

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

April 5, 2021

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**ITEM NO:** 1.a.

**SUBJECT:** City of Selma Community Video Program participation with CGI Communications

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**RECOMMENDATION:** Approve Resolution Approving Agreement with CGI Communications, Inc. and Authorize City Manager to direct staff in the development and implementation of the free marketing program for the City of Selma.

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**DISCUSSION:**

The Community Video Program is a valuable tool for cities to enhance their website and social media platforms by adding high-definition video content. CGI Communications (CGI) tailors their program to showcase the best of what each community has to offer to residents, visitors, and businesses. According to CGI, some of the most requested video topics include but are not limited to Quality of Life, Economic Development, Real Estate and Relocation, Healthcare, Tourism, Parks and Recreation, Education, Arts and Culture, and Events. Their video production team will work hand in hand with the City to produce content that allows the community to tell its story more effectively and to engage online audiences in an impactful way.


Once the videos have been produced, CGI creates a custom link to display the video tour prominently on the City's website. Videos can also be sent via email or social media platforms to target recruiters, site locators, future residents, or visitors.

In addition to the videos produced for the City, CGI will also provide local businesses with the opportunity to utilize various digital media tools and services. Businesses can expand their outreach by having their own video produced and it's solely CGI's responsibility to educate businesses on the advantages and opportunity for participation. Local non-profit organizations will be able to expand their visibility through the program by having a free link and logo around the Community Organizations Chapter provided.

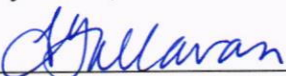
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**RECOMMENDATION:** Approve Resolution Approving Agreement with CGI Communications, Inc. and Authorize City Manager to direct staff in the development and implementation of the free marketing program for the City of Selma.

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\_\_\_\_\_  
Tracy Tosta, Administrative Analyst

3/30/21  
\_\_\_\_\_  
Date

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

3-30-21  
\_\_\_\_\_  
Date

**RESOLUTION NO. 2021- R**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF SELMA  
APPROVING AN AGREEMENT WITH CGI COMMUNICATIONS, INC.  
FOR THE COMMUNITY VIDEO PROGRAM**

**WHEREAS**, the City of Selma is authorizing the City Manager to execute an agreement for the CGI Communications 2021 Community Video Program; and

**WHEREAS**, the expense of this program is free to the City of Selma other than staff time for communication with CGI and is estimated to be completed in 2022.

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

1. The foregoing recitals are true and correct.
2. The Council approve the Agreement with CGI Communications, Inc., attached hereto and incorporated by reference.
3. The City Manager is authorized to execute the Agreement and direct staff accordingly.
4. This Resolution is effective upon adoption.

**I, Reyna Rivera**, City Clerk of the City of Selma, do hereby certify that the foregoing Resolution was duly adopted at a regular meeting of the City Council of the City of Selma on the 5th day of April 2021, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

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Scott Robertson, Mayor

ATTEST:

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Reyna Rivera  
City Clerk





## 2021 Community Video Program

Name: Reyna Rivera

Title: City Clerk

Address: 1710 Tucker Street

City, State, Zip: Selma, CA. 93662

Phone: 559-891-2200 ext. 3104

Email: [ReynaR@CityofSelma.com](mailto:ReynaR@CityofSelma.com)

Website: [www.cityofselma.com](http://www.cityofselma.com)

This agreement is between CGI Communications, Inc. ("CGI") and the City of Selma (the "City") and shall remain in effect from the date it is signed by both parties until the third anniversary of the date that the completed and approved Community Video Program is made available for viewer access on different devices via a link on the [www.cityofselma.com](http://www.cityofselma.com) homepage, including any alternate versions of that homepage.

