicated otherwise.
12. Lighting labor in ECM 2 is included as performed by Nonresidential Lighting Technicians working at Light Fixture Maintenance wages.

#### **ECM 1: Solar Photovoltaic Systems**

##### **General Scope of Work**

ENGIE Services will provide installation of solar photovoltaic (PV) systems at the Facilities listed per the table below:  
Solar Generating Facilities to be Installed

Facility	Address	Est. kWdc
Brentlinger Park	2550 Olive St. Selma, CA 93662	50
City Hall	1710 Tucker St, Selma, CA 93662	89
Shafer Park	Floral Ave & Thompson Ave, Selma, CA 93662	65

##### **Detailed Scope of Work:**

- Preparation of final engineered design drawings based on preliminary layouts 1-3 shown below for submission to City authority having jurisdiction (AHJ).
- Final layout drawings for Fire Marshall and City review and approval.
- Structural, Mechanical, Civil, Electrical engineering evaluations and calculations necessary for design requirements.
- Solar canopy "T" structure design includes concrete pier foundations provided up to a depth of no greater than ten (10) feet by thirty (30) inches in diameter. The structure will be a minimum 9 ft. high with a five-degree tilt. If soil conditions require foundation depths greater than ten feet, ENGIE Services will have the right to an increase in the Contract Amount.
- PG&E interconnection drawings and application management services, as necessary.
- General coordination with PG&E for installation of Net Energy (NEM) metering.

- Labor, supervision and coordination with City for the installation of the photovoltaic modules and supporting structures, electrical distribution and monitoring systems.
- Installation of the requisite inverters and necessary electrical equipment and conduits to connect to the electrical switchgear. Two electrical shut-downs are anticipated per system. ENGIE Services will coordinate timing of shutdowns with City and PG&E.
- Installation of new LED lighting fixtures, mounted under each new parking canopy bay, in place of existing parking lot light poles to be demolished.
- Tree trimming or removal to prevent shading of the PV modules as indicated in layouts below. City acknowledges that it has reviewed layouts and approved trimming/removal of trees within or on perimeter of array areas.
- Selma acknowledges that upon issuance of Notice to Proceed per Section 2.04, Selma will allow ENGIE full, unimpeded access to perform the Scope of Work. Further, within ten (10) working days of issuance of Notice to Proceed, Selma or it's representatives shall provide staked or surveyed location points for the location of concrete pier foundations at the City Hall location, for the purpose of coordinating the appropriate location of caissons for the future installation of a new City Hall parking lot by others. If Selma fails to provide City Hall caisson location points within ten (10) working days after the Notice to Proceed has been issued, ENGIE will be entitled to an equitable extension of time and an equitable adjustment in the Contract Amount as a result of such delay.
- Twenty-five (25) year manufacturer warranty for photovoltaic panels and ten (10) year manufacturer warranty for inverters.
- Start-up and commissioning of the systems in accordance with the final design and applicable industry standards

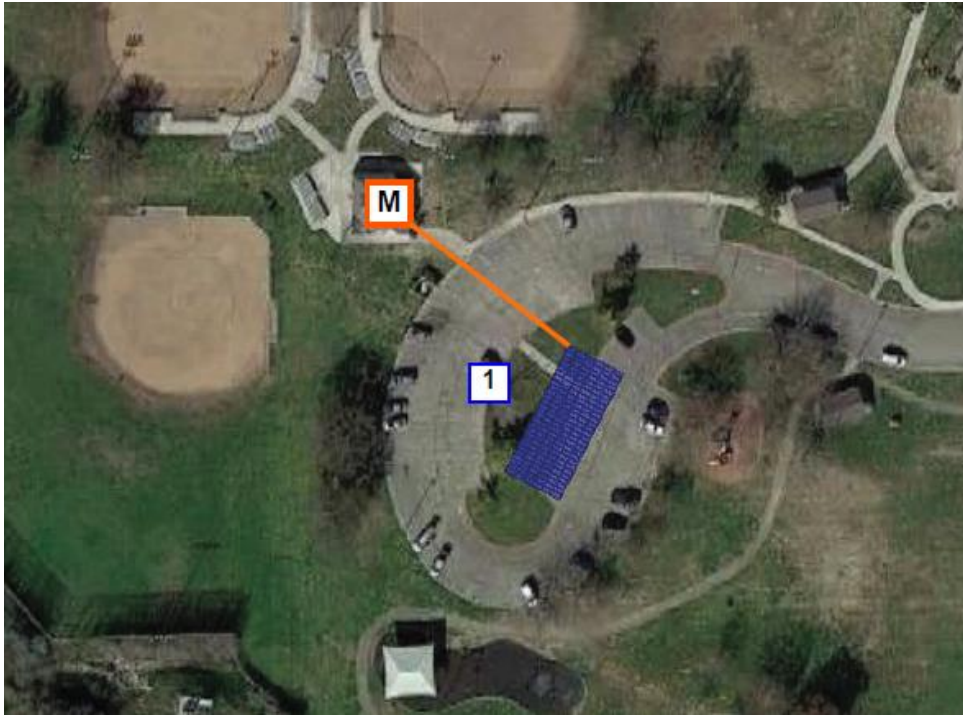
### Photovoltaic Project Layouts

**Layout 1 – City Hall**



**Layout 2 – Shafer Park**





**Layout 3 – Bretlinger Park**



**ECM 2: Facility Interior and Exterior Lighting**

**Detailed Scope of Work:**

Install new or retrofit lighting fixtures as follows; see tables below for the type and number of LED lighting installations or retrofits to be performed per Facility.

## **Berry Park**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture(s) and install one (1) RAB 12 W wall pack or equivalent	2
Remove existing fixture(s) and install one (1) RAB 150 W flood or equivalent	2
Remove existing fixture(s) and install one (1) RAB 24 W wall pack or equivalent	1
Remove existing lamp(s) and install one (1) Green Creative 9 W A19 screw-in lamp or equivalent	1
<b>Total</b>	<b>6</b>

## **Brentlinger Park**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture head and install one (1) Cree OSQ head with one (1) Cree Hi/Low sensor or equivalent	3
Remove existing fixture(s) and install one (1) RAB 12 W canopy or equivalent	2
Remove existing fixture(s) and install one (1) RAB 24 W wall pack or equivalent	3
Remove existing fixture(s) and install one (1) RAB 25 W wall pack or equivalent	1
Remove existing lamp(s) and ballast and install two (2) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	16
Remove existing lamp(s) and install one (1) Green Creative 39 W screw-in LED or equivalent	2
Remove existing lamp(s) and install one (1) Green Creative 9 W A19 screw-in lamp or equivalent	1
<b>Total</b>	<b>28</b>

## **City Hall**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture(s) and install one (1) RAB 12 W wall pack or equivalent	4
Remove existing lamp(s) and ballast and install one (1) Philips EvoKit 2x4 31W or equivalent	48
Remove existing lamp(s) and ballast and install two (2) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	4
Remove existing lamp(s) and install one (1) Green Creative 13 W lamp or equivalent	2
Remove existing lamp(s) and install one (1) Green Creative 13 W screw-in lamp or equivalent	69
Remove existing lamp(s) and install one (1) Green Creative 14 W screw-in LED lamp or equivalent	4
Remove existing lamp(s) and install one (1) Green Creative 9.5 W A19 screw-in lamp or equivalent	40
Remove existing lamps(s) and ballast and install Philips EvoKit 2x2 24 W or equivalent	11
Remove existing lamps(s) and ballast and install Philips EvoKit 2x4 26 W or equivalent	9
<b>Total</b>	<b>191</b>

## **Fire Administration**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture(s) and install one (1) RAB 12 W wall pack or equivalent	3
Remove existing lamp(s) and ballast and install one (1) Philips EvoKit 2x4 31W or equivalent	45

Remove existing lamp(s) and ballast and install two (2) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	11
Remove existing lamp(s) and install one (1) Green Creative 14 W screw-in LED lamp or equivalent	4
<b>Total</b>	<b>63</b>

### **Fire Station 1**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture(s) and install one (1) RAB 12 W wall pack or equivalent	2
Remove existing fixture(s) and install one (1) RAB 14 W canopy or equivalent	2
Remove existing fixture(s) and install one (1) RAB 24 W wall pack or equivalent	1
Remove existing fixture(s) and install one (1) RAB 25 W wall pack or equivalent	1
Remove existing fixture(s) and install one (1) RAB 39 W knuckle flood or equivalent	2
Remove existing lamp(s) and ballast and install four (4) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	13
Remove existing lamp(s) and ballast and install two (2) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	49
Remove existing lamp(s) and install one (1) Green Creative 13 W screw-in lamp or equivalent	1
Remove existing lamp(s) and install one (1) Green Creative 9 W A19 screw-in lamp or equivalent	4
<b>Total</b>	<b>75</b>

### **Fire Station 54**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture head and install one (1) Cree OSQ head with one (1) Cree Hi/Low sensor or equivalent	1
Remove existing fixture(s) and install one (1) Juno 20 W downlight or equivalent	1
Remove existing fixture(s) and install one (1) L.A. Lighting 4ft vapor tight fixture or equivalent	1
Remove existing fixture(s) and install one (1) RAB 12 W wall pack or equivalent	1
Remove existing fixture(s) and install one (1) RAB 14 W canopy or equivalent	1
Remove existing fixture(s) and install one (1) RAB 39 W knuckle flood or equivalent	3
Remove existing lamp(s) and ballast and install four (4) Philips 10 W LED T8 InstantFit lamps and two (2) Philips LED drivers or equivalent	6
Remove existing lamp(s) and ballast and install one (1) Philips EvoKit 2x4 31W or equivalent	4
Remove existing lamp(s) and ballast and install two (2) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	3
Remove existing lamp(s) and install one (1) Green Creative 6 W G 25 screw-in lamp or equivalent	1
Remove existing lamp(s) and install one (1) Green Creative 6 W MR16 lamp or equivalent	4
Remove existing lamp(s) and install one (1) L.A. Lighting 8ft vapor tight or equivalent	8
<b>Total</b>	<b>34</b>

### **Maintenance Yard**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture and install one (1) Hubbell 72 W wall pack or equivalent	8

Remove existing fixture and install one (1) LG 115 W high-bay fixture or equivalent	6
Remove existing fixture head and install one (1) NLS universal quick adaptor or equivalent	2
Remove existing lamp(s) and ballast and install one (1) Green Creative 21 W downlight or equivalent	1
Remove existing lamp(s) and ballast and install two (2) Lunera 13 W lamps and one (1) Philips driver or equivalent	2
Remove existing lamp(s) and ballast and install two (2) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	8
Remove existing lamps(s) and ballast and install Philips EvoKit 2x4 26 W or equivalent	15
<b>Total</b>	<b>42</b>

### **Ringo Park**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture(s) and install one (1) RAB 12 W wall pack or equivalent	6
Remove existing fixture(s) and install one (1) RAB 150 W flood or equivalent	4
Remove existing lamp(s) and install one (1) Green Creative 39 W screw-in LED or equivalent	4
Remove existing lamp(s) and install one (1) Green Creative 9 W A19 screw-in lamp or equivalent	1
<b>Total</b>	<b>15</b>

### **Salazar Community Center**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture and install one (1) Lithonia 24 W interior surface drum or equivalent	3
Remove existing fixture(s) and install one (1) RAB 14 W canopy or equivalent	4
Remove existing fixture(s) and install one (1) RAB 39 W knuckle flood or equivalent	1
Remove existing lamp(s) and ballast and install two (2) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	57
Remove existing lamp(s) and install one (1) Green Creative 9 W A19 screw-in lamp or equivalent	2
<b>Total</b>	<b>67</b>

### **Selma Arts Center**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing lamp(s) and ballast and install two (2) Lunera 26 W CFL lamps and one (1) Philips driver or equivalent	2
Remove existing lamp(s) and ballast and install two (2) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	53
Remove existing lamp(s) and install one (1) Green Creative 6 W G 25 screw-in lamp or equivalent	3
Remove existing lamp(s) and install one (1) Lunera 11W CFL and one (1) Philips driver	10
Remove existing lamp(s) and install one (1) Lunera 11W CFL, one (1) Philips ballast and one (1) Iota battery	8
Remove existing lamps(s) and ballast and install Philips EvoKit 2x4 26 W or equivalent	5
<b>Total</b>	<b>81</b>

## **Senior Center**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture and install one (1) Hubbell 32 W wall pack or equivalent	6
Remove existing lamp(s) and ballast and install one (1) Philips EvoKit 2x4 31W or equivalent	26
Remove existing lamp(s) and ballast and install two (2) Lunera 26 W CFL lamps and one (1) Philips driver or equivalent	24
Remove existing lamp(s) and ballast and install two (2) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	15
Remove existing lamp(s) and install one (1) Green Creative 27 W screw-in LED lamp or equivalent	6
Remove existing lamp(s) and install one (1) Green Creative 9 W A19 screw-in lamp or equivalent	4
Remove existing lamp(s) and install one (1) Lunera 11W CFL and one (1) Philips driver	16
Remove existing lamps(s) and ballast and install Philips EvoKit 2x4 26 W or equivalent	32
<b>Total</b>	<b>129</b>

## **Shafer Park**

<b>Lighting Retrofit Description</b>	<b>Quantity</b>
Remove existing fixture and install one (1) Hubbell 32 W wall pack or equivalent	3
Remove existing fixture head and install one (1) NLS universal quick adaptor or equivalent	11
Remove existing fixture(s) and install one (1) RAB 150 W flood or equivalent	4
Remove existing fixture(s) and install one (1) RAB 150 W trunnion or equivalent	2
Remove existing lamp(s) and ballast and install one (1) Linmore 44 W URS or equivalent	4
Remove existing lamp(s) and ballast and install two (2) Philips 10 W LED T8 InstantFit lamps and one (1) Philips LED driver or equivalent	3
<b>Total</b>	<b>27</b>

## **ECM 3: EV Charging**

**General Scope of Work:** This scope of work applies to the electric-vehicle charging (EVC) stations listed in the tables below, and includes installation, startup and commissioning.

**Detailed Scope of Work:** Refer to the following for quantities and equipment types:

Provide & install & configure two (2) EV-Box Open Charge Point Protocol (OCPP) B2323-65063-EVC-04Dual Port, EV-connect Networked EVC stations or equivalent. Activation, one-year EV-Connect Self-Managed network service, and three-year equipment warranty included.

### **General Project Exclusions and Clarifications:**

1. Selma will be responsible for obtaining and paying for inspections and any required Building, Mechanical, and Electrical Permits.
2. Selma will be responsible for hiring and paying all inspectors, including special inspectors.
3. ENGIE Services U.S. has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.
4. Temporary utilities are to be provided by Selma at no cost to ENGIE Services U.S. (including, without limitation, trailer power, phone lines, and construction power).

