

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

January 22, 2021

ITEM NO:

SUBJECT: Continued Item – Consideration of a Resolution approving a request to enter into an Agreement with Vanir Construction Management, Inc. for Project Management of the Rockwell Park Project.

DISCUSSION: At the City Council meeting of October 5, 2020 City Council continued this item to the next meeting and directed staff to meet and discuss with the developer of Selma Grove and Vanir Construction Management (Vanir) concepts for the City's Rockwell Park Project. At the October 19, 2020 City Council meeting staff reported contact with the Selma Grove developer had been made and he informed staff he needed at least 30 - 45 days to work on providing the City a concept of the park and his development to create potential synergy between his commercial development and the adjacent City Rockwell Park project. City Council tabled this item and requested this item be brought back to the November 16, 2020 meeting. This item was tabled until January 2021 to allow additional time for the developer to complete the concept and to allow the new City Council members to be part of the decision process.

On Tuesday, November 3, 2020, staff forwarded by e-mail, as per the developer's request, concepts that were drawn up in 2015 and 2018 to him.

Per the City's grant, the City has a deadline of May 2024 to complete the park project. Staff is recommending City Council consider approving the agreement with Vanir. With an approval, City Staff and Vanir can begin to move forward with many of the preliminary steps needed to be completed as we move forward finalizing the land purchase with Fresno County, infrastructure development, pre-design, design and construction of the park. During this time, City Staff and Vanir will continue to work with the developer on a concept that would incorporate both the park and commercial development. By approving the agreement with Vanir, it allows us to move forward and with no further delay, and at the same time, allows for us time to coordinate efforts with the developer. Any revisions relating to the park location would cause further delay, the State would require the City to go through the application process once again, Community Forums and several of our figures would change within our Community Fact Finder. Following this process, the State cannot guarantee the new application would be approved. The deadline for completion of the park would remain May 2024.

<i>COST:</i> (Enter cost of item to be purchased in box below)		<i>BUDGET IMPACT:</i> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
\$489,040.00		None.
<i>FUNDING:</i> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<i>ON-GOING COST:</i> (Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).
Funding Source: Park Development Fund Fund Balance: \$662,415.32		None.

RECOMMENDATION: Approve City Manager to sign and enter into agreement with Vanir Construction Management Inc. for the purpose of Project Management of the Rockwell Park Development.


Mikal Kirchner, Director of Recreation

1-15-2021
Date

/s/
Teresa Gallavan, City Manager

01/21/2021
Date

RESOLUTION NO. 2020 –

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SELMA, CALIFORNIA, APPROVING A
REQUEST TO ENTER INTO A CONTRACT
AGREEMENT BETWEEN THE CITY OF SELMA AND
VANIR CONSTRUCTION MANAGEMENT**

WHEREAS, the City has received grant funds for the development of a 28-acre park located near Rockwell Pond; and

WHEREAS, the last park developed in Selma was Shafer Park in 1989; and

WHEREAS, the City went out for submission of Request for Proposals (RFP) for a Project Manager for the Rockwell Park Project; and

WHEREAS, the City reviewed each of the RFP proposals and conducted a review, reference checks and interviews; and

WHEREAS, the City and Vanir Construction Management desire to enter into an agreement to provide Park Project Management Services; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELMA
DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:**

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

SECTION 2. The Agreement serves as a public purpose in overseeing the park development project and construction of a new park.

SECTION 3. The City Council hereby approves the City Manager to enter into the agreement on behalf of the City of Selma with Vanir Construction Management.

SECTION 4. Vanir Construction Management shall comply with the City's Municipal Code during construction and shall provide the City with all information required by City staff, including, but not limited to, the following:

1. Proof of insurance with the City named as additional insured.
2. Indemnification of the City.

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

SECTION 6. 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 this 22nd day of January, 2021, by the following vote:

AYES: 0 COUNCIL MEMBERS:
NOES: 0 COUNCIL MEMBERS:
ABSTAIN: 0 COUNCIL MEMBERS:
ABSENT: 0 COUNCIL MEMBERS:

Scott Robertson, Mayor

ATTEST:

Reyna Rivera, City Clerk

CITY OF SELMA

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of January 22, 2021 ("Effective Date"), between the City of Selma, a municipal corporation ("City") and Vanir Construction Management, Inc. ("Consultant"). The City and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, City desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 31, 2024, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the City. The Services shall be performed by Consultant, unless prior written approval is first obtained from the City. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) City shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the City and in a first-class manner in conformance with the standards of quality normally observed by an entity providing park development services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) City has not consented in writing to Consultant's

performance of such work. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

City's City Manager shall represent the City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Four Hundred Eighty Nine Thousand and Forty Dollars (\$489,040.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. City will consult with Consultant before serving any notice of termination of this Agreement, and if City is terminating for any breach, cause or reason, it will allow Consultant fifteen (15) days to cure any breach or correct any condition that is cause or reason for the City's contemplated termination of this Agreement. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the City pursuant to Section 4 of this Agreement.

6. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to review such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office, and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the City.

7. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, 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, alleged or threatened, including legal counsel fees and costs, court costs, interest, 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 Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) DUTY TO DEFEND. In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall have an immediate duty to defend the City at Consultant's cost or at City's option, to reimburse the City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

8. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

9. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant and/or independent contractor. The personnel performing the services under this

Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the City, or bind the City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

11. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City, unless otherwise required by law or court order. (b) Consultant shall promptly notify

City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless Consultant is prohibited by law from informing the City of such Discovery, court order or subpoena. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES

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

To City:	City of Selma 1710 Tucker Street Selma, CA 93662 Attention: City Manager
With a Copy To:	Interim City Attorney 1710 Tucker Street Selma, CA 93662
To Consultant:	Vanir Construction Management, Inc. Headquarters 4540 Duckhorn Drive, Suite 300 Sacramento, CA 95834

15. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include and indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the City for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the City for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the City and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

16. GOVERNING LAW/ATTORNEYS' FEES

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Fresno County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

18. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any

paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

21. WAIVER

The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

22 REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

23. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

"CITY"

City of Selma

"CONSULTANT"

Vanir Construction Management, Inc.

By: _____
Scott Robertson, Mayor

By: _____
Steven Whitehead, President

Attest:

By: _____
Reyna Rivera, City Clerk

Approved as to form:

By: _____

Printed Name _____
Interim City Attorney

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Rate Schedule
	Exhibit C	Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Park Project Management of a 28-acre Park development.

Project Manager shall work closely with City Staff to develop a project schedule and a detailed scope of work for property acquisition, design and construction elements. In addition, the Project Manager will assist City with maintaining compliance with Proposition 68 Grant guidelines.

Project Manager's Basic Services:

Kick Off Meeting: A review of the Scope of the Project, communications protocols, Project Budget, Design and Construction and Grant Guidelines.

Pre-Design Phase

Shall assist the City in the project budget development to include providing infrastructure to the park, including but not limited to, power, water, sewer, etc.

Shall assist the City, to the extent possible, with coordinating with the respective utility agencies to extend all necessary utilities to the project site.

Shall assist the City in securing a Phase II and Geo Earth Testing evaluation through the City's environmental consultant.

Design Phase

Pre-Design Phase: Shall assist the City in development of a Request for Proposals for the Park Design. This service shall include the following: preparation and distribution of prequalification questionnaires; receiving and analyzing completed questionnaires; interviewing potential designers; and preparing recommendations for the City, including staff reports to City Council.

Design Phase: Shall monitor the Design Professional's compliance with the design schedule, design phase procedures and coordinate and expedite the flow of information between the Design Firm and City. Shall conduct periodic project meetings to serve as a forum for the exchange of information relating to the project and also review of design progress. Shall review all design documents for clarity, consistency, constructability and coordination. Shall make recommendations to the City based on evaluation of all design documents, plans and drawings.

Assist in completion of a 100% Schematic Design (SD) estimate and also a 50% Construction Drawing (CD) estimate.

Bid and Award Phase

Construction Pre-Qualifying Phase: Shall assist the City in development of a Bid Documents packet. Shall assist the City in developing lists of possible bidders. Services shall include the following: preparation and distribution of prequalification questionnaires; receiving and analyzing completed questionnaires; assisting City staff with interviewing possible bidders; bonding agents and financial institutions; and preparing recommendations for the City. Shall prepare a bidder's list for each bid package for approval by City.

Bid and Award Phase: Shall conduct a telephonic and correspondence campaign to attempt to increase interest among qualified bidders. Shall assist the City in preparing and placing notices and advertisements to solicit bids for the project. Shall coordinate the delivery of Bid Documents to bidders. The City shall obtain the City-approved contract documentation from the Design Professional and the Project Manager shall arrange for printing, binding, wrapping and delivery to the bidders. The Project Manager shall maintain a list of bidder's receiving Bid Documents.