**During the term of this Agreement, CGI shall:**

- Produce a total of four video chapters with subject matter that includes but is not limited to: Welcome, and three additional videos
- Provide one Community Organizations chapter to promote charities, nonprofits and community development organizations
- Provide script writing and video content consultation
- Send a videographer to City locations to shoot footage for the videos
- Reserve the right to use still images and photos for video production
- Provide all aspects of video production and editing, from raw footage to final video including professional voiceovers and background music
- Provide a final draft of Community Video Program content subject to City's approval (up to 3 sets of revisions allowed). CGI's request for approval of content or revision, including final draft, shall be deemed approved if no response is received by us within 30 days of request
- Provide our patented OneClick™ Technology and encode all videos into multiple streaming digital formats to play on all computer systems, browsers, and Internet connection speeds; recognized player formats include WindowsMedia™ and QuickTime™
- Store and stream all videos on CGI's dedicated server
- Feature business sponsors around the perimeter of video panels
- Be solely responsible for sponsorship fulfillment including all related aspects of marketing, production, printing, and distribution
- Facilitate viewer access of the Community Video Program from City website, including any alternate versions of City's homepage, for different devices, by providing HTML source code for a graphic link to be prominently displayed on the [www.cityofselma.com](http://www.cityofselma.com) website homepage as follows: "Coming Soon" graphic link designed to coordinate with existing website color theme to be provided within 10 business days of execution of this agreement. "Community Video Program" graphic link to be provided to replace the "Coming Soon" link upon completion and approval of videos
- Grant to City a license to use CGI's Line of Code to link to and/or stream the videos
- Own copyrights of the master Community Video Program
- Assume all costs for the Community Video Program
- Afford businesses the opportunity to purchase various digital media products and services from CGI and its affiliates

**Program add-ons will include:**

- Multiple segments of aerial footage pending approval from FAA and any airports within a 5 mile radius of filming location(s)

**During the term of this Agreement, the City shall:**

- Provide a letter of introduction for the program on City's letterhead
- Assist with the content and script for the Community Video Program
- Grant CGI the right to use City's name in connection with the preparation, production, and marketing of the Program
- Display the "Coming Soon" graphic link prominently on the [www.cityofselma.com](http://www.cityofselma.com) homepage within 10 business days of receipt of HTML source code
- Display the "Community Video Program" link prominently on its [www.cityofselma.com](http://www.cityofselma.com) homepage, including any alternate versions of your home page, for viewer access on different devices for the entire term of this agreement
- Ensure that this agreement remains valid and in force until the agreed upon expiration date, regardless of change in administration
- Grant full and exclusive streaming video rights for CGI and its subsidiaries, affiliates, successors and assigns to stream all video content produced by CGI for the Community Video Program
- Agree that the town will not knowingly submit any photograph, video, or other content that infringes on any third party's copyright, trademark or other intellectual property, privacy or publicity right for use in any video or other display comprising this program.

This Agreement constitutes the entire agreement of the parties and supersedes any and all prior communications, understandings and agreements, whether oral or written. No modification or claimed waiver of any provision shall be valid except by written amendment signed by the parties herein. City warrants that it is a tax exempt entity. The undersigned, have read and understand the above information and have full authority to sign this agreement.

Selma, CA

CGI Communications, Inc.

Signature:

Name (printed):

Name (printed): Nicole Rongo

Title:

Title: Vice President of Marketing and Acquisitions

Date:

Date: March 11, 2021

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

April 5, 2021

**ITEM NO:** 1.b.

**SUBJECT:** Consideration of an agreement with the Office of Administrative Hearings (OAH), Department of General Services, State of California for Services of an Administrative Law Judge

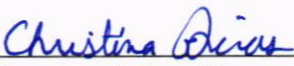
**DISCUSSION:** Pursuant to Government Code Section, 11517:1 under the Administrative Procedure Act (APA) Council can allow an Administrative Law Judge (ALJ) to hear the appeals submitted by fire safety personnel in the competitive service regarding certain specified personnel matters.

An Administrative Law Judge (ALJ) can hear the appeals and provide a proposed decision to the City Council, which will make the final decision to adopt/reduce/reject the ALJ's decision.

As proposed, this agreement allows the Office of Administrative Hearings (OAH) to furnish the services of an ALJ, and case management to the City, for the purpose of managing cases and conducting hearings under Government Code Section 27727 when requested by fire safety personnel. The assignment of ALJ's for hearings will be at the discretion of the Director and/or Presiding Administrative Law Judges, who may elect to hear the matter themselves. The term of this agreement upon the date of approval and execution by all parties is through five years.

<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).
The maximum amount of this agreement is not to exceed to \$48,000.00	Fiscal impact on an as-needed basis
<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: FY 2018-19 \$4,566,411	

**RECOMMENDATION:** It is recommended that the City Council approve the agreement with the Office of Administrative Hearings, Department of General Services, and State of California for Services of an Administrative Law Judge and authorize the City Manager to execute.