5. Removal and disposal of Hazardous Substances, including asbestos containing materials, to be by Selma. If ENGIE Services U.S. encounters material suspected to be hazardous, ENGIE Services U.S. will notify Selma representative and stop further work in the area until the material is removed.
6. Selma will provide IP addresses as required.
7. ENGIE Services U.S. will require the assistance of Selma personnel to secure the Project Location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
8. No allowance has been made for structural upgrades to existing structures, except as specifically set forth in this Scope of Work.
9. No allowance has been made for screening of new or existing equipment, except as specifically set forth in this Scope of Work.
10. ENGIE Services U.S. standard construction means and methods will be used.
11. Selma will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for ENGIE Services U.S. and ENGIE Services U.S.'s subcontractor vehicles in parking lots at the Facilities.
12. Work will be performed during normal work hours; no overtime hours are included in the Contract Amount. The lighting retrofit Work will be performed so as not to unreasonably interfere with the building schedule.
13. The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. ENGIE Services U.S. will not be responsible for repairs or upgrades to existing systems that are not functioning properly or compliant with current codes. No allowances have been made to bring existing systems up to code.
14. No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, ENGIE Services U.S. will immediately notify Selma representative.
15. No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
16. Smoke detectors and fire alarm system work is excluded.
17. The PV shade structure is not weather tight and will not provide shelter from rain.
18. Water hose bibs for washing the panels are excluded.
19. Decorative fascia along the perimeter of the panels and decorative covering underneath the panels are excluded.
20. Parking lot repairs are excluded, except where specifically noted, except to the extent of damage caused by ENGIE Services U.S. or its subcontractors.
21. Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded, except as specifically set forth in this Scope of Work.
22. Painting, unless specified, is excluded.
23. With respect to lighting equipment maintenance and/or lamp and ballast retrofitting, Selma will properly ground lighting fixtures before ENGIE Services U.S. commences Work in compliance with applicable codes.
24. With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, Selma will provide an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest NEC requirements adopted by the authority having jurisdiction. This Scope of Work includes, if applicable, properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
25. With respect to Projects with new equipment connecting to the Facility's existing electrical distribution system, ENGIE Services U.S. will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. Selma is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and guidelines adopted by the authority having jurisdiction.

**Work scopes to receive Substantial and Final Completion:**

Scope of Work	Location	Total Qnty of SC	Total Qnty of FC
Solar PV, City Hall EV Charging	3 sites	3; one per site	3; one per site
Facilities Lighting (interior & exterior)	12 sites	12; one per site	1; for entire ECM

**Substantial Completion/Beneficial Use and Commencement of Warranty** occur when the following milestones have been achieved:

- (1) PV SYSTEMS – The ENGIE Services U.S. Warranty commences immediately when the Generating Facility is capable of generating expected energy and the Utility is ready to issue the permission-to-operate letter.
- (2) FACILITY LIGHTING – Uninterrupted operation for a duration, as necessary, with a maximum of 1 week, to determine proper operation.

“Uninterrupted supply” or “uninterrupted operation” is defined as: no involuntary shutdowns due to mechanical or electrical difficulties.

ENGIE Services will provide written notice to City of the date of Substantial Completion and commencement of Warranty for each scope of work of above.

**Authority Having Jurisdiction (AHJ) Approvals & Permits and Other Approvals**

ENGIE Services, its designers and contractors will promptly and timely submit and provide documentation required for approvals of the ECMs above to the Authority Having Jurisdiction (AHJ), the local Fire Marshall and the serving Utility. ENGIE Services will obtain approvals from Utility or other responsible party for the interconnection of the Work with Owner’s utility provider.

Owner, at its sole cost, will retain plan approval and inspecting authorities to include the services of an Authority Having Jurisdiction-approved Inspector of Record (IOR) and Special Inspection Agency (SIA) who will represent the authority having jurisdiction and perform all inspections necessary. ENGIE Services will notify the IOR and SIA of required inspections and will provide reasonable access and accommodations for inspections.

Americans with Disabilities Act (ADA) accessibility upgrades to existing buildings, parking lots, or path of travel are specifically excluded.



**ATTACHMENT D**  
**MONITORING INSTALLATION SCOPE OF WORK**

*Overview of DAS Network Installation and Equipment Requirements*

ENGIE Services U.S. will provide a revenue-grade billing, data acquisition system (DAS). This will provide readily available access to various internal and external information collected on the distributive generation (i.e., solar PV) plant.

***ENGIE Services U.S. DAS Monitoring Installation:***

- Supply and install hardware specific to the DAS system.
- Supply and install, terminate, label, and test all Data Point of Connection (DPOC) communication cabling from each DAS node to the predetermined and respective DPOC(s); in accordance with Selma's specifications.
- Supply, install, and configure a Modbus based digital Net Energy Meter (NEM).
- Connect the data portion of digital NEM(s) to their respective DPOC(s).
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Perform the physical installation, labeling, testing and certification testing of each data circuit from the digital NEM(s) to their respective DPOC(s).
- Provide basic system training to designated Selma/Facility maintenance staff.

**ATTACHMENT E**  
**M&V SERVICES**

**EQUIPMENT AND FACILITIES COVERED**

ENGIE Services U.S. will perform measurement and verification services (“M&V Services”) as set forth in this Attachment E with respect to Selma’s property at the following Project Locations:

Facility	Address	Square Feet	Energy Measures To Be Assessed:
Selma Arts Center	1935 High St, Selma, CA 93662	6,330	LED lighting
Berry Park	1814 Tucker St, Selma, CA 93662	NA	LED lighting
Brentlinger Park	Orange Ave and Rose Ave, S/W Corner, Selma, CA 93662	NA	Solar, LED lighting
City Hall	1710 Tucker St, Selma, CA 93662	7,525	Solar, LED lighting, EV charging
Fire Administration Building	1711 Tucker St, CA 93662	3,909	LED lighting
Fire Department Station 1	1927 W Front St, Selma, CA 93662	4,290	LED lighting
Fire Department Station 2	2857 A St, Selma, CA 93662	4,639	LED lighting
Maintenance Yard	1325 Nebraska Ave, Selma, CA 93662	NA	LED lighting
Ringo Park	2099 Mitchell Avenue, Selma, CA 93662	750	LED lighting
Salazar Community Center	1800 Sheridan St, Selma, CA 93662	5,429	LED lighting
Selma Senior Center	2301 Selma St, Selma, CA 93662	6,937	LED lighting
Shafer Park	Floral Ave & Thompson Ave, Selma, CA 93662	NA	Solar, LED lighting

**I. Definitions:**

Capitalized terms used in this Attachment E and not defined in the Contract, have the meanings set forth below:

“**Accumulated Savings**” means, as of any date of determination, the cumulative total of Excess Savings.

“**Actual Energy Rate**” means, for any Measurement Period, utility rates calculated by ENGIE Services U.S. using actual utility billing information supplied by Selma for that Measurement Period.

“**Annual M&V Fee**” means a fee payable annually in advance by Selma to ENGIE Services U.S., in consideration of the provision of up to five (5) years of M&V Services. The Annual M&V Fee for the first Measurement Period will be Five Thousand Six Hundred Thirty-Two Dollars (\$5,632.00). The Annual M&V Fee will be increased annually thereafter at the rate of three percent (3%) per annum for the first five (5) Measurement Periods, each increase to be effective on the first day of the corresponding Measurement Period. The Annual M&V Fee for each Measurement Period after the fifth (5<sup>th</sup>) Measurement Period will be negotiated in good faith by the Parties, not later than ninety (90) days prior to the end of the preceding Measurement Period, on the basis of then-prevailing market rates for, e.g., labor and equipment.

“**Average Energy Unit Savings**” means, with respect to any number of consecutive Measurement Periods, the arithmetic means of the Energy Unit Savings for such number of Measurement Periods.

“**Base Energy Rate**” means the dollars per energy unit for each building and/or each ECM, set forth in this Attachment E, Section (III), and used by ENGIE Services U.S. to calculate the EC Savings.

“**Baseline**” means the energy use established by ENGIE Services U.S. from time to time for each building in the Facilities, taking into consideration Energy Use Factors for such buildings.

“**EC Savings**” means the savings in units of dollars (\$) calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

**“Energy Rate Factors”** means factors identified by ENGIE Services U.S. which may affect utility rates from the local utility companies.

**“Energy Savings Report”** is defined in this Attachment E, Section (II)(D).

**“Energy Savings Term”** means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the fifth (5<sup>th</sup>) anniversary of the M&V Commencement Date; (ii) the termination of the Contract; (iii) the termination by Selma of the M&V Services in accordance with this Attachment E, Section (II)(G); or (iv) the failure by Selma to pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H)(i).

**“Energy Unit Savings”** means the savings in units of energy, power, water, etc., calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

**“Energy Use Factors”** means factors identified by ENGIE Services U.S. which may affect the Baselines or energy use for the Facilities, including but not limited to: hours and levels of occupancy; adjustments in labor force; building use and operational procedures; temperature, humidification, and ventilation levels; installed lighting and scheduled use; building construction and size; general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment; and amount of heating and air conditioning and other energy-using equipment.

**“Energy Use Savings”** means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in energy use, energy demand, water use, and the use of other commodities.

**“Excess Savings”** means the excess of EC Savings over Guaranteed Savings, calculated in the manner set forth in this Attachment E, Section (II)(I)(iv).

**“Guarantee Payment”** means, for any Measurement Period, either: (i) a cash payment by ENGIE Services U.S. to Selma in an amount equal to the Guarantee Shortfall for that Measurement Period pursuant to this Attachment E, Section (II)(A)(ii); or (ii) additional energy services or energy saving retrofits requested by Selma with an agreed value equal to the Guarantee Shortfall for that Measurement Period pursuant to this Attachment E, Section (II)(A)(iii).

**“Guarantee Shortfall”** means an amount calculated in accordance with this Attachment E, Section (II)(I)(v).

**“Guaranteed Savings”** means, for any Measurement Period, the dollar amount set forth below for such Measurement Period, as the same may be adjusted from time to time by ENGIE Services U.S. for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline:

Measurement Period	Guaranteed Savings
1	\$95,009
2	\$99,414
3	\$104,024
4	\$108,848
5	\$113,897
6	\$119,180
7	\$124,709
8	\$130,496
9	\$136,551
10	\$142,889
11	\$149,521
12	\$156,462
13	\$163,726
14	\$171,329
15	\$179,285
16	\$187,612
17	\$196,326
18	\$205,447
19	\$214,992
20	\$224,983

“IPMVP” means the International Performance Measurement and Verification Protocol prepared by Efficiency Valuation Organization.

“Projected Energy Savings” means those Energy Unit Savings, which ENGIE Services U.S. anticipates will be realized from the installation and continued operation of the Work, as set forth in this Attachment E, Section (III).

“Savings Guarantee” is defined in this Attachment E, Section (II)(A)(i).

## II. Terms and Conditions

### A. Guaranteed Savings.

- i. Savings Guarantee. In consideration of the payment of the Annual M&V Fee, and upon the terms and subject to the conditions set forth herein, ENGIE Services U.S. warrants that Selma will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the “Savings Guarantee”), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.
- ii. Guarantee Payment. For any Measurement Period in which there is a Guarantee Shortfall, ENGIE Services U.S. will pay to Selma, within thirty (30) calendar days after the acceptance by Selma of the Energy Savings Report for such Measurement Period, the Guarantee Payment for that Measurement Period.
- iii. Services or Retrofits in Lieu of Guarantee Payment. If in the judgment of Selma, Selma would benefit from additional energy services or energy saving retrofits, Selma and ENGIE Services U.S. may mutually agree that ENGIE Services U.S. will provide such services or retrofits in lieu of the Guarantee Payment for such Measurement Period. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that Measurement Period.
- iv. Not used.
- v. Excusable Events. If ENGIE Services U.S. is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any Excusable Event, such circumstance will not constitute a default, and ENGIE Services U.S. will be excused from performing the M&V Services while such event is continuing. During such event, Projected Energy Savings for the month(s) in which such event is continuing will be used in lieu of actual data; *provided* that if three (3) or more years of post M&V Commencement Date data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.
- vi. Average Energy Unit Savings. For any Measurement Period beginning with the fifth (5<sup>th</sup>) Measurement Period, upon completion of that Measurement Period’s Energy Savings Report, ENGIE Services U.S. has the right to calculate the Average Energy Unit Savings which have occurred over all previous Measurement Periods. The Average Energy Unit Savings will be applied to all subsequent Measurement Periods to determine the Energy Unit Savings for each remaining Measurement Period. After applying such Average Energy Unit Savings for each subsequent Measurement Period and calculating the resulting EC Savings, if the *sum* of (i) such calculated EC Savings for any future Measurement Period *plus* (ii) the Annual M&V Fee for such Measurement Period is greater than the Guaranteed Savings for that Measurement Period, then such excess will be Excess Savings and the Savings Guarantee will have been met for that Measurement Period. If such *sum* of (i) calculated EC Savings for any future Measurement Period *plus* (ii) the Annual M&V Fee for such Measurement Period is less than the Guaranteed Savings for that Measurement Period, then ENGIE Services U.S. will apply Accumulated Savings then outstanding to determine whether there is a Guarantee Shortfall for that Measurement Period. If a Guarantee Shortfall is calculated to exist for a future Measurement Period, ENGIE Services U.S. may, in its sole discretion, pay to Selma, not later than the ninetieth (90<sup>th</sup>) day of such future Measurement Period, the net present value of the Guarantee Shortfall for any or all of such future Measurement Period(s). Net present value will be determined using a discount rate of ten percent (10%).

### B. Changes in Energy Use Factors.

- i. Adjustments to Baselines. Selma will notify ENGIE Services U.S. in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by ENGIE Services U.S. during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. ENGIE Services U.S. will determine the effect that any such change will have on EC Savings and present to Selma a written analysis of the effects of such changes. ENGIE Services U.S. will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.

- ii. Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. ENGIE Services U.S. will notify Selma, in writing, of all such changes.
- iii. Changes to Facilities. Selma or ENGIE Services U.S. may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing events beyond its control. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Attachment E, Section (II)(B)(iii).
- iv. Baseline Adjustment. If ENGIE Services U.S. proposes changes to the Facilities that would not unreasonably interfere with the conduct of Selma's business or cause Selma to incur additional costs, and Selma does not consent to the changes, then ENGIE Services U.S. will adjust the Baselines upward by the amount of savings projected from the changes.
- v. Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by ENGIE Services U.S.
- vi. Not used.
- vii. Changes in Energy Use Factors. If Selma fails to notify ENGIE Services U.S. of changes in Energy Use Factors or fails to supply ENGIE Services U.S. in a timely manner with information that is requested by ENGIE Services U.S. for the calculation of EC Savings, the Energy Unit Savings for the relevant Measurement Period will be deemed equal to the corresponding Projected Energy Savings for such period. If information for the relevant Measurement Period is supplied at a later date, the Energy Unit Savings will be modified only if and to the extent that the calculated savings for such period exceed the Projected Energy Savings for such period.
- viii. Change Order – Savings Effect. ENGIE Services U.S. will calculate the energy impact of any Change Orders.
- ix. Changes in Savings Calculations. Any changes made by ENGIE Services U.S. to the savings calculations will be presented to Selma in advance. Selma will have thirty (30) calendar days to challenge or question the changes in writing. No such changes will be effective unless agreed to by the parties in writing.
- x. Inspection of Facilities. Selma agrees that ENGIE Services U.S. will have the right, with or reasonable prior notice, to inspect the Facilities to determine if Selma has consistently complied with its obligations as set forth above. If any inspection discloses that Selma has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.
- xi. Interference. Selma may not cause, and will take all commercially reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, Selma will promptly notify ENGIE Services U.S. If an unforeseeable overshadowing or shading condition not caused by ENGIE Services U.S. or its subcontractors exists and continues for five (5) Business Days or more, Selma agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and ENGIE Services U.S. may present Selma with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. Selma Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, Selma will maintain such portion of the Work and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by ENGIE Services U.S. and by the manufacturers of the relevant equipment, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities.

D. Energy Savings Report. Annually during the first five (5) Measurement Periods of the Energy Savings Term, ENGIE Services U.S. will submit to Selma an energy savings report containing a precise calculation of the EC Savings during the applicable Measurement Period (an "Energy Savings Report"). ENGIE Services U.S. will use its best efforts to submit such Energy Savings Report within ninety (90) calendar days after receipt of all needed information for a Measurement Period, unless additional information is needed to accurately calculate the EC Savings, in which case Selma will be notified of such a situation within the ninety (90) calendar-day period.