Pre-Bid Conferences: In conjunction with the City and Design Professional, the Project Manager shall conduct Pre-Bid Conferences. These conferences shall be forums for the Project Manager, City and Design Professional to explain project requirements to the bidders, including information concerning schedule requirements, time and cost control. The Project Manager shall develop and coordinate procedures to provide answers to bidder's questions.

Addenda: The Project Manager shall receive from the Design Professional a copy of all Addenda. Shall review Addenda for clarity, consistency, and coordination among the bidders. Shall distribute a copy of the Addenda to each bidder receiving Bid Documents.

Bid Opening and Recommendations: Shall assist City in conducting the bid opening and shall evaluate the bids for responsiveness and price. Shall make recommendations to the City concerning the acceptance or rejection of bids.

Construction Phase

Project Management: Shall provide and maintain a management team on the Project site to provide contract administration as an agent of the City and to establish and implement coordination and communication procedures among the Project Manager, City, Design Professional and Contractors.

Construction Administration Procedures: Shall establish and implement procedures for expediting and processing requests for information, drawings, material and equipment sample submittals, contract schedule adjustments, change orders, payment request and tracking all relevant information related to the above. Shall maintain daily job reports, as the Cities agent and representative at the construction site, if provided for in the Construction Phase Procedures approved by the City, the Project Manager shall be the party to whom requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment applications shall be submitted.

Project Site Meetings: Periodically the Project Manager shall conduct coordination meetings at the Project site and/or City Hall with each Contractor, the City and the Design Professional. Project Manager shall record, transcribe and distribute minutes to all attendees, including the City and Design Professional.

Review of Requests for Changes to the Contract Time and Price: Shall review the contents of requests for changes to the contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests and make recommendations to the City with respect to acceptance of the request.

Substantial Completion: In consultation with the Design Professional and City inspectors, the Project Manager shall review the contractor's request for substantial completion and final completion and recommend to the City when the Project and the Contractor's Work has achieved substantial and final completion. Shall prior to issuing a Certificate of Substantial Completion, compile a list of incomplete work which does not conform to the Contract Documents based on input from the Design Professional and City inspector's. The list shall be attached to the Certificate of Substantial Completion. Shall issue the Certificate of Substantial Completions and Certification of Final Completion to the Contractor.

Final Payment: Shall provide the City a written recommendation regarding final payment to the contractor following consultation with Design Professional and City.

EXHIBIT B
RATE SCHEDULE

<u>Positions</u>	<u>'20/'21 Rates</u>
Principal in Charge	\$235
Project Director/Sr. Project Manager	\$195
Sr. Construction Manager	\$185
Construction Manager	\$170
Asst. Construction Manager II	\$150
Asst. Construction Manager I	\$145
Project Coordinator	\$135
Project Engineer	\$125
Commissioning Agent	\$145
Administrative Assistant II	\$95
Administrative Assistant I	\$85
Estimator I	\$160
Scheduler I	\$150

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to the City.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000.00 per occurrence, \$4,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$2,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$2,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees and volunteers.

Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

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

November 16, 2020

ITEM NO:

4.

SUBJECT: Continued Item – Consideration of a Resolution approving a request to enter into an Agreement with Vanir Construction Management, Inc. for Project Management of the Rockwell Park Project.

DISCUSSION: At the City Council meeting of October 5, 2020 the City Council continued this item to the next meeting and directed staff to meet and discuss with the developer of Selma Grove and Vanir Construction Management (Vanir) concepts for the City's Rockwell Park Project. At the October 19, 2020 City Council meeting staff reported contact with the Selma Grove developer had been made and he informed staff he needed at least 30 - 45 days to work on providing the City a concept of the park and his development and the synergy between his commercial development and the adjacent City Rockwell Park project. The City Council again tabled this item and to bring back at the November 16, 2020 meeting.

On Tuesday, November 3, 2020 staff forwarded by e-mail, as per the developer's request, concepts that were drawn up in 2015 and 2018 to him. Staff followed up with the developer in regards to when we can expect to receive a conceptual plan.