  
Christina Arias, Human Resources Manager

4/6/21  
Date

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

\_\_\_\_\_  
Date

**STANDARD AGREEMENT**

AGREEMENT NUMBER

**1. This Agreement is entered into between:**

LOCAL AGENCY'S NAME

City of Selma

CONTRACTOR'S NAME

Department of General Services / Office of Administrative Hearings

**2 The term of this**

Agreement is:

Upon the date of approval and execution by all parties through five years

**3. The maximum amount**

of this Agreement is:

\$ 48,000.00

Forty Eight Thousand Dollars and No Cents

**4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.**

Exhibit A – Scope of Work 5 pages

Exhibit B – Budget Detail and Payment Provisions 2 pages

Exhibit C – General Terms and Conditions 1 pages

Exhibit D - Service Revolving Fund (SRF) Directive – Payment By Wire Transfer Form 1 pages

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.****CONTRACTOR**

CONTRACTOR'S NAME

Office of Administrative Hearings

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Phoenix Lawson, Staff Services Manager I

ADDRESS

2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833

**LOCAL AGENCY**

LOCAL AGENCY NAME

City of Selma

BY (Authorized Signature)

DATE SIGNED(Do not type)

**I declare under penalty of perjury that I have full authority to execute this agreement on behalf of the Local Agency.**

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

1710 Tucker Street, Selma, CA 93662



## EXHIBIT A

### SCOPE OF WORK

1. Upon request of City of Selma  
(hereinafter referred to as "Local Agency"), the Office of Administrative Hearings (OAH) agrees to furnish the services of Administrative Law Judges (ALJs) and case management staff to the Local Agency, for the purpose of managing cases and conducting hearings under Government Code section 27727 when required personnel are available by OAH. The assignment of ALJs for hearings will be at the discretion of the Director and/or Presiding Administrative Law Judges, who may elect to hear the matter themselves.

2. Project Representatives

The project representatives during the term of this agreement will be:

Office of Administrative Hearings

Susan L. Formaker, Division Chief Presiding Administrative Law Judge

Phone: 213-576-7200

Email: Susan.Formaker@dgs.ca.gov

Local Agency: City of Selma

Name: Teresa Gallavan

Title: City Manager

Phone: (559) 891-2200

Email: teresag@cityofselma.com

Direct all inquiries regarding this agreement to:

Office of Administrative Hearings

Tim Dean, Contract Analyst

2349 Gateway Oaks Dr. Suite 200

Sacramento, CA 95833

Phone: 916-263-0791

Email: tim.dean@dgs.ca.gov

Local Agency: City of Selma

Attention: Christina Arias

Address: 1710 Tucker Street, Selma, CA 93662

Phone: (559) 891-2200

Email: christinaa@cityofselma.com

All invoices and billing shall be directed to:

Local Agency: City of Selma

Attention: Christina Arias

Address: 1710 Tucker Street, Selma, CA 93662

Phone: (559) 891-2200

Email: chrisitnaa@cityofselma.com

The Project Representative and Agreement and Billing Representative may be changed through written confirmation to the other party. This change shall not require an amendment to this agreement. It may take up to two billing cycles for a change to the Local Agency Billing Contact to be in effect.

3. Services to be Performed:

- a. The Local Agency shall provide OAH a written request to set a matter for hearing or mediation with all pleadings, documents, papers, or other materials that have been provided to the other party. The Local Agency agrees to provide OAH copies of all applicable laws and ordinances governing the hearing at the time the request for hearing or mediation is made. The Local Agency agrees that OAH will not be able to schedule a hearing or mediation until these materials are provided. The Local Agency shall indicate in the request to set a matter for hearing if OAH is to issue a proposed or final decision in the matter. If a proposed decision is required, Local Agency shall provide the name and contact information for the decision-maker who is responsible for making the final decision.

- b. The Local Agency shall electronically file the request to set a matter for hearing and all other required pleadings and papers with OAH using the secure electronic filing system offered by OAH or otherwise in accordance with OAH requirements.
  - c. The Local Agency shall inform OAH if the hearing is to be electronically recorded or if a court reporter is required. If a court reporter is required, the Local Agency shall indicate at the time the request a hearing if they will be providing a court reporter or if OAH should provide one. Unless the Local Agency or OAH determines a court reporter is required by statute, ordinance, or regulation, the hearing will be electronically recorded by OAH.
  - d. OAH shall perform all case management and hearing services that OAH, in its sole discretion, deems necessary to the proper handling and adjudication of the case.
  - e. The Local Agency agrees to inform OAH 30 days prior to the hearing if any accommodations or interpreters are required. Local Agency shall be responsible for the costs of accommodations or interpreters. If OAH incurs costs for providing reasonable accommodations, interpreter or translation services for any matter under this agreement, those costs shall be borne by the Local Agency.
  - f. Record Retention: OAH shall retain all records in accordance with its current record retention schedule. If the Local Agency requests OAH to issue a proposed decision, the exhibits will be returned to the Local Agency Project Representative along with the proposed decision at the conclusion of the matter, and the Local Agency shall be deemed the custodian of the administrative record.
4. Service Location: The services shall be performed at a location convenient for OAH and all parties. The Local Agency shall file a request for mediation or hearing directly with the local OAH office which is handling the matter.
5. Record of the Proceeding:
- a. If a Court Reporter is not used, OAH shall be responsible for electronic recording of all hearings, and shall impose a recording fee not to exceed the amount set by the Department of General Services through the Price Book. The current Price



Book is located at: <https://www.dgs.ca.gov/OFS/Price-Book>. The electronic recording fee shall only be imposed following the actual recording of a proceeding and shall not be included as part of the filing fee.