E. On-Site Measurements. Selma irrevocably grants to ENGIE Services U.S. the right, during the Energy Savings Term, to monitor EC Savings and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. ENGIE Services U.S. will not exercise such right in a manner that unreasonably interferes with the business of Selma as conducted at the Facilities as of the date hereof. Selma will cooperate fully with the exercise of such right by ENGIE Services U.S. pursuant to this Attachment E, Section (II)(E). Selma will further cooperate with ENGIE Services U.S.'s performance of the M&V Services by providing utility information, changes in Energy Use Factors, and/or additional information as reasonably requested by ENGIE Services U.S.

F. Termination of Guaranteed Savings. If (i) Selma notifies ENGIE Services U.S. in writing of its intent to terminate the M&V Services, (ii) the Contract is terminated by ENGIE Services U.S. for default by Selma or by Selma for any reason permitted by the Contract, (iii) ENGIE Services U.S. is no longer the provider of the Maintenance Services set forth in Attachment F, or (iv) Selma fails to maintain the Project in accordance with this Attachment E, Section (II)(C), or is in default of any of its other obligations under this Attachment E, the obligation of ENGIE Services U.S. to prepare and deliver the Energy Savings Report and to make a Guarantee Payment will also be terminated. If such termination occurs on a date other than the last day of a Measurement Period, ENGIE Services U.S. will have no obligation to make a Guarantee Payment or prepare and deliver an Energy Savings Report for such Measurement Period.

G. Annual M&V Fee.

- i. Invoicing and Payment. The Annual M&V Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to Selma in a lump sum on the M&V Commencement Date. All subsequent Annual M&V Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. Selma, or its designee, will pay ENGIE Services U.S. such Annual M&V Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Unless Selma gives ENGIE Services U.S. prior written notice of its intent to terminate the M&V Services, any failure to timely pay the Annual M&V Fee in accordance with this Attachment E, Section (II)(H) will be a material default by Selma under the Contract, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to perform M&V Services or to make Guarantee Payments.
- ii. Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.
- iii. Not Refundable. The Annual M&V Fee is not refundable for any reason.

H. Calculations.

- i. Calculation of Accumulated Savings. Accumulated Savings will be increased, for any Measurement Period, by the amount of Excess Savings during such Measurement Period, and will be decreased, for any Measurement Period, by the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the EC Savings for such Measurement Period. For the avoidance of doubt, Accumulated Savings will not be reduced below zero.
- ii. Calculation of EC Savings. EC Savings for any Measurement Period will be equal to the *sum*, for such Measurement Period, of (i) the Energy Use Savings, *plus* (ii) the Stipulated Non-Energy Savings, in each case as adjusted for changes in Energy Use Factors during such Measurement Period. EC Savings achieved during the Construction Period will be included in the EC Savings for the first Measurement Period.
- iii. Calculation of Energy Use Savings. Energy Use Savings will be calculated by ENGIE Services U.S. as the *product* of (i) the Energy Unit Savings *multiplied by* (ii) the greater of (a) the applicable Base Energy Rate or (b) the applicable Actual Energy Rate.
- iv. Calculation of Excess Savings. From and after the M&V Commencement Date, Excess Savings will be calculated by ENGIE Services U.S. as the *difference*, to the extent positive, between (i) the EC Savings for the relevant Measurement Period *minus* (ii) the Guaranteed Savings for such Measurement Period. During the Construction Period, Excess Savings will be calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III). For the avoidance of doubt, Excess Savings will not be reduced below zero.
- v. Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any Measurement Period, will be calculated by ENGIE Services U.S. as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the sum of (a) EC Savings for such Measurement Period plus (b) Accumulated Savings then outstanding.

III. Methodologies and Calculations

The following details the methodologies and calculations to be used in determining the Energy Unit Savings under this Contract.

**Table E-1: Measurement and Verification Methods**

ECM	ECM Description	M&V Method	
		Electric Usage	Electric Demand
1	Solar PV	Option B	N/A
2	Facilities Lighting (Interior & Exterior)	Option A	N/A

1. M&V Option A: This option allows for the energy savings to be predicted, measured, and agreed upon between Selma and ENGIE Services U.S. One-time measurements and stipulated parameters are used to quantify savings that are stipulated for the term of the Contract.
  - a. ENGIE Services U.S. will supply a one-time report to Selma detailing the measurements and calculation of savings. If the calculated savings fall short of those expected, ENGIE Services U.S. will have the opportunity to remedy the short fall and re-measure and calculate the results. Such work will be done at ENGIE Services U.S.'s expense and will not be unreasonably denied by Selma, as long as such work does not interfere with Selma's use of the Facilities. These calculated savings will be defined as Energy Unit Savings and will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the ECM and the M&V Commencement Date.
  - b. Scope of Work  
The Energy Savings generated from the installation of the lighting ECMs will be measured and verified using IPMVP Option A. These savings will be measured and calculated by the following method:
    1. The reduction in units of electric demand (kW) from the installation of the lighting ECMs is to be measured directly using a calibrated true-RMS watt meter or stipulated based on the following parameters. Existing and to-be-installed fixture types will be grouped project-wide, based on the type of fixture (i.e., type of lamp, number of lamps and ballast type) and the assumed wattage. All lamps without ballasts (incandescent), along with exit signs and exterior fixtures that cannot be isolated and measured, will be stipulated at their manufacturer's rated wattage. Groups of fixtures with ballasts will be measured in the following manner.
      - a. For groups with 1,000 or more fixtures, ten (10) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
      - b. For groups with 500 or more fixtures but fewer than 1,000, seven (7) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
      - c. For groups with 100 or more fixtures but fewer than 500, four (4) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
      - d. For groups with 99 or fewer fixtures or where measurements are not physically possible, the measured wattage will be stipulated for that group to equal the wattage defined in the lighting line-by-line, showing the existing fixture codes, quantities, and manufacturer's rated wattage for these type fixtures.
    2. Assumptions: The annual unit consumption savings (kWh) for each retrofit will be calculated by multiplying the demand savings as calculated above by the Occupied Annual Hours, where the Occupied Annual Hours have been agreed upon and stipulated to by Selma and are presented in *Table E-2* below. The Energy Unit Savings (kWh) will be the sum of the calculated annual unit consumption savings for each retrofit.

**Table E-2: Annual Lighting Hours by Room Type – Stipulated**

<b>Agreed Upon Lighting Hours of Operation</b>
--



Building	Annual Hours
Inactive Storage	520
Server Room	1,040
Restroom	2,080
Lounge	2,080
Active Storage	1,560
Mechanical / Electrical	1,560
Office Areas / Lobby	2,600
Bedroom / Kitchen	2,920
Exterior	4,368

3. Post-retrofit measurements will be performed one time, after the retrofit is complete. Post-retrofit ECM performance is assumed to be consistent for the duration of the Energy Savings Term.
4. EC Savings achieved from the lighting ECMs are calculated by the following equation:  

$$\text{EC Savings} = \text{Energy Unit Savings} \times \text{Base Energy Rate}$$

**Table E-3: Lighting Annual Savings by Site (ECM-2)**

Location	Projected Annual Savings (kWh)
Berry Park	3,377
Brentlinger Park	4,072
City Hall	15,253
Fire Administration Building	10,236
Fire Department Station 1	11,203
Fire Department Station 2	10,679
Maintenance Yard	13,069
Ringo Park	7,798
Salazar Community Center & Park	5,388
Selma Arts Center	4,368
Selma Senior Center	9,640
Shafer Park	22,565
<b>Total</b>	<b>117,648</b>

2. M&V Option B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Option B techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option B, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.
  - a. ENGIE Services U.S. will supply a one-time report to Selma detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.
  - b. Scope of Work

No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Measured interval production kilowatt-hours will be compared against production shown on the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in *Table E-4* below and is projected to degrade by 0.5% per year.

**Table E-4: First Year Solar PV Production (ECM-1)**

Location	Projected Annual Production (kWh)
Brentlinger Park	75,477
City Hall	137,193
Shafer Park	99,037
<b>Total</b>	<b>311,707</b>

- c. Assumptions: Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.
  - d. Baselines and Projected Savings: EC Savings will be determined by multiplying the Energy Unit savings by the applicable Base Energy Rate. EC Savings will be calculated and presented in ongoing reports. During the Construction Period, the EC Savings will be calculated by adding the production measured for the period between Substantial Completion of the EC Measure and the M&V Commencement Date.
4. Base Energy Rates: EC Savings will be calculated using the Base Energy Rates or Actual Energy Rates for that meter, whichever results in greater EC Savings. Actual Energy Rates will be calculated at the end of each Measurement Period using utility billing information for that Measurement Period and using the same methodology as was employed to determine the base energy rate in the Recommendations.

The Base Energy Rates listed here are to be increased each Measurement Period on a cumulative basis by five percent (5%) beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

**Table E-6: Base Energy Rates**

Location	Electricity Rate (\$/kWh)
Berry Park	0.2128
Brentlinger Park	0.2293
City Hall	0.2282
Fire Administration Building	0.2337
Fire Department Station 1	0.2248
Fire Department Station 2	0.2250
Maintenance Yard	0.2397
Ringo Park	0.2259
Salazar Community Center & Park	0.2271
Selma Arts Center	0.2298
Selma Senior Center	0.2351
Shafer Park	0.2073

**ATTACHMENT F**  
**MAINTENANCE SERVICES**

**EQUIPMENT AND FACILITIES COVERED**

ENGIE Services U.S. will perform preventive maintenance services ("Maintenance Services") as set forth in this Attachment F with respect to Generating Facilities being constructed on Selma's property at the following Project Locations:

Facility	Address
Brentlinger Park	2550 Olive Street, Selma, CA 93662
City Hall	1710 Tucker St, Selma, CA 93662
Shafer Park	Floral Ave & Thompson Ave, Selma, CA 93662

Capitalized terms used in this Attachment F and not defined in the Contract, have the meanings set forth below:

**I. Definitions**

"**Annual Maintenance Fee**" means a fee payable annually in advance by Selma to ENGIE Services U.S., in consideration of the provision of up to ten (10) years of Maintenance Services. The Annual Maintenance Fee for the first Measurement Period will be Eight Thousand Three Hundred Fifty-Nine Dollars (\$8,359.00). The Annual Maintenance Fee will be increased annually thereafter at the rate of three percent (3%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

**II. Term**

So long as Selma pays to ENGIE Services U.S. the Annual Maintenance Fee, ENGIE Services U.S. will provide the Maintenance Services, as described herein, up to ten (10) years from the M&V Commencement Date on an annualized basis. At the end of this term, City of Selma may:

- a. Enter into another agreement with ENGIE Services U.S. to perform Maintenance Services
- b. Enter into an agreement with another service provider
- c. Self-perform preventive maintenance

**III. Annual Maintenance Fee; Reporting**

The Annual Maintenance Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to Selma in a lump sum on the M&V Commencement Date. All subsequent Annual Maintenance Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. Selma, or its designee, will pay ENGIE Services U.S. such Annual Maintenance Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Any failure to timely pay the Annual Maintenance Fee in accordance with this Attachment F will be a material default by Selma, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide Maintenance Services.

Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.

The Annual Maintenance Fee is not refundable for any reason.

Upon completion of any maintenance or repair work, ENGIE Services U.S. will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to Selma on a quarterly basis.

If ENGIE Services U.S. is no longer the provider of Maintenance Services, Selma's new provider will maintain similar service logs. ENGIE Services U.S. will have reasonable access to inspect service logs to determine that adequate Maintenance Services are being performed.

**IV. Preventive Maintenance Services Provided**

ENGIE Services U.S. will provide the following Maintenance Services during the term:

a. Inspection:

- i. Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations and support structure on an annual basis.
- ii. Perform the following Inspection for the Electric Vehicle Charging stations on an annual basis:
  - a. Check outside unit for any damage
  - b. Check casing of charger
  - c. Check cable plug of charger
  - d. Fully extend and test retractor mechanism
  - e. Check Led ring
  - f. Open and check internal components of charger
  - g. Check clamps to hold components to dinrails
  - h. Check CCID for rust caused by condensation
  - i. Check connection of Power Supply to terminal block
  - j. Check connections in PCB

b. Testing:

- a. Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on an annual basis.
- b. Measure Power Quality, Voltage, Amperage on Electrical Vehicle Charging station on an annual basis.

c. Monitoring: Monitor system performance on a daily basis.

d. Cleaning:

- i. Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.
- ii. Wash PV modules and remove accumulated dust and debris on a semi-annual basis.

**V. Repair Services**

Section 27.01 If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, Selma must contact the ENGIE Services U.S. PV Operations & Maintenance Manager. In the event of damage, any component of the Generating Facility installed by ENGIE Services U.S. can be repaired or reconstructed by ENGIE Services U.S. at Selma's request. Selma must submit a request for quotation to the ENGIE Services U.S. PV Operations & Maintenance Manager. ENGIE Services U.S. will inspect the damage and provide a written quotation and complete scope of work to Selma to restore the Generating Facility to normal operational condition. Before proceeding with repairs, ENGIE Services U.S. and Selma must execute a work order, on ENGIE Services U.S.'s form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis. Standard Business Hours are M-F, 7am to 5pm. Non-business Hours & Saturdays Equals 1.5x Rates. Sundays & Holidays Equals 2.0x Rates.

Labor Category		Straight Time
Hourly Rate – PV Electrical Journeyman Technician	\$/hr.	\$ 150.00
Hourly Rate – PV Electrical Apprentice Technician	\$/hr.	\$ 65.00
Hourly Rate - Engineering	\$/hr.	\$ 170.00
Hourly Rate - Administrative	\$/hr.	\$ 65.00
Service call-out - Daily minimum fee	\$	\$ 550.00
Mileage	\$	IRS Rate
Material mark-up %	%	15.00
Lift rental fee	\$	Current Market Price

## **VI. Warranty Services**

The ENGIE Services U.S. PV Operations & Maintenance Manager will also be Selma's point of contact for all issues related to the ENGIE Services U.S. Warranty set forth in Section 9.01 of the Contract. Selma should refer to Section 9.02 of the Contract for services provided by ENGIE Services U.S. to Selma in relation to manufacturer's warranties. The terms and conditions of the relevant manufacturer's warranties can be found in the operation and maintenance manuals delivered to Selma at Final Completion.

## **VII. Services and Equipment to Be Covered by Selma**

ENGIE Services U.S.'s obligations under this Attachment E are expressly conditioned upon Selma's payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to ENGIE Services U.S.:

- a. Making the Generating Facilities described herein available to ENGIE Services U.S. as of the Contract Effective Date.
- b. Operating and maintaining security systems associated with the Generating Facilities.
- c. Maintaining all landscaping in and around Generating Facilities including tree trimming.
- d. Allowing ENGIE Services U.S. and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Maintenance Services, including reasonable work, parking, and equipment staging areas.
- e. Allowing ENGIE Services U.S. and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for ENGIE Services U.S. to satisfy its obligations under the Contract.
- f. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by ENGIE Services U.S. during the performance of the Maintenance Services which Hazardous Substances were not deposited by ENGIE Services U.S., including any backfill with clean soil as may be reasonably required.
- g. Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

ENGIE Services U.S. will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by Selma's failure to satisfy the conditions set forth in this Attachment E.

**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

April 20, 2020

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**ITEM NO:**

3.

**SUBJECT:** Consideration of a Resolution Supporting Alternative 3 as identified in the State Route 99/Mountain View Feasibility Study

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**RECOMMENDATION:** Approve Resolution of Support for Alternative 3 as identified in the SR 99/Mt. View Feasibility Study and commitment by the City of Selma to pursue local, regional, state and federal funding sources to construct identified transportation improvements.