Per the City's grant, the City has a deadline of May 2024 to complete the park project. Staff is recommending City Council consider approving the agreement with Vanir. With an approval, City Staff and Vanir can begin to move forward with many of the preliminary steps needed to be completed as we move forward with pre-design, design and construction. During this preliminary time, City Staff and Vanir will continue to work with the developer to look for mutually beneficial development opportunities between the park and commercial development. By approving the agreement with Vanir, it allows us to move forward and no delay, and at the same time, allows for us time to coordinate efforts as stated with the developer.

<u>COST:</u> (Enter cost of item to be purchased in box below)		<u>BUDGET IMPACT:</u> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
\$489,040.00		None.
<u>FUNDING:</u> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<u>ON-GOING COST:</u> (Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).
Funding Source: Park Development Fund Fund Balance: \$662,415.32		None.

RECOMMENDATION: Approve City Manager to sign and enter into agreement with Vanir Construction Management Inc. for the purpose of Project Management of the Rockwell Park Development.


 Mikal Kirchner, Director of Recreation

11-12-2020
 Date

/s/
 Teresa Gallavan, City Manager

11/13/2020
 Date

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

October 5, 2020

ITEM NO:

2.

SUBJECT: Consideration of a Resolution approving a request to enter into an Agreement with Vanir Construction Management, Inc. for Project Management of the Rockwell Park Project.

DISCUSSION: A Request for Proposals (RFP) was sent out for a Project Manager to oversee the development of the Rockwell Park Project. Staff received five RFP's for consideration:

Precision Civil Engineering, Inc.	\$ 79,800.00
CPM California Professional Management	\$292,460.00
Vanir Construction Management	\$362,600.00
Griffin Structures	\$561,170.00
Ghirardelli Associates	\$966,563.42

From the review of the proposals, experience and references, Vanir Construction Management, Inc., Griffin Structures and CPM California Professional Management firms were interviewed by Teresa Gallavan, City Manager, Isaac Moreno, Assistant City Manager/Finance Director and Mikal Kirchner, Recreation and Community Services Director.

Based on the review and information gathered from the proposals, references and interview process, staff is recommending Vanir Construction Management, Inc. The Rockwell Park Project is receiving \$4,416,000.00 in grant funds to complete a 28-acre park. Funds to cover the Project Manager would come directly from the Park Development Fund.

The development of the park through acquisition of the property, infrastructure, the design and the construction phase, will require a great deal of time, expertise and experience. Staff believes Vanir Construction Management, Inc. based on the review and their level of experience and professionalism, will complete this project both timely and professionally and will be a project the City and the Community will be proud of.

Following the review meeting with Vanir Construction Management, staff is recommending an extension of services through Vanir that will greatly assist with the project. Vanir Construction Management is also being recommended to manage the pre-design development and preparation for the infrastructure needs including, but not limited to power, water, sewer, etc. from the point of service to the property line. In addition, extending the construction phase of the park from 8 months to 12 months. Within the RFP, the project reflected an 8-month period of construction. However, based on the project itself and all the variations required to complete the park, 12 months is highly recommended. Based on the extension of services the cost to oversee this entire project would be not to exceed \$489,040.00. (City will be billed for actual time, if the actual billing comes under budget, those savings will be passed on to the City).

Available Park Development Funds are more than sufficient to cover this expense and this is an item that has been anticipated as the City has looked to add additional park space. In addition, as new developments arise, the Park Development Funds will continue to increase.

The required time to manage and expertise needed to complete this project exceeds our staff and consultant capacities. Therefore staff recommends outsourcing the project management for the Rockwell Park Project.

The primary contacts for this project will be Mikal Kirchner, Recreation and Community Services Director and Shane Ferrell, Public Works Director. Each will work closely with Vanir Construction Management Inc., yet still being able to focus on their daily workloads.

<u>COST:</u> (Enter cost of item to be purchased in box below)		<u>BUDGET IMPACT:</u> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
\$489,040.00		None.
<u>FUNDING:</u> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<u>ON-GOING COST:</u> (Enter the amount that will need to be budgeted each year in box below – if one-time cost, enter NONE).
Funding Source: Park Development Fund Fund Balance: \$662,41.32		None.

RECOMMENDATION: Approve City Manager to sign and enter into agreement with Vanir Construction Management Inc. for the purpose of Project Management of the Rockwell Park Development.


Mikal Kirchner, Director of Recreation

10-1-2020
Date

/s/
Teresa Gallavan, City Manager

10/1/2020
Date