- b. If OAH provides a Court Reporter, the Local Agency is responsible for all costs associated with the Court Reporter, in accordance with the current contract rates. Current contract rates, including Court Reporter and transcription costs, can be found at: <https://www.dgs.ca.gov/OAH/Case-Types/General-Jurisdiction/Resources/Page-Content/General-Jurisdiction-Resources-List-Folder/Find-Contract-Information-to-Obtain-OAH-Court-Reporter-Services>.
- c. OAH shall arrange for transcription of hearing recordings upon the request of any party to the proceeding or the Local Agency Project Representative and upon receipt of payment for transcription costs. OAH may use a vendor for transcription services.
- d. OAH will charge a requesting party the actual cost of preparing the administrative record. If the requesting party has been declared in forma pauperis, or has received a waiver of court fees from a court of competent jurisdiction in a case arising out of the OAH matter, and is seeking judicial review of the case before OAH, the Local Agency shall pay the full costs for preparing the administrative record and/or transcript. OAH will notify the Local Agency of the associated costs prior to preparing such records.
- e. OAH will not include within its administrative record any records or hearing exhibits the custody of which has been transferred to the Local Agency. OAH may prepare a clerk's record upon request and payment of associated fees in these circumstances.

## 6. Rates

- a. In consideration of the performance of such services by OAH, the Local Agency agrees to pay to OAH the full cost of rendering such services at the rate established at the time the services are rendered. The Local Agency is responsible for the filing fee for each case filed, ALJ (including Presiding Administrative Law Judge, and Division Presiding Administrative Law Judge)

time billed at an hourly rate, an electronic recording fee if the proceedings are electronically recorded, the cost of all accommodation or interpreter services requested, and the full cost of any preparation of the clerk's record or transcript at the current contract rates.

- b. In the event a calendared case is taken off-calendar, or needs to be re-calendared, other than by OAH, and OAH is unable to schedule the ALJ for work on another case, the Local Agency agrees to pay OAH for the original hearing time or until the ALJ is assigned to another case, whichever occurs first. Every effort will be made to promptly reassign the scheduled ALJ in the event a calendared matter is cancelled, taken off-calendar, settled, re-calendared or continued.
  - c. The costs of OAH's services include filing fees, ALJ hourly rates, any reasonable costs related to any requested accommodations, and translator/interpreter fees as required. All costs associated with providing a record of the hearing (reporter/transcription, etc.) shall be billed directly to the requesting party or the Local Agency in accordance with Section 5 above. ALJ hourly rates and filing fees charged by OAH will be the rates set forth in the Department of General Services' Price Book at the time the services are rendered. Rates for court reporters will be the current contract rates at the time the services are rendered, which vary by geographical location. Fees for translator/interpreters and transcription services will be based on current contract rates at the time the services are rendered. All rates are subject to change annually. The current contract rates for these services can be found on OAH's website.
  - d. The Local Agency agrees to be responsible for the full costs of any service provided by OAH on a Local Agency case, regardless of any agreement the Local Agency may have with a third party or any other cost-sharing provision.
7. The contract is effective upon approval and execution of all signatures to this contract. The term of this contract is five years from the effective date of the contract. This contract may only be amended for term and amount upon mutual agreement of the parties.