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**DISCUSSION:** The Fresno Council of Governments (FCOG), the Tulare County Association of Governments (TCAG), the City of Kingsburg, and the City of Selma in cooperation with Caltrans conducted a feasibility study that concluded in May 2019 to determine the required necessary long term transportation improvements at the Mountain View Avenue/ SR 99 interchange. Four alternatives were presented to address the interchange issues that were as follows:

- Alternative 1: Realigned on-ramps with All Way Stop (AWS) intersection control.
- Alternative 2: Realigned on-ramps with signalized intersection control. This alternative would widen Mountain View Avenue on each side of the overcrossing to provide left and right turn lanes to the on-ramps.
- Alternative 3: Realigned on-ramps with roundabout intersection control.
- Alternative 4 (Long Term): An L-9 interchange configuration with signalized Intersections was developed as an ultimate alternative. This alternative would require the reconstruction of the Mountain View Avenue overcrossing and adjusting the roadway profile. Additionally, construction of the successive on-ramps could create the need for construction of auxiliary lanes on SR 99. This alternative would also create Right of Way impacts to both service stations on the west side of the interchange and the Flea Market on the east side.

An additional alternative was considered that would add hook on-ramps and eliminate the need for left turns from Mountain View Avenue to the existing on-ramps. Due to the narrow width between the bents adjacent to the SR 99 outside shoulders and the structure abutments hook ramps are not viable. Standard freeway entrance ramp geometry cannot be constructed with the available width.



The preliminary Cost estimate for the SR 99/Mountain View Avenue interchange alternatives are listed below:

ELEMENT	Near Term (Re-delineate right turns for On-Ramps)	Alternative 1 (AWSC)	Alternative 2 (Signalized)	Alternative 3 (Roundabout)	Long Term Alternative (I-9 Interchange)
Roadway	\$300K-\$375K	\$3.6M-\$4.5M	\$5.4M-\$6.8M	\$5.2M-\$6.5M	\$11.3M-\$14.2M
Structures	\$0	\$0	\$0	\$0	\$12.4M-\$15.5M
Right of Way	\$0	\$1.1M-\$1.4M	\$1.1M-\$1.4M	\$1.5M-\$1.9M	\$23.8M-\$29.8M
Sub-Total	\$300K-\$375	\$4.7M-\$5.9M	\$6.5M-\$8.2M	\$6.7M-\$8.4M	\$47.5M-\$59.5M
Support Cost	%50	50%	50%	50%	30%
<b>Total Project Capital Cost</b>	<b>\$450K-\$563K</b>	<b>\$7.1M-\$8.9M</b>	<b>\$9.8M-\$12.3M</b>	<b>\$10.1M-\$12.6M</b>	<b>\$61.8M- \$77.4M</b>

Staff recommended alternative 3 as the preferred option for this location due to the estimated construction costs and estimated useful life. Alternative 3 consists of a double roundabout on each side of the overpass with an estimated capital cost of \$10.1-\$12.6 million dollars. In addition, it provides dramatic and lasting improvements to the interchange with a useful life beyond 2045. The other alternatives, besides the long-term, would present a substandard level of service and short-term useful life.

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**RECOMMENDATION:** Approve Resolution of Support for Alternative 3 as identified in the SR 99/Mt. View Feasibility Study and commitment by the City of Selma to pursue local, regional, state and federal funding sources to construct identified transportation improvements.

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/s/  
Joey Daggett, City Engineer

\_\_\_\_\_  
04/13/2020  
Date

\_\_\_\_\_  
/s/  
Teresa Gallavan, City Manager

\_\_\_\_\_  
04/13/2020  
Date



**RESOLUTION NO. 2020 - \_\_R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA IN SUPPORT FOR  
ALTERNATIVE 3 AS IDENTIFIED IN THE SR 99/MT. VIEW FEASIBILITY STUDY  
AND COMMITMENT BY THE CITY OF SELMA TO PURSUE LOCAL, REGIONAL, STATE  
AND FEDERAL FUNDING SOURCES TO CONSTRUCT IDENTIFIED TRANSPORTATION  
IMPROVEMENTS**

WHEREAS, the Fresno Council of Governments (FCOG), the Tulare County Association of Governments (TCAG), the City of Kingsburg, and the City of Selma in cooperation with Caltrans have conducted a feasibility study to determine the required necessary long term transportation improvements at the Mountain View Avenue/ SR 99 interchange; and

WHEREAS, the purpose of the study was to determine the future transportation needs at the State Route 99/ Mt. View interchange and to develop alternatives to address the long term geometric deficiencies and develop alternatives to improve the safety and operations at the interchange; and

WHEREAS, the SR 99/Mt. View Avenue Feasibility Study identifies near-, mid- and long-term alternatives and recommends improvement alternatives for future traffic demands at the interchange, and is consistent with the Cities of Kingsburg and Selma General Plans; and

WHEREAS, The SR 99/Mt. View Avenue Feasibility Study identified three alternative projects to address needs of the subject interchange through approximately 2045 and one long-term alternative (L-9); and

WHEREAS, The SR 99/Mt. View Avenue Feasibility Study identified that Alternative Three, with roundabout intersection control, would best address the identified deficiencies including the improvement of traffic operations and best align with long-term alternative (L-9);

NOW, THEREFORE, BE IT RESOLVED, that the City of Selma supports Alternative 3 as identified in the SR 99/Mt. View Feasibility Study as the preferred alternative based on the cost-benefit assessment developed as part of the feasibility study and is committed to seeking local, regional, state and federal funding to construct the Alternative 3 improvements as identified in the feasibility study and support the future pursuit of the complete L-9 Interchange buildout.

**PASSED, APPROVED and ADOPTED** at a Regular Meeting of the City Council of the City of Selma on this 20<sup>th</sup> day of April, 2020, by the following roll call vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

\_\_\_\_\_  
Louis Franco, Mayor

ATTEST:

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

**CITY MANAGER'S/STAFF'S REPORT  
CITY COUNCIL MEETING:**

April 20, 2020

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**ITEM NO:** 4.

**SUBJECT:** Consideration of a Resolution Approving Final Parcel Map No. 2017-0044 (2336 Orange Avenue, Selma CA.) and Authorizing Execution of Development Agreement

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**RECOMMENDATION:** Adopt Resolution Approving Final Parcel Map No. 2017-0044 and Authorizing Execution of Development Agreement.

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**DISCUSSION:** A subdivision is defined by law as a division of real property that results in five or more lots. Divisions of land that are five lots or less are reflected by parcel maps. The development of a subdivision and the required terms of a subdivision agreement would be governed by the Subdivision Map Act. Selma's Municipal Code, except for provisions authorizing the Planning Commission to approve a Tentative Parcel Map, make parcel maps subject to the same provisions of law as are Subdivision Maps. That is a function of Selma Municipal Code Sections 9-1-10.40 and 9-6-12.04. Those provisions require the City Council to approve a Final Parcel Map for a Tentative Parcel Map that has been approved by the Planning Commission. Prior to recordation of the final map if there are any required public improvements that are to be dedicated to the City, a development agreement is required.

Tentative Parcel Map 2017-0044 was approved by the Planning Commission on October 23, 2017. The Final Parcel Map has been duly approved by the City Engineer who has prepared an estimate of the cost of the public improvements. The cost of those public improvements has, in turn, been included as the required security for completion and warranty of those public improvements in a Development Agreement which is also attached.

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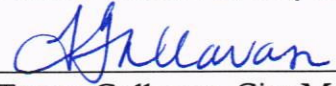
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**RECOMMENDATION:** Adopt Resolution Approving Final Parcel Map No. 2017-0044 and Authorizing Execution of Development Agreement.

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/s/  
\_\_\_\_\_  
Neal E. Costanzo, City Attorney

  
\_\_\_\_\_  
Teresa Gallavan, City Manager

04/14/2020  
\_\_\_\_\_  
Date

4-15-20  
\_\_\_\_\_  
Date



**RESOLUTION NO. 2020-\_\_\_\_\_**

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SELMA APPROVING FINAL PARCEL MAP NO. 2017-0044 AND  
AUTHORIZING EXECUTION OF DEVELOPMENT AGREEMENT**

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**WHEREAS**, on October 23, 2017, the Planning Commission approved a tentative parcel map and Environmental Assessment No. 2017-0044, with conditions, to subdivide approximately 1.03 acres at 2336 Orange Avenue, Selma, California (APN 389-194-04), into four legal parcels; Parcel "1" approximately 8,886 square feet, Parcel "2" approximately 9,673 square feet, Parcel "3" approximately 7,033 square feet, Parcel "4" approximately 7,033 square feet and a remainder parcel of 7,919 square feet; and

**WHEREAS**, pursuant to Chapter 6 of Title 9 of the Selma Municipal Code a parcel map is required for divisions of property into less than 5 parcels and the Planning Commission has authority to approve a tentative parcel map and authority to approve a final parcel map that conforms to the tentative parcel map is delegated to the Secretary of the Planning Commission, (SMC Section 9-6-1.07). Where improvements to be dedicated to City are required, by the terms of the tentative map approved by the Planning Commission, the developer is required to enter into an agreement with the City prior to approval of the final parcel map and post security in the form of a cash deposit or faithful performance bond in an amount specified by provisions of the Selma Municipal Code and by the Subdivision Map Act, although the parcel map is not a division of land into 5 or more lots. (SMA Section 9-6-10.40 through 9-6-10.45); and

**WHEREAS**, the developer has submitted for approval a final parcel map prepared under the direction of the City Engineer based upon a survey in accordance with the Subdivision Map Act and with City ordinances; and

**WHEREAS**, the City Engineer has examined the Final Parcel Map No. 2017-0044 and the parcel is shown substantially the same as it appeared on the Approved Tentative Map and any approved alterations thereof and that map complies with the provisions of the Selma Municipal Code and with all applicable laws at the time of approval of the tentative map and the City Engineer has certified the final map as technically correct; and

**WHEREAS**, the conditions for approval a of the Tentative Parcel Map No. 2017-0044 require improvements within and adjacent to the subdivision and satisfaction of certain other conditions; and

**WHEREAS**, the conditions for approval of the Tentative Parcel Map require certain of the improvements within and adjacent to the subdivision on certain parcels of land and such parcels or easements as necessary to be offered for dedication to the City in fee for public use in conformity with the conditions of the Tentative Parcel Map; and

**WHEREAS**, the provisions of SMC 9-6-12.04 require approval of an agreement and the provision of appropriate security for completion of improvements to be dedicated to the City in specified amounts, consistent with the Subdivision Map Act and before execution by the City Clerk of the acceptance of dedicated lands or easements or execution by the City Engineer or Surveyor, the developer shall be required to enter into a development agreement providing for such security.

**NOW, THEREFORE**, the City Council resolves as follows:

1. The foregoing recitals are true and correct and are incorporated fully herein and made a part of this Resolution.
2. The Final Map No. 2017-0044 is approved subject to the conditions provided for by the Planning Commission's Resolution No. 2017-13 and the Council accepts on behalf of the City, subject to construction, all parcels of land and easements offered for dedication in fee for public use in conformity with the terms of the offer of the dedication as reflected in the Final Map and the Clerk is authorized to execute the City Clerk statement and acceptance of such dedications contained in the Parcel Map No. 2017-0044. The City Engineer is authorized to have the final Parcel Map fully executed and to record the map in the official records of Fresno County.
3. The Development Agreement attached hereto and incorporated by reference as Exhibit A is approved and the City Manager is authorized to execute the Development Agreement on behalf of the City, subject to such modifications and minor changes as determined by the City Manager and City Attorney as required to conform to the Selma Municipal Code and other law.

\*\*\*\*\*

The foregoing resolution was duly approved by the Selma City Council at a regular meeting held on the 20<sup>th</sup> day of April, 2020 by the following vote, to wit:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

\_\_\_\_\_  
Louis Franco, Mayor

ATTEST:

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



## **DEVELOPMENT AGREEMENT**

This Development Agreement ("Agreement") is entered into as of April 20, 2020 (the "Effective Date"), between the CITY OF SELMA, a California municipal corporation and general law city (the "City"), and WARREN FORTIER, an individual (the "Developer"), with respect to the following:

### **Recitals**

A. On October 23, 2017, the Selma Planning Commission approved by Resolution 2017-13, a Tentative Parcel Map to subdivide 1.03 acres at 2336 Orange Avenue, Selma, California (APN 389-193-04) into four parcels, Parcel 1 at approximately 8,886 square feet, Parcel 2 at approximately 9,673 square feet, Parcel 3 at approximately 7,033 square feet, Parcel 4 at approximately 7,033 square feet and a remainder Parcel of 7,919 square feet. The Real Property in Parcel Map No. 2017-0044 approved by the Planning Commission is described in the legal description that is attached as Exhibit A incorporated by this reference.

B. On April 20, 2020, the City Council approved a Final Parcel Map No. 2017-0044 in full compliance with State law, including the Selma Municipal Code and the Subdivision Map Act (California Government Code §66410 et seq.).

C. The conditions of approval for the Tentative Parcel Map No. 2017-0044 require improvements within and adjacent to said parcel and the satisfaction of certain other conditions.

D. Improvement plans for the Parcel Map No. 2017-0044 for improvements required by the Conditions of Approval of the Tentative Parcel Map to be constructed and dedicated to City (the "Improvements") have been reviewed and approved by the City Engineer (the "Plans").

E. The Selma Municipal Code requires certain security to guarantee installation of the required Improvements and payment of all costs in connection therewith.

F. The parties desire to enter this Agreement to ensure performance by the Developer of its obligations under the Selma Municipal Code, the Map Act and to specify other agreements and conditions relating to development of the subdivision.

Based on the foregoing recitals and in consideration of the mutual covenants, promises and agreement contained in this Agreement, the City and the Developer agree as follows:



## **Agreement**

### **1. Improvements.**

a. After the City Council approves this Agreement, the Developer shall cause all on-site and off-site subdivision improvements required by the Conditions of Approval of the Tentative Map, as specified in the Plans, to be made and constructed within 12 months after the Effective Date. All Improvements shall be made, constructed and completed in full compliance with the requirements of the City's current "Construction Standards," the Plans as finally approved by the City Engineer, any changes or alterations in such work that may be agreed to by the City and the Developer, the Conditions of Approval of the Tentative Map and all applicable federal, State and local laws, codes and standards. Without limiting the foregoing, the Developer, its contractor and all subcontractors shall comply with the California Building Standards Code; the Building Code, the Electrical Code, the Plumbing Code and the Mechanical Code of the City; and all other applicable codes of the City as determined by the City Engineer.

b. The Developer shall pay for any and all materials, provisions and other supplies used in, upon, for or about the performance of such work, for any and all work or labor done thereon by contractors, subcontractors, laborers, materialmen and any other persons employed in performance of work on the Improvements, and for any and all amounts due under the State Unemployment Insurance Act with respect to such work or labor.

c. The Developer may request an extension of time to complete the Improvements. The request must be submitted to the City Engineer in writing not less than four weeks before expiration of the initial 12-month completion period and must contain a statement of the facts and circumstances necessitating the extension. The City Manager may grant such extension in his or her reasonable discretion. In that regard, if any substantial change has occurred during the term of this Agreement, the City Manager will have the right, subject to the City Council's approval, to impose additional reasonable conditions to the extent allowed by law or to require reasonable adjustments in the provisions of this Agreement, including the construction standards, cost estimates and improvement security.

d. The Developer shall remedy any defective work or labor or any defective materials in the Improvements and shall pay for any damage to other work resulting therefrom, which occurs within one year after the date the City Council accepts the Improvements.

e. If the Developer fails or neglects to comply with the provisions of this Agreement, the City will have the right (but not the obligation) at any time to cause such provisions to be met by any lawful means and to recover from the Developer and/or its sureties the full cost and expense incurred by the City in doing so. This right is in addition to and without limitation on any other remedy the City may have for the Developer's failure or neglect.



## 2. Security.

Before starting any work on the Improvements, the Developer shall furnish to the City security in accordance with provisions of the Selma Municipal Code (Section 9-6-10.40 and 9-6-12.04) for performance and completion of the Improvements and payment therefore as follows:

a. To secure faithful performance of this Agreement, security in the amount of \$234,715 which is equal to 100% of the estimated cost of the Improvements as determined by the Engineer.

b. To secure payment to Developer's contractor, subcontractors, materialman, laborers, and other persons furnishing labor, materials or equipment in the performance of this Agreement, security in the amount of \$117,357.57 which is equal to 50% of the estimated cost of the Improvements as determined by the City Engineer.

c. To secure the guarantee and warranty of all completed Improvements for a period of one year following the completion and acceptance of the Improvements, prior to final acceptance of any such Improvements by the City, the Developer shall furnish to the City security in the amount of \$23,471.50 which is equal to 10% of the total estimated cost of the Improvements required by the Conditions of Approval and specified on the Plans as determined by the City Engineer.

d. As part of the obligations guaranteed by the security described in this Section 2, and in addition to the face amount of the security, that will be included cost and reasonable expenses and fees, including attorney's fees, incurred by the City in successfully enforcing the obligations secured.

e. All security will be in a form acceptable to the City Attorney and the City Engineer. If the security is furnished in the form of a bond or bonds, the performance and payment bonds will be in the forms required by Sections 66499.1 and 66499.2 of the Map Act, as applicable, and all bonds will be executed by a corporate surety company authorized to transact surety business in the State of California. Liability for security will be limited as set forth in Section 66499.9 of the Map Act.

## 3. Release of Securities.

Release of Securities will be as follows:

a. Security given for faithful performance may be released 35 days after recording the notice of completion for the Improvements, provided that evidence of recording the notice of completion has been furnished to the City, the City Council has finally accepted all Improvements and the City has been furnished the security guaranteeing and warranting the Improvements required by this Section 2. If the performance security is an instrument of credit, it will be released in the manner provided in subdivision 66499.7(a) of the Map Act.



b. Security given to secure payment to the contractor, the subcontractors, materialmen, laborers and other persons furnishing labor, materials or equipment may be released 60 days after the notice of completion for the Improvements is recorded, provided no stop notices, mechanics' liens or other claims thereon have been filed with the City in accordance with the Map Act.

c. Security guaranteeing and warranting that the completed Improvements remain satisfactory during the required one-year warranty period may be released upon correction by the Developer of any defects in any such Improvements existing at any time during the one-year period.

4. Inspection.

The City Engineer or his/her duly authorized representative will inspect all work or Improvements made in connection with the Subdivision as they progress for compliance with City requirements, including the Plans and all provisions of this Agreement. The Developer shall give at least 24 hours-notice to the City Engineer, but not less than one full working day, prior to any desired inspection. Any Improvements installed without inspection by the City Engineer or his/her representative will be subject to rejection. However, inspection by the City will in no way relieve the Developer or its sureties of full responsibility for noncomplying or defective work or materials in the Improvements.

When the City Engineer has determined, based on a final inspection, that all Improvements have been satisfactorily completed in compliance with the Plans, this Agreement and other City requirements, the City Engineer shall prepare and submit to the City Council, for the City Council's consideration at its next available regular meeting, a proposed notice of completion for the Improvements together with his/her recommendation thereon. The Improvements will be approved and accepted on behalf of the City only by resolution of the City Council. If the City Council approves and accepts the Improvements, the City Engineer shall file the executed notice of completion with the Fresno County Recorder as promptly as practicable.

The Developer shall pay the City the cost of inspection as invoiced.

5. Safety.

The Developer shall perform all work under this Agreement in accordance with the applicable sections of the most current versions of Title 3 of the California Administrative Code (CalOSHA) and the WATCH (Work Area Traffic Control Handbook) published by Building News, Inc. The Developer shall ensure adequate protection for members of the public who may use public roads or rights-of-way affected by the Remaining Improvements and/or work under this Agreement.

Without limiting the foregoing, the Developer shall place barricades and related facilities in such number and at such locations as required for public safety and compliance with law. At night such barricades will be equipped with flashing yellow lights. The City Engineer, Public Utilities Director or Police Chief will have the right to require,



and the Developer shall promptly install or place, additional barricades or other facilities to assure public safety if any of them deem the same necessary or desirable for public safety. In addition to and without limitation on Section 6, the Developer will be fully responsible for all loss, liability or damages which may arise out of failure of the Developer, its contractor, subcontractors or any employees thereof to comply with this Section 4, whether or not on public property, and shall indemnify, defend and hold harmless the City from any and all claims, loss, liability, damages or causes of action arising therefrom or related thereto.

6. Indemnity.

The Developer shall indemnify, defend and hold harmless the City and its Council, boards, commissions, officers, officials, employees and agents from any and all loss, liability, costs and damages (whether in contract, statute, tort or strict liability, including without limitation death at any time, personal injury or property damage), and from any and all suits and claims in law or equity (including attorneys' fees, court costs and legal expenses), arising directly or indirectly out of or in any way connected with (i) any act, error or omission at any time of the Developer, its contractor(s), subcontractors or any of their respective, employees, agents or representatives in performing work under this Agreement, including without limitation work in or upon streets or other rights-of-way in the Subdivision and premises adjacent to the Subdivision; (ii) the design, construction, operation or maintenance of the Improvements specified in the Plans, or any portion thereof; or (iii) the use by any person of any patent or patented articles in the construction of the Improvements.

The foregoing paragraph will apply to the greatest extent allowed by law, but will not apply to, and the Developer shall not be responsible for, any loss, liability, costs, damages, suits or claims caused solely by the active negligence or willful misconduct of the City its officials, officers or employees acting within the scope of their authority.

The use of any and all streets and other Improvements will, at all times prior to final acceptance of such streets and Improvements by the City Council, be the sole responsibility and exclusive risk of the Developer. Issuance of any occupancy permits by the City for dwellings in the Subdivision will not be considered acceptance or approval of any streets or other Improvements in the Subdivision.

7. Insurance.

Before work is commenced pursuant to this Agreement, the Developer shall obtain and maintain, or cause each of its contractor(s) and subcontractors to obtain and maintain, in full force and effect during the performance of the work, at its own expense and risk, insurance on terms and conditions described in this Section and file with the City Engineer a certificate evidencing that such insurance is in full force and effect. The liability insurance will name the City, its Council, boards, commissions, officers, employees and agents as insureds or additional insureds, and will indemnify the City and such persons against liability for loss occasioned by acts or omissions of the Developer, or its contractor



or subcontractor, as applicable, or their respective employees under this Agreement. The insurance shall be in the following minimum limits and on at least the following terms:

a. (1) General Liability. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, death and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit will apply separately to this Subdivision or the general aggregate limit will be twice the required occurrence limit.

(2) Automobile Liability. \$1,000,000 combined single limit per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code, and Employer's Liability limits of \$1,000,000 per accident.

If the Developer itself performs any actual construction of Improvements under this Agreement, the Developer itself shall obtain, maintain and provide all insurance coverages and provide all insurance certificates, endorsements and other matters required by this Section 7. However, if the Developer itself does not perform any construction of the Improvements or any portion thereof and its contractor(s) and subcontractors are solely responsible to the Developer for construction of all the Improvements under this Agreement, the obtaining, maintaining and providing by each contractor or subcontractor of (i) all insurance coverages and (ii) all insurance certificates, endorsements and other matters required by this Section 7 shall be deemed the Developer's compliance with this section. In any case, the Developer shall be solely responsible for ensuring compliance with this section.

b. The policies will contain, or will be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverages.

(A) The City, its Council, boards, commissions, officers, employees and agents will be covered as insureds as to liability arising out of activities performed by or on behalf of the Developer/contractor/subcontractor, products and completed operations of the Developer/contractor/subcontractor, premises owned, occupied or used by the Developer/contractor/subcontractor, or automobiles owned, leased, hired or borrowed by or on behalf of the Developer/contractor/subcontractor. The coverage will contain no special limitations on the scope of protection afforded to the City and such other additional insureds.

(B) The insurance will be primary insurance with respect to coverage of the City, its officers, officials, agents and employees. Any insurance or self-insurance maintained by the City will be excess of the Developer's/contractor's/subcontractor's insurance and will not contribute with it.



(C) Failure to comply with the reporting provisions of the insurance policies will not affect coverage provided to the City or its Council, boards, commissions, officers, employees or agents.

(D) The insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability.

(2) Workers' Compensation and Employer's Liability Coverages.

The Developer/contractor/subcontractor shall waive all rights of subrogation against the City and its Council, boards, commissions, officers, employees and agent for losses arising from work performed by the Developer/contractor/subcontractor of their respective subcontractors or employees under this Agreement.

- c. Each insurance policy required under this section will be endorsed to state that coverage will not be suspended, voided, canceled or reduced in coverage or limits unless at least 30 days prior written notice has been given to the City Manager by certified mail, return receipt requested. The endorsement must not contain any "best efforts" or similar qualification on the notice requirement.

If any required insurance coverage is provided by a policy which also covers the Developer/contractor/subcontractor or a person or entity other than the City, the policy must contain a standard form of cross liability endorsement.

- d. The Developer/contractor/subcontractor shall furnish the City with certificates of insurance and with original endorsements effecting the coverages required by this section. The certificates and endorsements for each insurance policy will be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements will be on forms provided by or acceptable to the City. Where, by statute, the City's workers' compensation forms cannot be used, equivalent forms approved by the State and acceptable to the City Attorney will be substituted. All certificates and endorsements must be received and approved by the City before work commences under this Agreement. On request by the City at any time during the term of this Agreement, the Developer shall submit, or cause its contractor or subcontractor (as applicable) to submit, complete, certified copies of the required insurance policies.
- e. Neither the limits of liability of insurance specified in this section, nor the provision of insurance and insurance certificates, endorsements and other matters by the Developer's contractor(s) or subcontractors under paragraph 7.a., will limit the liability of the Developer under this Agreement or relieve the Developer for any responsibility or liability for work performed under this Agreement.

- f. All insurance required by this section will be issued by a corporate insurer authorized to do insurance business in California and having a rating of no less than A-XIII in Best's Insurance Rating Guide.

8. Approvals.

This Agreement and all securities provided pursuant to Section 2, all insurance policies or certificates and all other documents submitted pursuant to this Agreement will be subject to approval by the City Manager as to substance and by the City Attorney as to form and legal sufficiency.

9. Successors and Assigns.

This Agreement will benefit and be binding on the parties and their respective assigns, transferees and successors-in-interest.

10. Attorneys' Fees.

If either party brings a legal action or arbitration to enforce or interpret any part of this Agreement, the prevailing party in the action or arbitration will be entitled to recover from the other party reasonable attorneys' fees, court costs and legal expenses in the amounts determined by the court or tribunal having jurisdiction.

11. Notices.

All notices in connection with this Agreement must be written and given by personal delivery or first-class U.S. mail to a party at its respective address below:

To the City: City of Selma  
Attn.: City Manager  
1710 Tucker Street  
Selma, CA 93662

To the  
Developer: Warren Fortier  
2336 Orange Avenue  
Selma, CA 93662

Notice by personal delivery will be effective on delivery; notice by mail will be effective on receipt or three days after the postmark date, whichever is earlier.

12. Modification; Amendment.

This Agreement may be modified or amended only by a written instrument, signed by duly authorized representatives of the Developer and the City and approved by the



City Council. No other statement, action or representation will be effective to modify or amend any provision of this Agreement.

13. Governing Law; Interpretation.

- a. This Agreement will be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties will be determined, according to California law.
- b. In interpreting this Agreement, unless the context clearly requires otherwise, singular includes plural, masculine includes feminine and vice versa, and neuter includes masculine and feminine.

\* \* \* \* \*

Each party acknowledges that it has executed and entered into this Agreement as of the Effective Date.

**CITY OF SELMA**

**WILLIAM FORTIER**

By: \_\_\_\_\_  
Teresa Gallavan, City Manager

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

ATTEST:

Name: William Fortier

By: \_\_\_\_\_  
Reyna Rivera, City Clerk

Title: Developer

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**ITEM NO:** 5.

**SUBJECT:** Consideration of Request and Application from Waste Management for Special Interim Rate Review to Increase Annual Refuse Charges to be Added to the 2021 Fresno County Property Tax Roll, for Residential Property in Addition to Annual Consumer Price Index Increase

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**RECOMMENDATION:** Staff recommends that Council consider whether it would like to proceed with:

- 1) the special rate increase as proposed by Waste Management (WM/Contractor) and the annual Consumer Price Index increase (CPI); or
- 2) authorize the City Manager to negotiate a special rate increase with WM in addition to the annual CPI increase; or
- 3) proceed only with the annual CPI increase;

And adopt Resolution confirming the annual refuse collection charges with the annual CPI increase to be added to the 2021 Fresno County property tax roll for residential properties.

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**BACKGROUND:** Annually the City of Selma along with WM, the City's solid waste contractor, prepares a list of residential trash assessments for placement on the Fresno County property tax roll. As per the contract between WM and the City, an annual CPI calculation is added to the rate for the upcoming year. The CPI increase will be 2.15% and has been verified by the Finance Department.

The Resolution approves the CPI increase to WM's rates which for residential properties will be placed on the 2021 Fresno County property tax roll.

In addition, Waste Management has made application to the City for a Special Interim Rate Review to increase annual refuse charges. WM may apply to the City for consideration of a special interim rate review should an event or circumstance arise which jeopardizes the economic operation of the Contractor, such as operating at a loss or significantly below a reasonable rate of return by industry standards. A special application will be considered if:

- A. It is necessary for the Contractor to make a substantial change in its operation, or substantial capital investment in order to perform its obligation under the Agreement; or
- B. Changes to operations are mandated as provided for in Contractor's Agreement; or

- C. Changes in law, regulation or taxes affecting disposal costs or sites occur which were not reasonably foreseen or anticipated.

Contractor shall retain any income from actual costs being less, or recyclable materials sale revenue being greater than projected but shall not be compensated for actual costs being more, or recyclable materials sales revenues being less than projected except as described above (Annual CPI Adjustment and Special Interim Rate Review). In addition, calculations for Contractor's compensation shall not be adjusted for past variances of actual cost from those projected. If initiated by the Contractor, the complete application must be submitted at least 90 days prior to the date it may become effective.

In April 2018, WM started discussing a special interim rate review with the City. In June 2019, the City received requested information citing the changes in law that were directly responsible for the events that have impacted the recycling industry. At that point WM's request for review was specifically for commercial customers, since the opportunity to assess residential customers via the property tax roll had passed.

On January 21, 2020, the City received a formal renewal to request the Special Interim Rate Review to include commercial and residential customers as well as an increase in charges for roll-offs.

**DISCUSSION:** Attached is WM's request for special interim rate review (Attachment A), that outlines the actions of the Chinese government and other foreign governments adopting more stringent quality specifications that has increased the cost of processing recyclable material. Also attached is specific information on Chinese regulations affecting disposal costs (Attachment B). In order to meet the new specifications, the material has had to undergo additional sorting which has reduced the tons per hour of material that can be processed for market and it has increased labor costs due to the need for additional hand sorting.