## EXHIBIT B

### BUDGET DETAIL AND PAYMENT PROVISIONS

1. The Office of Administrative Hearings is a reimbursable entity as detailed in Government Code section 11370.4. Notwithstanding any other provision of law, the total cost of services provided by the OAH shall be collected from the Local Agency entering into this agreement.
2. Parties shall keep apprised of the balance of this agreement at all times. Local Agency agrees to notify OAH when the expended amount is close to exhausting the funds in this agreement.
3. For services rendered in accordance with the Scope of Work, the Local Agency shall compensate the OAH for the full cost of services and actual expenditures incurred in accordance with the rates specified herein. Compensation for services rendered by OAH pursuant to this agreement shall not be dependent on the decision rendered by the ALJ in a hearing involving the Local Agency. OAH charges shall include the following: filing fees, electronic recording fees, Administrative Law Judge hourly charges, and translator/interpreter fees as required. Additionally, all costs associated with providing a record of the hearing (reporter/transcription, etc.) shall be billed directly to the Local Agency.
4. Invoices shall be paid promptly and delays in payment may result in OAH's discontinuation of services.
5. ALJ hourly rates and filing fees charged by OAH will be the rates set forth in the Department of General Services' Price Book at the time the services are rendered. Rates for court reporters will be the current contract rates at the time the services are rendered, which vary by geographical location. Fees for translator/interpreters and transcription services will be based on current contract rates at the time the services are rendered. All rates are subject to change annually. Any training required of the ALJs by the Local Agency to conduct these hearings will be paid out of the contract funds by the



Local Agency at the prevailing ALJ hourly rate. The Price Book is available at <http://www.dgs.ca.gov/ofs/Pricebook.aspx>

6. OAH shall be paid not more frequently than monthly, in arrears, upon issuance of an invoice by the Department of General Services which details charges, expenses, direct and indirect costs.
7. Payment may be completed through direct transfer, in accordance with Service Revolving Fund Directive, SRF #1025, attached hereto as Exhibit D. For questions about establishing a wire transfer process with OAH/DGS, the Local Agency shall contact DGS at [SRFFISCALSERVICES@dgs.ca.gov](mailto:SRFFISCALSERVICES@dgs.ca.gov) or the OAH Project Representative.

## EXHIBIT C

### GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties.
2. AMENDMENT: Except as noted in Exhibit A, Paragraph 2, no amendment or variation of the terms of this Agreement shall be valid, unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. CANCELLATION/TERMINATION:
  - A. This agreement may be cancelled or terminated without cause by either party by giving 30 calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
  - B. Upon receipt of a notice of termination or cancellation from the Local Agency, OAH shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
  - C. OAH shall be entitled to payment for all allowable costs authorized under this agreement, including authorized non-cancelable obligations incurred up to the date of termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.
4. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
5. SETTLEMENT OF DISPUTES: In the event of a dispute, the Local Agency shall file a "Notice of Dispute" with the Director of OAH within 10 days of discovery of the problem. Within 10 days, the Director of OAH may meet with the Local Agency for purposes of resolving the dispute. The Director of OAH shall make the final administrative decision regarding a dispute.

## EXHIBIT D

### Service Revolving Fund (SRF) Directive – Payment By Wire Transfer Form

#### SERVICE REVOLVING FUND (SRF) DIRECTIVE

Number:  <b>SRF # 1025</b>	Subject:  <b>PAYMENT BY WIRE TRANSFER</b>	Date Issued:  <b>REV 10/2018</b>
References: SAM Section 8091		

#### PURPOSE

To outline the process for a private company to set up wire transfer documents with their banking institution in making payments to the State of California, Department of General Services (DGS).

#### PROCEDURES

The following instructions are for the private company and their banking institution, the DGS Office contact person, and the DGS SRF Receivables Analyst in requesting and processing wire transfers:

#### **A. APPROVAL REQUESTED TO TRANSFER FUNDS INTO DGS ACCOUNT**

Either the private company or the DGS Office is to contact SRF Receivable Analyst by E-mail at [SRFFISCALSERVICES@dgs.ca.gov](mailto:SRFFISCALSERVICES@dgs.ca.gov) to obtain **approval to wire transfer funds into the DGS Account**. The following information is needed along with any pertinent data that would help identify the nature of the payment:

1. Company Name
2. Company Representative (name, phone, e-mail and fax number)
3. DGS Office contact person name
4. Escrow Account Number
5. Reason for payment
6. Amount

If you have any questions regarding the wire transfer process, please contact SRF Receivables Analyst by E-mailing to [SRFFISCALSERVICES@dgs.ca.gov](mailto:SRFFISCALSERVICES@dgs.ca.gov) or by phone at 916-376-5182.



<b>B. WIRE TRANSFER PROCESS</b>
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**1) PRIVATE COMPANY & BANKING INSTITUTION**

Provide your banking institution with the following information to set up wire transfer payments to DGS (banking customer is responsible for the payment of any processing fee):

**ABA Routing Number: 026009593**  
**Account Number: 14360-80784**

**Department of General Services**  
**OFS - SRF Fiscal Services**  
**707 Third Street, 10<sup>th</sup> Floor**  
**West Sacramento, CA 95605**

**2) DGS OFFICE CONTACT PERSON**

Provide DGS OFS 2028 Report of Check/Cash Collection to the SRF Receivable Analyst as soon as you know that a wire transfer payment is in process. This will ensure the money is recorded properly in the Financial Information System for California (FI\$Cal) Accounts Receivable Module.