In the attached request dated Jan. 21, 2020, WM requested the following increase in addition to the annual CPI adjustment:

- Commercial – 1.09% effective as soon as practicable
- Roll Off – a change to the roll off recycling rate to set a \$50.00 per ton processing charge
- Residential – 3.92% effective with the next tax roll billing

On April 16, 2020, WM updated its request for rate increases and added new fee requests as follows:

- A 5.82% increase in addition to CPI for all business lines (residential, commercial and roll-off)

New fees for Short Term and Special Bins (7-day use):

- |                                   |          |
|-----------------------------------|----------|
| • 10 YD, recycling up to 1 ton    | \$304.66 |
| • 20 YD, recycling up to 1.5 tons | \$331.43 |
| • 30 YD, recycling up to 2 tons   | \$359.21 |
| • 40 YD, recycling up to 3 tons   | \$326.63 |



- Charge for every recycling ton over 3 tons \$55.56
- 40 YD, Green Waste including up to 5 tons \$486.51
- Charge for every green waste ton over 5 tons \$37.73
- 20 YD Construction & Demolition, (1/2 full only) \$546.27

These increases factor in compensation for losses incurred in prior years. Section 7.4 of the City's contract states, "...calculations for Contractor's compensation shall not be adjusted for past variances of actual costs from those projected." WM believes the City's reliance on Section 7.4 is misplaced because Section 7.4 accepts rate adjustments arising under the special interim rate adjustment provisions of Section 7.3. Sections 7.3 and 7.4 are attached (Attachment C).

Below are the steps to consider WM's request for a special interim rate review.

- April 20, 2020 – Council discuss request from WM and process moving forward
- April 29, 2020 and May 6, 2020 – Public Hearing Notices published
- May 22, 2020 – Notices for prop 218 compliance mailed by this date
- July 6, 2020 – Council hold public hearing for 218 compliance

**FINANCIAL ANALYSIS:** Attached is a Waste Management/City of Selma Special Interim Rate Review sheet outlining how the adjustment request was derived and the City of Selma rate sheet for Fiscal Year 2020-21 with columns showing rates for: 2018; 2019; proposed increases under the Special Interim Rate Adjustment; CPI; and, a column for the rate with the increase and CPI. (Attachment D).

The City receives a franchise fee of 10% of the gross revenue, net of taxes, uncollected amounts, rebates or any other amounts contractor is required to refund, derived by the Contractor from services provided in the City.

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**RECOMMENDATION:** Staff recommends that Council consider whether it would like to proceed with:

- 1) the special rate increase as proposed by WM and the annual CPI; or
- 2) authorize the City Manager to negotiate a special rate increase with WM in addition to the annual CPI; or
- 3) proceed only with the annual CPI increase;

And adopt Resolution confirming the annual refuse collection charges with the annual CPI increase to be added to the 2021 Fresno County property tax roll as to residential properties.

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/s/	04/17/2020
Isaac Moreno, Assistant City Manager	Date

/s/	04/17/2020
Teresa Gallavan, City Manager	Date

**RESOLUTION NO. 2020-\_\_\_\_R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SELMA APPROVING AND DIRECTING INCREASE IN CHARGES  
FOR SOLID WASTE, RECYCLING AND GREEN WASTE COLLECTION  
IN THE CITY ACCORDING TO THE TERMS OF THE AMENDED AND  
RESTATED SOLID WASTE AND RECYCLING FRANCHISE AGREEMENT  
BETWEEN THE CITY AND USA WASTE OF CALIFORNIA INC.**

**WHEREAS**, the City of Selma is a party to an Amended and Restated Solid Waste Recycling Franchise Agreement for Solid Waste Collection, Green Waste Collection and Recycling Services with USA Waste of California Inc, dba as Waste Management which provides for solid waste, recycling and green waste collection within the City of Selma (the “Agreement”); and

**WHEREAS**, the Agreement provides that, annually, the rates for the services provided by Waste Management under the Agreement are to increase or decrease by multiplying the current rate by 1 plus the percentage change in the Consumer Price Index specifically relating to garbage and trash collection as published by the United States Department of Labor (the “CPI Increase”); and

**WHEREAS**, the Agreement mandates different rates for service to different real property to which solid waste, green waste and recycling services are to be provided with different rates applicable to single-family residents, multi-family residences and to commercial or business enterprises; and

**WHEREAS**, Waste Management reports, and the City of Selma Finance Director has confirmed that the Consumer Price Index applicable under the Agreement increased in 2019, as reflected by the publications of the United States Department of Labor by 2.86%.

**NOW, THEREFORE**, be it resolved as follows:

1. The foregoing recitals are true and correct.
2. The rates for solid and green waste collection and for recycling services provided by Waste Management under the Agreement shall be increased from the current level by 2.86% for all residential, multi-family and commercial solid and green waste collection and recycling services provided under the Agreement, and the Agreement shall be deemed to be amended to include the increase rate.
3. With respect to all charges against residential properties under the Agreement, the Finance Director shall calculate the amount of the rate increase provided for by this Resolution and shall include that amount as the amount of such rates in the report required by Health & Safety Code §5473.1 for the placement of such charges upon the Fresno County tax rolls in accordance with Health & Safety Code §5473, and prior to August 10, 2020 shall present to this Council a resolution directing the County Assessor to place the resulting charges upon

the Fresno County tax rolls.

\*\*\*\*\*

The foregoing resolution was duly approved by the Selma City Council at a regular meeting held on the \_\_\_\_ day of April, 2020 by the following vote, to wit:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

\_\_\_\_\_  
Louis Franco, Mayor

ATTEST:

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



**Waste Management of Fresno**  
4333 E. Jefferson Avenue  
Fresno, California 93725  
(559) 834-4070  
(559) 834-3751 Fax

January 21, 2020

Mrs. Teresa Gallavan  
City Manager  
City of Selma  
1710 Tucker Street  
Selma, CA 93725

**Re: Request for Special Interim Rate Review**

Dear Teresa,

This is written to follow up on Waste Management of Fresno's ("WM") letters to you dated April 20, 2018 and again on May 2, 2019 requesting a Recycling Surcharge due to events beyond our control that have jeopardized the economic operation of WM in providing services to the City. We had also followed up with a letter from WM's legal counsel dated June 27, 2019 citing the changes in law that were directly responsible for the events that have impacted the recycling industry throughout the United States.

At this time, WM wishes to formally renew its request for a Special Rate Review and the addition of a Recycling Surcharge. Unfortunately, as will be discussed below the events of recent months have made WM's economic situation even worse. It is imperative that the Recycling Surcharge be included in the rates for service, and we are renewing our request now to have the Recycling Surcharge implemented as soon as practicable for commercial service and included in the next tax roll submittal in July 2020 for residential service along with the next annual CPI adjustment.

**Background**

The cost of providing handling, processing, transport and marketing of Recyclable Materials is a function of the costs of those activities compared with the commodity value of the materials. When WM contracts with a third-party Materials Recovery Facility ("MRF"), it could receive a rebate if commodity values exceed processing costs but is charged a processing fee if commodity values are less than processing costs.

The actions of the Chinese government and later other foreign governments have resulted in a "double whammy" to WM. The adoption of more stringent quality specifications has increased the cost of processing Recyclable Materials. In order to meet the new specifications, the material has had to undergo additional sorting, which has reduced the tons per hour of material that can be processed and readied for market at the MRF. It has also increased labor costs due to the need for additional hand sorting.

And at the same time, the United States has experienced large reductions in commodity values. This can best be seen by looking at commodity values for paper products, which nationally make up about 60% of Recyclable Materials received and processed. The largest paper commodity is mixed paper. Prices have fallen from \$88.00 per ton in 2017 to **negative \$5.00-20.00** per ton in November 2019. This means that WM must pay to have this material recycled following processing. The second commodity is cardboard, which has gone from well



above \$100.00 per ton to \$10-20 per ton in November 2019. One example of this loss of value is in the Pacific Northwest, where values have plummeted from \$170.00 per ton in 2017 to \$15.00 per ton in 2019, but that same trend generally exists throughout the United States. In California, aluminum values have declined from about \$0.80-0.90 per pound to about \$0.40 per pound and prices for recycled plastic have also dipped sharply. *Los Angeles Times*, 1/13/20, *A New Push for Bottle Bill Fix*

Another adverse impact to commodity markets has been the growing concern over plastic waste in the environment, and the impact of plastics transported to less developed countries. This led WM's parent, Waste Management, to adopt a policy in August 2019 that its operating subsidiaries would no longer ship collected and processed plastics outside of North America. As of November 2019, prices for virgin resin are less than prices for resin made from post-consumer recycled plastics.

The impact on WM has been profound. As of the end of 2017, WM was receiving a rebate of \$18.00 per ton for Recyclable Materials collected in Selma, and this was factored into the rates for service that could be offered. Beginning in 2018 WM's third party processor began charging a processing fee rather than paying a rebate. The increased costs were as follows:

<u>Date</u>	<u>Per ton Recyclables Processing Increase</u>
April 2017	(\$18.00)
January 2018	\$ 0.00
March 2018	\$10.00
August 2018	\$15.00
February 2019	\$20.00
April 2019	\$25.00
May 2019	\$35.00
August 2019	\$40.00 (New MRF Processor)
April 2020	\$50.00

The situation deteriorated to the point WM was forced to contract with a different MRF in August 2019. Now, we are paying a processing fee of \$40.00 per ton for Selma's Recyclable Materials. While that is more than what was indicated in the May 2, 2019 request letter, that is an improvement over what WM would have had to pay if it had not changed processors. Despite our efforts to sustain current recycle processing fees, we were recently notified of yet another increase, bringing the per ton fee to \$50.00 beginning April 1, 2020.

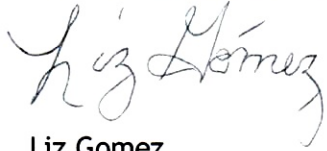
In the attached table, WM calculated the annual increased expenses for providing Recyclable Materials collection services to the City of Selma since the rebate rate effective April 2017. The overall annual costs incurred by WM since our initial request is \$289,326.59 with an additional amount of \$182,930.75 to cover recycle processing costs until June 30, 2020.

As you can see, the adverse economic impact to WM has been and will be substantial, and meets the criteria set forth in Section 7.3 of the franchise agreement for receiving an adjustment.

WM respectfully requests the following increase beyond the standard CPI adjustment:

- Commercial - 1.09% effective as soon as practicable
- Roll Off - a change to the roll off recycling rate to set a \$50.00 per ton processing charge
- Residential - 3.92% effective with the next tax roll billing

As a company, WM is dedicated to making a positive difference in the City of Selma's environment and quality of life. Thank you in advance for your favorable consideration. We look forward to answering any questions you may have regarding this matter.

A handwritten signature in cursive script, reading "Liz Gomez".

Liz Gomez  
Public Sector Solutions Manager  
Waste Management

LAW OFFICES OF  
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June 27, 2019

VIA ELECTRONIC MAIL

Ms. Teresa Gallavan  
City Manager  
City of Selma  
1710 Tucker Street  
Selma, CA 93662

Bianca Sparks Rojas, Esq.  
Casso & Sparks, LLP  
13200 Crossroads Pkwy N, Ste 345  
City of Industry, CA 91746-3420

Dear Ms. Gallavan and Ms. Rojas:

By way of introduction, this firm is legal counsel to USA Waste of California, Inc., a Waste Management company ("USA Waste"). Your letter of June 25, 2019 to Ms. Liz Gomez has been forwarded to this office to respond to your request to provide a specific citation of laws and regulations.

As indicated by Ms. Gomez, the challenges facing the recycling industry arose from changes in law adopted by the Chinese government.

The underlying environmental protection statute in China is the Law of the People's Republic of China on Prevention and Control of Environmental Pollution by Solid Waste.<sup>1</sup> Chapter III, Article 25 of this statute provides, in relevant part:

Importing of solid waste that cannot be used as raw materials or utilized after being made innocuous is prohibited; as a means of control, the solid waste that can be used as raw

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<sup>1</sup> The full text of this statute can be found at [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383723.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383723.htm)

materials shall be classified as solid waste the import of which is restricted and solid waste the import of which is automatically permitted.

...

The solid waste imported shall conform to the national standards for environmental protection and shall be checked and accepted as qualified by the department in charge of quality supervision, inspection and quarantine.

The specific administrative measures for import of solid waste shall be formulated by the administrative department for environmental protection under the State Council, in conjunction with the department in charge of foreign trade under the State Council, the department in charge of comprehensive and macro-economic control under the State Council, the General Administration of Customs and the department in charge of quality supervision, inspection and quarantine under the State Council.

Starting in 2017, administrative measures were adopted that both set standards and prohibited imports of certain types of recyclables. These administrative measures would be considered analogous to our regulations.

National Standards of the People's Republic of China GB 16487.4-2017 related to paper recyclables. The biggest impact of this standard was that it established a new quality specification, in Section 4.5, of 0.3% contamination by weight for any imported waste paper. The practical impact from this standard was a significant increase in processing costs to meet this specification, and the inability for mixed paper to ever meet the specification. As noted in Ms. Gomez's letter, by March 2019 mixed paper now has a negative value. A copy of this National Standard is included as Attachment 1.

National Standards of the People's Republic of China GB 16487.12-2017 related to plastic recyclables. For plastics, in Section 4.4 the contamination specification was established at 0.5%, which again resulted in a significant increase in processing costs. But even worse, in 2018 Announcement No. 6 of the Announcement on Adjustment to the Catalogue for the Administration of Import Solid Waste, Section 1, banned the import of "scrap of plastics" effective December 31, 2018. Ms. Gomez's letter describes the impact of the Announcement on value of recyclable plastics. A copy of this National Standard and Announcement No. 6 are included as Attachment 2.

In combination, these actions by the Chinese government started the downward spiral in the value of all recyclable commodities that continues to this day, and is anticipated to continue into the future.



Ms. Teresa Gallavan  
Bianca Sparks Rojas, Esq.  
June 27, 2019  
Page 3

USA Waste is hopeful that this response and supporting documentation satisfies your request for citations to laws and regulations. In light of this documentation, USA Waste respectfully requests that you bring this matter to the City Council for its consideration and action at your earliest convenience.

Please feel free to contact me if you have any questions, or wish to discuss.

Sincerely,

A handwritten signature in black ink, reading "E. William Hutton". The signature is written in a cursive style with a large, stylized "E" and "H".

E. William Hutton

Attachments

cc: Liz Gomez

# ATTACHMENT 1

**Z 70**

**National Standards of the People's Republic  
of China**

GB 16487.4—2017

**Replaces GB 16487.4—2005**

# Environmental Protection Control Standard for Imported Solid Wastes as Raw Materials – Waste and scrap of paper or paperboard

Released on □□-□□-2017

Implemented on □□-□□-2017

Released by Ministry of Environmental Protection  
General Administration of Quality Supervision,  
Inspection and Quarantine of the People's Republic of  
China

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## Preface

This standard is formulated in order to enforce the *Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes*, strictly restrict import of solid wastes, control environmental pollution due to imported waste and scrap of paper or paperboard as raw material and standardize examination and approval for import of solid wastes as raw materials.

This standard specifies the environmental protection and control requirements for imported waste and scrap of paper or paperboard.

This standard is one of a series of environmental protection control standards for imported solid wastes and applies to the import management of waste and scrap of paper or paperboard under the catalogue of imported solid wastes as raw materials.

This standard was initially issued in 1996, initially revised in 2005, and this is the second revision.

Main contents of this revision:

- requirement on external exposure penetrating radiation dose for imported waste paper was added;
- requirement on prohibition of import of unsorted, mixed waste paper was added;
- control requirement for hazardous wastes was adjusted;
- control requirement for regular carried wastes was tightened.

*Environmental Protection Control Standard for Imported Solid Wastes- Waste and Scrap of Paper or Paperboard* (GB 16487.4-2005) is voided as of the effective date of this standard.

This standard was revised under the leadership of Department of Soil Environment Management and Department of Science, Technology and Standards of Ministry of Environmental Protection.

Main drafting organization for this standard: Chinese Research Academy of Environmental Sciences.

This standard was approved by the Ministry of Environmental Protection on (date).

This standard shall come into effect on (date).

This standard shall be interpreted by Ministry of Environmental Protection.

**Environmental protection control standard for imported solid wastes as raw materials  
- Waste or scrap of paper or paperboard**

**1 Scope of application**

This standard specifies the environmental protection and control requirements for imported waste and scrap of paper or paperboard (hereinafter referred to as "Imported waste paper"). This standard applies to the import management of waste papers with the following harmonized system codes:

Harmonized System Code	Name of solid waste
4707100000	Recycled (waste and scrap), unbleached kraft, corrugated paper or paperboard
4707200000	Recycled (waste and scrap) paper and paperboard made from bleached chemical wood pulp (without mass dyeing)
4707300000	Recycled (waste and scrap) paper and paperboard made from mechanical wood pulp (such as, waste newspaper, magazine and similar printed materials)

**2. Normative references**

The provisions in the following documents are cited in this standard. For undated references, the valid edition of the normative document applies to this standard.

- GB 5085.1 Identification standards for hazardous wastes - Corrosivity
  - GB 5085.2 Identification standards for hazardous wastes - Screening test for acute toxicity
  - GB 5085.3 Identification standards for hazardous wastes - Leaching toxicity
  - GB 5085.4 Identification standards for hazardous wastes - Flammability
  - GB 5085.5 Identification standards for hazardous wastes - Reactivity
  - GB 5085.6 Identification standards for hazardous wastes - Identification for toxic substance content
  - SN/T0570 Inspection procedures for radioactive contamination of imported wastes as raw materials
  - SN/T1791.13 Inspection and quarantine procedures for imported wastes as raw materials - Part 13: waste and scrap of paper or paperboard
- National Catalogue of Hazardous Wastes (Order No.39 issued by Ministry of Environmental Protection, National Development and Reform Commission, Ministry of Public Security)

**3. Terms and definitions**

The following terms and definitions apply to this standard.

**3.1 Carried waste**

Foreign substances introduced into imported waste paper during production, collection, packaging and transportation (excluding packing material for imported waste paper and other substances required for transportation).

**4 Control criteria and requirements**

4.1 To control radioactive contamination induced by imported waste paper, the following requirements shall be met:

- a) imported waste paper shall not contain radioactive wastes;
- b) the external exposure penetrating radiation dose ( $\gamma$ ) for waste paper (including packing material) shall be no more than  $+0.25\mu\text{Gy/h}$  greater than the normal natural background radiation level at the place where the port of import is located;

c)  $\alpha$ -ray and  $\beta$ -ray radioactive contamination levels on the surface of waste papers shall be as follows: the average value of maximum detected level in any portion of 300cm<sup>2</sup> on the surface shall not exceed 0.04Bq/cm<sup>2</sup> for  $\alpha$ -ray and 0.4Bq/cm<sup>2</sup> for  $\beta$ -ray;

d) the specific activity of radioactive nuclide in waste paper shall be less than the threshold value listed in Table 1.

Table 1 Threshold Values of Specific Activity of Radioactive Nuclide

Nuclide	Specific activity (Bq/g)
<sup>59</sup> Ni	3×10 <sup>3</sup>
<sup>63</sup> Ni	3×10 <sup>3</sup>
<sup>54</sup> Mn	0.3
<sup>60</sup> Co	0.3
<sup>65</sup> Zn	0.3
<sup>55</sup> Fe	300
<sup>90</sup> Sr	3
<sup>134</sup> Cs	0.3
<sup>137</sup> Cs	0.3
<sup>235</sup> U	0.3
<sup>238</sup> U	0.3
<sup>239</sup> Pu	0.1
<sup>241</sup> Am	0.3
<sup>152</sup> Eu	0.3
<sup>154</sup> Eu	0.3
<sup>94</sup> Nb	0.3
$\beta$ - $\gamma$ mixture with unknown components	0.3
$\alpha$ mixture with unknown components	0.1

4.2 Imported waste paper shall not contain explosive weaponry and ammunition, such as scrapped bomb, cannonball.

4.3 It's forbidden to import unsorted, mixed waste paper.

4.4 The total weight of the following carried wastes in imported waste paper shall be strictly restricted to a level not greater than 0.01% of the weight of the imported wooden waste.

a) incinerated or partially incinerated waste paper, waste paper contaminated by fire extinguishing agent;

b) sealed container;

c) hazardous wastes with one or more hazardous characteristics including corrosivity, toxicity, flammability and reactivity as identified according to the GB5085.1- GB5085.6 identification standards.

d) other wastes listed in the *National Catalogue of Hazardous Wastes*.

4.5 In addition to the wastes listed above, the total weight of other carried wastes (including wooden waste, waste metal, waste glass, waste plastic, waste rubber, spent absorbent, aluminum-plastic composite bag, thermosensitive paper, asphalt-coated moisture-proof paper, self-adhesive paper, wallpaper, waxed paper, oiled paper, carbon paper, unsorted mixed waste paper) in the imported waste paper shall be restricted to a level not greater than 0.3% of the weight of the imported waste paper.

## 5 Inspection

5.1 Items in section 4.1 herein shall be inspected according to SN/T0570.

5.2 Items in section 4.4c) and 4.4d) herein shall be inspected according to the methods of GB5085.1- GB5085.6.

5.3 Other items herein shall be inspected according to SN/T1791.13.

# ATTACHMENT 2



ICS 13.030.50

Z 70



# National Standards of the People's Republic of China

**GB 16487.12—2017**

**Replace GB 16487.12—2005**

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## 进口可用作原料的固体废物环境保护控 制标准—废塑料

## Environmental Protection Control Standard for Imported Solid Wastes as Raw Materials—Waste and Scrap of Plastics

(Published Version)

This E-version is a published version. Please use the version published by  
China Environmental Science Press as the final version of the standard.

Issued on 12-29-2017

Effective on 03-01-2018

Issued  
by

**Ministry of Environmental Protection  
and  
General Administration of Quality  
Supervision, Inspection and Quarantine  
of the People's Republic of China**

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## Foreword

In order to implement the *Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes*, the *Law of the People's Republic of China on the Prevention and Control of Radioactive Pollution* and other applicable laws and regulations, strictly restrict the import of solid wastes, and control the environmental pollution caused by imported waste and scrap of plastics as raw materials, this standard is hereby formulated.

This standard specifies the environmental protection control requirements for imported waste and scrap of plastics.

As one of a series of environmental protection control standards for imported solid wastes, this standard shall be applicable to the administration of import of the waste and scrap of plastics included in the Catalogue of Imported Solid Wastes as Raw Materials.

This standard was first issued in 1996 and first amended in 2005, and it is hereby amended for a second time.

It is hereby amended mainly in the following aspects:

- The definition of waste and scrap of plastics was revised;
- Requirement on external exposure penetrating radiation dose for imported waste and scrap of plastics was added;
- Control requirement for hazardous wastes was adjusted;
- Control requirement for regular carried-wastes was tightened; and
- Requirements on inspection were revised.

*Environmental Protection Control Standard for Imported Solid Wastes as Raw Materials –Waste and Scrap of Plastics* (GB 16487.12-2005) shall be abolished as of the effective date of this standard.

This standard was amended under the direction of the Department of Environmental Management of Soil and the Department of Science and Technology Standards of the Ministry of Environmental Protection.

Primary drafting organization for this standard: Chinese Research Academy of Environmental Sciences.

This standard was approved by the Ministry of Environmental Protection on 12/29/2017.

This standard shall come into full force and effect on 03/01/2018.

This standard shall be interpreted by the Ministry of Environmental Protection.

## Environmental Protection Control Standard for Imported Solid Wastes as Raw Materials –Waste and Scrap of Plastics

### 1. Scope of Application

This standard hereby sets forth the environmental protection control requirements for imported waste and scrap of plastics.

This standard shall be applicable to the administration of import of the waste and scrap of plastics included in the *Catalogue of Solid Wastes Used as Raw Materials under Restricted Import* as listed below.

HS Code	Name of Solid Waste
3915100000	Waste and scrap ethylene polymers and remnants
3915200000	Waste and scrap vinyl benzene polymers and remnants
3915300000	Waste and scrap chloroethylene polymers and remnants
3915901000	Waste and scrap polyethylene terephthalate and remnants
3915909000	Other waste and scrap plastics and remnants

### 2. Cited Normative Documents

The provisions of the following documents are cited in this standard. In case of any undated citation, the effective version of such cited normative document shall be applicable to this standard.

GB 5085.1	Identification Standards for Hazardous Wastes	Identification of corrosivity
GB 5085.2	Identification Standards for Hazardous Wastes	Screening test for acute toxicity
GB 5085.3	Identification Standards for Hazardous Wastes	Identification of leaching toxicity
GB 5085.4	Identification Standards for Hazardous Wastes	Identification of flammability
GB 5085.5	Identification Standards for Hazardous Wastes	Identification of reactivity
GB 5085.6	Identification Standards for Hazardous Wastes	Identification for toxic substance content

SN/T 0570      Inspection Procedures for Radioactive Contamination of Imported Wastes as Raw Materials

SN/T 1791.1    Inspection and Quarantine Procedures for Imported Wastes as Raw Materials – Part 1: Waste and Scrap of Plastics

*National Catalogue of Hazardous Wastes* (Order No. 39 issued by Ministry of Environmental Protection, National Development and Reform Commission, and Ministry of Public Security)

*Catalogue of Solid Wastes Used as Raw Materials under Restricted Import* (Announcement No. 39 in 2017 issued by Ministry of Environmental Protection, Ministry of Commerce, National Development and Reform Commission, General Administration of Customs, and General Administration of Quality Supervision, Inspection and Quarantine)

### 3. Terms and Definitions

For purpose of this standard, the following terms and definitions shall apply.

#### 3.1 Waste and scrap of plastics

As used herein, "waste and scrap of plastics" shall refer to the thermoplastic remnant materials, leftover materials, and inferior products produced in the manufacture of plastics and processing of plastic products.

### 3.2 Carried-waste

Foreign substances introduced into imported waste and scrap of plastics during production, collection, packaging and transportation (excluding packing materials for the imported waste and scrap of plastics and other substances that need to be used during the transportation process).

## 4 Control Standards and Requirements

4.1 To control radioactive contamination induced by imported waste and scrap of plastics, the following requirements shall be met:

- a) The waste and scrap of plastics shall not contain any radioactive wastes;
- b) The external exposure penetrating radiation dose rate for the waste and scrap of plastics (including packing material) shall be no more than  $+0.25\mu\text{Gy/h}$  greater than the normal natural background radiation level at the place where the port of import is located;
- c)  $\alpha$ -ray and  $\beta$ -ray radioactive contamination levels on the surface of the waste and scrap of plastics shall be as follows: the average value of maximum detected level in any portion of  $300\text{cm}^2$  on the surface shall not exceed  $0.04\text{Bq/cm}^2$  for  $\alpha$ -ray and  $0.4\text{Bq/cm}^2$  for  $\beta$ -ray; and
- d) The specific activity of radioactive nuclide in the waste and scrap of plastics shall be less than the threshold values specified in Table 1 below.

**Table 1 Threshold Values of Specific Activity of Radioactive Nuclide**

Nuclide	Specific Activity (Bq/g)
$^{59}\text{Ni}$	$3 \times 10^{-3}$
$^{63}\text{Ni}$	$3 \times 10^{-3}$
$^{54}\text{Mn}$	0.3
$^{60}\text{Co}$	0.3
$^{65}\text{Zn}$	0.3
$^{55}\text{Fe}$	300
$^{90}\text{Sr}$	3
$^{134}\text{Cs}$	0.3
$^{137}\text{Cs}$	0.3
$^{235}\text{U}$	0.3
$^{238}\text{U}$	0.3
$^{239}\text{Pu}$	0.1
$^{241}\text{Am}$	0.3
$^{152}\text{Eu}$	0.3
$^{154}\text{Eu}$	0.3
$^{94}\text{Nb}$	0.3
$\beta$ - $\gamma$ mixture with unknown components	0.3
$\alpha$ mixture with unknown components	0.1

4.2 Waste and scrap of plastics shall not contain any explosive arms or ammunitions, such as discarded bombs and shells.

4.3 The total weight of the following carried-wastes in waste and scrap of plastics shall be strictly restricted

to a level not greater than 0.01% of the weight of the imported waste and scrap of plastics.

- a) Burnt or partially burnt waste and scrap of plastics, and those contaminated by fire extinguishing agent;
- b) Used and intact plastic container;
- c) Sealed container;
- d) Wastes listed in the *National Catalogue of Hazardous Wastes*; and
- e) Other hazardous wastes with one or more hazardous characteristics including corrosivity, toxicity, flammability and reactivity as identified according to the identification standards of GB5085.1-GB5085.6.

4.4 In addition to the wastes listed above, the total weight of other carried-wastes (including waste paper, wood scrap, waste metal, waste glass, waste rubber/tire, thermosetting plastics, other plastics containing metal coating, and uncompressed waste foamed plastics) in imported waste and scrap of plastics shall be restricted to a level not greater than 0.5% of the weight of the imported waste and scrap of plastics.

## **5 Inspection**

5.1 Inspection under this standard shall be carried out by random sampling, where opening, devanning, unpacking/unbaling and sorting shall be carried out for the inspection of imported wastes shipped in containers, open-cabin inspection and arrival inspection shall be carried out for the inspection of imported wastes shipped in bulk by sea, and open-box inspection and arrival inspection shall be carried out for the inspection of imported wastes shipped in bulk by land, which shall be sent to labs for tests when necessary (including specific activity of radioactive nuclide and hazardous characteristics). The results of inspection by random sampling shall serve as the results of the inspection of the whole shipment.

5.2 Inspection under Section 4.1 hereof shall be performed in accordance with the provisions of SN/T 0570.

5.3 Inspection under Section 4.3(e) hereof shall be performed according to the methodologies provided in GB 5085.1-GB 5085.6.

5.4 Inspection under other sections hereof shall be performed in accordance with the provisions of SN/T 1791.1.



## **Announcement on Adjustment to the Catalogue for the Administration of Import Solid Waste**

**Announcement No. 6 in 2018**

In order to further regulate the administration of importation of solid waste and prevent environment pollution, in accordance with the *Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste*, the *Measures for the Administration of Importation of Solid Waste*, and other applicable laws and regulations, Ministry of Ecology and Environment, Ministry of Commerce, National Development and Reform Commission, and General Administration of Customs shall make the following adjustment to the current *Catalogue of Solid Waste Used as Raw Materials under Restricted Import*, *Catalogue of Solid Waste Used as Raw Materials under Non-Restricted Import*, and *Catalogue of Banned Import Solid Waste*:

1. Sixteen (16) types of solid waste (as set forth in Annex 1 attached hereto), including, among others, metal scraps, scrap vessels, compressed piece of scrap automobile, smelt slag, and industrial waste and scrap of plastics, listed in the *Catalogue of Solid Waste Used as Raw Materials under Restricted Import*, shall be moved to and included in the *Catalogue of Banned Import Solid Waste*, effective as of December 31, 2018; and
2. Sixteen (16) types of solid waste (as set forth in Annex 2 attached hereto), including, among others, waste and scrap of stainless steel, titanium wastes and scraps, and wood waste and scrap, listed in the *Catalogue of Solid Waste Used as Raw Materials under Restricted Import* or *Catalogue of Solid Waste Used as Raw Materials under Non-Restricted Import*, shall be moved to and included in the *Catalogue of Banned Import Solid Waste*, effective as of December 31, 2019.