**3) DGS SRF RECEIVABLES ANALYST**

Once the wire transfer has been made, SRF Receivable Analyst will run the State Treasury Bank of America Report and apply the transfer using the Report of Check/Cash Collection or the E-mail from the private company or the DGS Office to record the transfer of funds in FI\$Cal.

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

April 5, 2021

**ITEM NO:** 1.c.

**SUBJECT:** Consideration of a legal services agreement with Lozano Smith, LLP

**RECOMMENDATION:** Approve and authorize the Mayor to execute the agreement.

**BACKGROUND/DISCUSSION:** At Council request, the City issued a Request for Proposals (RFP) for General Counsel Legal Services on February 3, 2021. The City received proposals from Aleshire & Wynder, Hale/Thurmond, Herr Pedersen Berglund, Jamison Chappel & Beaumont, and Lozano Smith. Council interviewed all five firms. Council provided staff with direction and an agreement (attached) was reached with Lozano Smith.

Per the agreement, there is no retainer and rates are \$225 per hour for all attorneys, \$110 per hour for paralegals/law clerks and \$240 an hour for litigation services. Quoted rates will be honored through June 30, 2023.

The City General Counsel is responsible for evaluating projects and their legal issues and provides recommended options to minimize legal risk and ensure due process in City decisions. The City General Counsel has the authority to enforce Selma's Municipal Code and to represent the City in litigation. Additional services provided are the preparation of proposed ordinances, resolutions, contracts, and other legal documents.

It was the determination of Council to award the contract to the law firm of Lozano Smith LLP.

**FINANCIAL ANALYSIS:**

<b><i>COST:</i></b> (Enter cost of item to be purchased in box below)		<b><i>BUDGET IMPACT:</i></b> (Enter amount this non-budgeted item will impact this years' budget in box below – if budgeted, enter NONE).
Estimated at \$11,250 a month (See Contract for Fees and Rates)		Estimated at \$33,750
<b><i>FUNDING:</i></b> (Enter the funding source for this item in box below – if fund exists, enter the balance in the fund).		<b><i>ON-GOING COST:</i></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 2018-19 \$4,566,411		

**RECOMMENDATION:** Approve and authorize the Mayor to execute the agreement.

/s/

04/01/2021

Teresa Gallavan, City Manager

Date

## AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is effective April 1, 2021, between the CITY OF SELMA (“Client”) and the law firm of LOZANO SMITH, LLP (“Attorney”) (each a “Party” and collectively the “Parties”). Attorney shall provide legal services as requested by Client on the following terms and conditions:

1. **ENGAGEMENT.** Client hires Attorney on an as-requested basis as its legal counsel with respect to matters the Client refers to Attorney. When Client refers a matter to Attorney, Attorney shall confirm availability and ability to perform legal services regarding the matter. After Attorney has completed services for the specific matter referred by Client, then no continuing attorney-client relationship exists until Client requests further services and Attorney accepts a new engagement. If Attorney undertakes to provide legal services to represent Client in such matters, Attorney shall keep Client informed of significant developments and respond to Client’s inquiries regarding those matters. Client understands that Attorney cannot guarantee any particular results, including the costs and expenses of representation. Client agrees to be forthcoming with Attorney, to cooperate with Attorney in protecting Client’s interests, to keep Attorney fully informed of developments material to Attorney’s representation of client, and to abide by this Agreement. Client is hereby advised of the right to seek independent legal advice regarding this Agreement.
2. **RATES TO BE CHARGED.** Client agrees to pay Attorney for services rendered based on the attached rate schedule. Attorney represents that the rates in the attached rate schedule will not change through June 30, 2023. After June 30, 2023, any rate increases must be mutually agreed upon between Client and Attorney in writing. Agreements for legal fees on other-than-an-hourly basis may be made by mutual agreement for special projects (including as set forth in future addenda to this Agreement).
3. **REIMBURSEMENT.** Client agrees to reimburse Attorney for actual and necessary expenses and costs incurred in the course of providing legal services to Client, including but not limited to expert, consultant, mediation and arbitration fees. Attorney shall not be required to advance costs on behalf of Client over the amount of \$1,000 unless otherwise agreed to in writing by Attorney. Typical expenses advanced for Client, without prior authorization, include messenger fees, witness fees, expedited delivery charges, travel expenses, court reporter fees and transcript fees. Client authorizes Attorney to retain experts or consultants to perform services.
4. **MONTHLY INVOICES.** Attorney shall send Client a statement for fees and costs incurred every calendar month (the “Statement”). Statements shall set forth the amount, rate and description of services provided. Client shall pay Attorney’s Statements within thirty (30) calendar days after receipt. An interest charge of one percent (1%) per month shall be assessed on balances that are more than thirty (30) calendar days past due, not to exceed 10% per annum.
5. **COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT.** The Parties recognize that all legal advice provided by Attorney is protected by the Attorney-Client and Work Product

Privileges. In addition to regular telephone, mail and other common business communication methods, Client hereby authorizes Attorney to use facsimile transmissions, cellular telephone calls and text, unencrypted email, and other electronic transmissions in communicating with Client. Unless otherwise instructed by Client, any such communications may include confidential information.

6. **POTENTIAL AND ACTUAL CONFLICTS OF INTEREST.** If Attorney becomes aware of any potential or actual conflict of interest between Client and one or more other clients represented by Attorney, Attorney will comply with applicable laws and rules of professional conduct.

7. **INDEPENDENT CONTRACTOR.** Attorney is an independent contractor and not an employee of Client.

8. **TERMINATION.**

a. Termination by Client. Client may discharge Attorney at any time, with or without cause, by written notice to Attorney.

b. Termination by Mutual Consent or by Attorney. Attorney may terminate its services at any time with Client's consent or for good cause. Good cause exists if (a) Client fails to pay Attorney's Statement within sixty (60) calendar days of its date, (b) Client fails to comply with other terms of this Agreement, including Client's duty to cooperate with Attorney in protecting Client's interests, (c) Client has failed to disclose material facts to Attorney or (d) any other circumstance exists that requires termination of this engagement under the ethical rules applicable to Attorney. Additionally, to the extent allowed by law, Attorney may decline to provide services on new matters or may terminate the Agreement without cause upon written notice to Client if Attorney is not then providing any legal services to Client. Even if this Agreement is not terminated, under paragraph 1 an attorney-client relationship exists only when Attorney is providing legal services to Client.

c. Following Termination. Upon termination by either Party: (i) Client shall promptly pay all unpaid fees and costs for services provided or costs incurred pursuant to this Agreement up to the date of termination; (ii) unless otherwise required by law or agreed to by the Parties, Attorney will provide no legal services following notice of termination; (iii) the Parties will cooperate with one another in facilitating the orderly transfer of any outstanding matters to new counsel, including promptly signing a substitution of counsel form upon request; and (iv) Client shall, upon request, be provided the Client's file maintained for the Client by Attorney and shall sign acknowledgment of receipt upon delivery of that file. For all Statements received by Client from Attorney prior to the date of termination, Client's failure to notify Attorney in writing of any disagreement with either the services performed or the charges for those services as shown in the Statement within thirty (30) calendar days of the date of termination shall be deemed Client's acceptance of and agreement with the Statement. For any billing appearing for the first time on a Statement received by Client from Attorney after the date

of termination, failure to notify Attorney in writing of any disagreement with either the services performed or the charges for those services within thirty (30) calendar days from receipt of the Statement shall be deemed to signify Client's acceptance of and agreement with the Statement.

9. **MAINTENANCE OF INSURANCE.** Attorney agrees that, during the term of this Agreement, Attorney shall maintain liability and errors and omissions insurance.

10. **CONSULTANT SERVICES.** Attorney works with professional consultants that provide services, including but not limited to, investigations, public relations, educational consulting, leadership mentoring and development, financial, budgeting, management auditing, board/superintendent/chancellor relations, administrator evaluation and best practices, and intergovernmental relations. Attorney does not share its legal fees with such consultants. Attorney may offer these services to Client upon request.