In event of any discrepancy between the catalogues enclosed in the *Catalogue for the Administration of Import Solid Waste* (Announcement No. 37 in 2017 issued by Ministry of Environmental Protection, Ministry of Commerce, National Development and Reform Commission, General Administration of Customs, and General Administration of Quality Supervision, Inspection and Quarantine) and this announcement, this announcement shall prevail.

This announcement is hereby issued.

Annex: 1. List of Solid Waste to be Included in the Catalogue of Banned Import Solid Waste Effective as of the End of 2018

**English translation  
For reference only**

**2. List of Solid Waste to be Included in the Catalogue of Banned Import Solid Waste Effective as of the End of 2019**

**Ministry of Ecology and Environment  
Ministry of Commerce  
National Development and Reform Commission  
General Administration of Customs**

**April 13, 2018**

**Printed and circulated by the Ministry of Ecology and Environment on April 19, 2018.**

CPI-variable costs have increased ten percent (10%) or more, City shall grant a rate adjustment commensurate with the actual increase in such costs, up to but not to exceed the CPI inflation rate. If the audit reveals that such costs have increased less than ten percent (10%), City shall grant a rate adjustment commensurate only with the actual increase in CPI-variable costs. Conversely, if CPI deflation exceeds ten percent (10%) for a given annual period, Contractor may demonstrate to City that its variable costs have deflated less than ten percent (10%), in which case the rate adjustment shall be commensurate with the actual deflation in that portion of the Contractor's costs.

### **7.3 Special Interim Rate Review**

Contractor may apply to the City for consideration of a special interim rate review should an event or circumstance arise which jeopardizes the economic operation of Contractor (e.g., operating at a loss or significantly below a reasonable rate of return by industry standards). A special application will be considered if:

- A. It is necessary for the Contractor to make a substantial change in its operation, or substantial capital investment in order to perform its obligations under this Agreement; or
- B. Changes to operations are mandated as provided for in this Agreement; or
- C. Changes in law, regulations or taxes affecting Disposal costs or sites occur which were not reasonably foreseen or anticipated.

City may initiate a special interim rate review at its option. Any rate review, whether initiated by the City or the Contractor, will follow the format specified for a regular rate review. If initiated by the Contractor, the complete application must be submitted at least ninety (90) days prior to the date it may become effective. If initiated by the City, the Contractor shall submit requested data within sixty (60) days of the date that notice is provided to the Contractor.

Any determination by the City shall be based on findings by the City Council upon hearing with not less than fifteen (15) nor more than thirty (30) days' notice of the hearing date in writing after data is submitted as provided hereinabove and shall be final.

It should be noted that the services collected on the Fresno County Property Tax Roll can only be changed annually at the time the new tax roll is being prepared (July). Any interim rate correction will need to take this into consideration.

### **7.4 Variances from Projections**

Contractor shall retain any income from actual costs being less, or Recyclable Materials sale revenue being greater than projected but shall not be compensated for actual costs being more, or Recyclable Materials sales revenues being less than projected except as

described in Section 7.2 and Section 7.3 above. In addition, calculations for Contractor's compensation shall not be adjusted for past variances of actual cost from those projected.

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# City of Selma Rate Sheet

## Residential

City of Selma  
Service Rate Schdule  
Residential Rates (effective July 1, 2020 - June 30, 2021)

Attachment D

Service Type	Rate July 1, 2018		Rate July 1, 2019 Service Portion increase		Recycling Blended Special Interim Rate Adjustment		Rate July 1, 2020, 75% of CPI-U Only		Rate July 1, 2020, Combined Rate Adjustment and CPI-U	
Standard Service offering - 3 96-gallon carts (trash, recycling, greenwaste)	1.57%	\$31.12	3.58%	\$32.24	5.82%	\$34.05	2.15%	\$34.78	7.97%	\$37.55
2010 Senior Discount		\$1.00		\$1.00		\$1.00		\$1.00		\$1.00
Extra Trash Cart	1.57%	\$27.26	3.58%	\$28.24	5.82%	\$29.82	2.15%	\$30.46	7.97%	\$32.89
Extra Green Waste Cart	1.57%	\$9.52	3.58%	\$9.86	5.82%	\$10.42	2.15%	\$10.64	7.97%	\$11.49
Extra Pick Up per Cart	1.57%	\$9.52	3.58%	\$9.86	5.82%	\$10.42	2.15%	\$10.64	7.97%	\$11.49

## Commercial

Service Level	Monthly Fee		Monthly Fee		Monthly Fee		Monthly Fee		Monthly Fee	
1 Commercial Can, 1x/wk	1.57%	\$34.98	3.58%	\$36.24	5.82%	\$38.27	2.15%	\$39.09	7.97%	\$42.21
2 Commercial Can, 1x/wk	1.57%	\$67.90	3.58%	\$70.34	5.82%	\$74.29	2.15%	\$75.89	7.97%	\$81.94
3 Commercial Can, 1x/wk	1.57%	\$100.82	3.58%	\$104.44	5.82%	\$110.30	2.15%	\$112.67	7.97%	\$121.65
4 Commercial Can, 1x/wk	1.57%	\$134.77	3.58%	\$139.60	5.82%	\$147.44	2.15%	\$150.61	7.97%	\$162.61
1.5 YD 1X/WK	1.57%	\$97.73	3.58%	\$101.24	5.82%	\$106.92	2.15%	\$109.22	7.97%	\$117.92
1.5 YD 2X/WK	1.57%	\$173.86	3.58%	\$180.10	5.82%	\$190.21	2.15%	\$194.30	7.97%	\$209.79
2 YD 1X/WK	1.57%	\$119.33	3.58%	\$123.62	5.82%	\$130.55	2.15%	\$133.36	7.97%	\$143.99
2 YD 2X/WK	1.57%	\$208.83	3.58%	\$216.32	5.82%	\$228.47	2.15%	\$233.38	7.97%	\$251.98
3 YD 1X/WK	1.57%	\$160.49	3.58%	\$166.24	5.82%	\$175.58	2.15%	\$179.35	7.97%	\$193.64
3 YD 2X/WK	1.57%	\$267.48	3.58%	\$277.08	5.82%	\$292.63	2.15%	\$298.92	7.97%	\$322.74
3 YD 3X/WK	1.57%	\$376.52	3.58%	\$390.02	5.82%	\$411.93	2.15%	\$420.79	7.97%	\$454.33
3 YD 4X/WK	1.57%	\$527.76	3.58%	\$546.68	5.82%	\$577.39	2.15%	\$589.80	7.97%	\$636.81
3 YD 5X/WK	1.57%	\$638.86	3.58%	\$661.76	5.82%	\$698.94	2.15%	\$713.97	7.97%	\$770.87
4 YD 1X/WK	1.57%	\$203.69	3.58%	\$211.00	5.82%	\$222.85	2.15%	\$227.64	7.97%	\$245.78
4 YD 2X/WK	1.57%	\$391.96	3.58%	\$406.02	5.82%	\$428.82	2.15%	\$438.04	7.97%	\$472.95
4 YD 3X/WK	1.57%	\$581.25	3.58%	\$602.08	5.82%	\$635.91	2.15%	\$649.58	7.97%	\$701.35
4 YD 4X/WK	1.57%	\$770.55	3.58%	\$798.18	5.82%	\$843.01	2.15%	\$861.13	7.97%	\$929.76
6 YD 1X/WK	1.57%	\$237.65	3.58%	\$246.18	5.82%	\$260.00	2.15%	\$265.59	7.97%	\$286.76
6 YD 2X/WK	1.57%	\$447.51	3.58%	\$463.56	5.82%	\$489.59	2.15%	\$500.12	7.97%	\$539.98
6 YD 3X/WK	1.57%	\$645.04	3.58%	\$668.16	5.82%	\$705.70	2.15%	\$720.87	7.97%	\$778.32
6 YD 4 X/WK	1.57%	\$865.19	3.58%	\$896.20	5.82%	\$946.55	2.15%	\$966.90	7.97%	\$1,043.96
6 YD 5X/WK	1.57%	\$1,021.56	3.58%	\$1,058.18	5.82%	\$1,117.63	2.15%	\$1,141.66	7.97%	\$1,232.65
6 YD 6X/WK	1.57%	\$1,224.23	3.58%	\$1,268.12	5.82%	\$1,339.36	2.15%	\$1,368.16	7.97%	\$1,477.20
4 YD 1X/WK COMPACTOR	1.57%	\$402.25	3.58%	\$416.68	5.82%	\$440.08	2.15%	\$449.54	7.97%	\$485.37
4 YD 3X/WK COMPACTOR	1.57%	\$976.29	3.58%	\$1,011.28	5.82%	\$1,068.10	2.15%	\$1,091.06	7.97%	\$1,178.02

## Short Term and Special Bins (7-day use)

4 YD one-time trash bin	1.57%	\$149.17	3.58%	\$154.52	5.82%	\$163.20	2.15%	\$166.71	7.97%	\$180.00
20 YD, trash including up to 3 tons	1.57%	\$425.91	2.44%	\$436.30	0.00%	\$436.29	2.15%	\$445.67	2.15%	\$455.25
30 YD, trash including up to 4 tons	1.57%	\$507.18	2.44%	\$519.54	0.00%	\$519.54	2.15%	\$530.71	2.15%	\$542.12
40 YD, trash including up to 5 tons	1.57%	\$583.31	2.44%	\$597.54	0.00%	\$597.53	2.15%	\$610.38	2.15%	\$623.50
Charge for every trash ton over included Basic	1.57%	\$51.43	2.44%	\$52.68	0.00%	\$52.68	2.15%	\$53.81	2.15%	\$54.97
10YD, recycling up to 1 tons								\$304.66		\$304.66
20YD, recycling up to 1.5 tons								\$331.43		\$331.43
30YD, recycling up to 2 tons								\$359.21		\$359.21
40YD, recycling up to 3 tons		<del>\$244.71</del>	<del>3.78%</del>	<del>\$253.95</del>	11.35%	\$281.72	2.15%	\$287.78	13.50%	\$326.63
Charge for every recycling ton over 3 tons		<del>\$11.72</del>	<del>0.00%</del>	<del>\$11.72</del>	374.02%	\$55.56	0.00%	\$55.56	374.02%	\$55.56
4 YD : Daily charge for over 7-day use	1.57%	\$10.29	2.44%	\$10.54	0.00%	\$10.54	2.15%	\$10.77	2.15%	\$11.00
Roll-Off: Daily charge for over 7-day use	1.57%	\$19.54	2.44%	\$20.02	0.00%	\$20.02	2.15%	\$20.45	2.15%	\$20.89
40 YD, Green Waste including up to 5 tons		<del>\$452.41</del>	<del>3.06%</del>	<del>\$466.25</del>	0.00%	\$466.25	2.15%	\$476.27	2.15%	\$486.51
Charge for every green waste ton over 5 tons		<del>\$36.16</del>	<del>0.00%</del>	<del>\$36.16</del>	0.00%	\$36.16	2.15%	\$36.94	2.15%	\$37.73
40 YD Wood Only, includes all tons	1.57%	\$298.35	2.96%	\$307.20	0.00%	\$307.19	2.15%	\$313.79	2.15%	\$320.54
57 YD Wood Only, includes all tons	1.57%	\$358.01	2.96%	\$368.62	0.00%	\$368.62	2.15%	\$376.55	2.15%	\$384.65
20 YD Construction & Demolition, (1/2 full only)		<del>\$511.53</del>	<del>2.34%</del>	<del>\$523.51</del>	0.00%	\$523.51	2.15%	\$534.77	2.15%	\$546.27
20 YD Clean Concrete Only, (1/2 full only)	1.57%	\$238.67	2.82%	\$245.40	0.00%	\$245.40	2.15%	\$250.68	2.15%	\$256.07

## Portable Restrooms

Single Unit Restroom, up to one month use	1.57%	\$94.64	3.58%	\$98.04	0.00%	\$98.04	2.15%	\$100.15	2.15%	\$102.30
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## Commercial Organics Rate

96 Gallon 1X/WK	1.57%	\$19.59	2.87%	\$20.16	0.00%	\$20.15	2.15%	\$20.58	2.15%	\$21.02
96 Gallon 2X/WK	1.57%	\$38.98	2.87%	\$40.10	0.00%	\$40.10	2.15%	\$40.96	2.15%	\$41.84
96 Gallon 3X/WK	1.57%	\$58.78	2.87%	\$60.48	0.00%	\$60.47	2.15%	\$61.77	2.15%	\$63.10
1.5 yd 1X/WK	1.57%	\$116.80	2.87%	\$120.16	0.00%	\$120.15	2.15%	\$122.73	2.15%	\$125.37
1.5 yd 2X/WK	1.57%	\$233.61	2.87%	\$240.32	0.00%	\$240.31	2.15%	\$245.48	2.15%	\$250.76
1.5 yd 3X/WK	1.57%	\$350.41	2.87%	\$360.46	0.00%	\$360.46	2.15%	\$368.21	2.15%	\$376.13
3 yd 1X/WK	1.57%	\$167.59	2.87%	\$172.40	0.00%	\$172.40	2.15%	\$176.11	2.15%	\$179.90
3 yd 2X/WK	1.57%	\$335.17	2.87%	\$344.78	0.00%	\$344.78	2.15%	\$352.19	2.15%	\$359.76
3 yd 3X/WK	1.57%	\$502.76	2.87%	\$517.18	0.00%	\$517.18	2.15%	\$528.30	2.15%	\$539.66

## Commercial Overage Charges (per instance)

1.5 Yard	1.57%	\$42.61	3.58%	\$44.14	0.00%	\$44.14	2.15%	\$45.09	2.15%	\$46.06
2 Yard	1.57%	\$51.28	3.58%	\$53.12	0.00%	\$53.12	2.15%	\$54.26	2.15%	\$55.43
3 Yard	1.57%	\$84.82	3.58%	\$87.86	0.00%	\$87.86	2.15%	\$89.75	2.15%	\$91.68
4 Yard	1.57%	\$101.98	3.58%	\$105.64	0.00%	\$105.63	2.15%	\$107.90	2.15%	\$110.22
6 Yard	1.57%	\$124.11	3.58%	\$128.56	0.00%	\$128.55	2.15%	\$131.31	2.15%	\$134.13

Notes:

-Red line items are new billing items

-Strike throughs are unadopted rates in prior years.

**Waste Management  
City of Selma  
Special Interim Rate Review**

	2019 Tons Collected*	Jul 2020 MRF Gate Rate†	Jul 2017 MRF Gate Rate†	Total Rate Variance	Total Cost Variance	2019 Net Revenue	Rate Adjustment Required**	Total Rate Adjustment with, 75% of Change in CPI 2.15%
Residential	1852.99	\$ 50.00	\$ (18.00)	\$ 68.00	\$ 126,003.32	\$ 1,295,842.39	9.72%	11.87%
Commercial	641.60	\$ 50.00	\$ (18.00)	\$ 68.00	\$ 43,628.80	\$ 1,720,749.87	2.54%	4.69%
Roll-Off	105.63	\$ 50.00	\$ (18.00)	\$ 68.00	\$ 7,182.84	\$ 23,914.50	30.04%	32.19%
<b>All Lines of Business</b>	2600.22	\$ 50.00	\$ (18.00)	\$ 68.00	\$ 176,814.96	\$ 3,040,506.76	5.82%	7.97%

\*From the 2019 Franchise Hauler Diversion Summary Report

\*\*Excludes Portion of Change Captured by Annual CPI Adjustment