11. **DISPUTE RESOLUTION.**

a. Mediation. Except as otherwise set forth in this section, Client and Attorney agree to make a good faith effort to settle any dispute or claim that arises under this Agreement through discussions and negotiations and in compliance with applicable law. In the event of a claim or dispute, either Party may request, in writing to the other Party, to refer the dispute to mediation. This request shall be made within thirty (30) calendar days of the action giving rise to the dispute. Upon receipt of a request for mediation, both Parties shall make a good faith effort to select a mediator and complete the mediation process within sixty (60) calendar days. The mediator's fee shall be shared equally between Client and Attorney. Each Party shall bear its own attorney fees and costs. Whenever possible, any mediator selected shall have expertise in the area of the dispute and any selected mediator must be knowledgeable regarding the mediation process. No person shall serve as mediator in any dispute in which that person has any financial or personal interest in the outcome of the mediation. The mediator's recommendation for settlement, if any, is non-binding on the Parties. Mediation pursuant to this provision shall be private and confidential. Only the Parties and their representatives may attend any mediation session. Other persons may attend only with the written permission of both Parties. All persons who attend any mediation session shall be bound by the confidentiality requirements of California Evidence Code section 1115, et seq., and shall sign an agreement to that effect. Completion of mediation shall be a condition precedent to arbitration, unless the other Party refuses to cooperate in the setting of mediation.

b. Dispute Regarding Fees. Any dispute as to attorney fees and/or costs charged under this Agreement shall to the extent required by law be resolved under the California Mandatory Fee Arbitration Act (Bus. & Prof. Code §§ 6200, et seq.).

c. Binding Arbitration. Except as otherwise set forth in section (b) above, Client and Attorney agree to submit all disputes to final and binding arbitration, either following mediation which fails to resolve all disputes or in lieu of mediation as may be agreed by

the Parties in writing. Either Party may make a written request to the other for arbitration. If made in lieu of mediation, the request must be made within sixty (60) calendar days of the action giving rise to the dispute. If the request for arbitration is made following an unsuccessful attempt to mediate the Parties' disputes, the request must be made within ten (10) calendar days of termination of the mediation. The Parties shall make a good faith attempt to select an arbitrator and complete the arbitration within ninety (90) calendar days. If there is no agreement on an arbitrator, the Parties shall use the Judicial Arbitration and Mediation Service (JAMS). The arbitrator's qualifications must meet the criteria set forth above for a mediator, except, in addition, the arbitrator shall be an attorney unless otherwise agreed by the Parties. The arbitrator's fee shall be shared equally by both Parties. Each Party shall bear its own attorney fees and other costs. The arbitrator shall render a written decision and provide it to both Parties. The arbitrator may award any remedy or relief otherwise available in court and the decision shall set forth the reasons for the award. The arbitrator shall not have any authority to amend or modify this agreement. Any arbitration conducted pursuant to this paragraph shall be governed by California Code of Civil Procedure sections 1281, et seq. By signing this Agreement, Client acknowledges that this agreement to arbitrate results in a waiver of Client's right to a court or jury trial for any fee dispute or malpractice claim. This also means that Client is giving up Client's right to discovery and appeal. If Client later refuses to submit to arbitration after agreeing to do so, Client may be ordered to arbitrate pursuant to the provisions of California law. Client acknowledges that before signing this Agreement and agreeing to binding arbitration, Client is entitled, and has been given a reasonable opportunity, to seek the advice of independent counsel.

d. Effect of Termination. The terms of this section shall survive the termination of the Agreement.

12. **ENTIRE AGREEMENT.** This Agreement with its exhibit supersedes any and all other prior or contemporaneous oral or written agreements between the Parties. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

13. **SEVERABILITY.** Should any provision of this Agreement be held by a court of competent jurisdiction to be invalid, void or unenforceable, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties; provided, however, that if the invalidity or unenforceability of any provision of this Agreement results in a material failure of consideration, then, to the extent allowed by law, the Party adversely affected thereby shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to the other Party.

14. **NON-WAIVER.** None of the provisions of this Agreement shall be considered waived by either Party unless such waiver is specified in writing.

15. NO THIRD PARTY RIGHTS. This Agreement shall not create any rights in, or inure to the benefit of, any third party.

16. ASSIGNMENT. The terms of this Agreement may not be assigned to any third party. Neither Party may assign any right of recovery under or related to the Agreement to any third party.

SO AGREED:

CLIENT SIGNATURE	ATTORNEY SIGNATURE
City of Selma	Lozano Smith, LLP
BY <i>(Authorized Signature)</i>	BY <i>(Authorized Signature)</i>
PRINTED NAME AND TITLE OF PERSON SIGNING	PRINTED NAME AND TITLE OF PERSON SIGNING
	Karen M. Rezendes, Managing Partner
DATE EXECUTED	DATE EXECUTED
	04/01/2021





PROFESSIONAL RATE SCHEDULE  
FOR CITY OF SELMA

1. HOURLY PROFESSIONAL RATES

All Attorneys	\$ 225 per hour
Paralegal / Law Clerk	\$ 110 per hour
Litigation Services	\$ 240 per hour

2. BILLING PRACTICE

Lozano Smith will provide a monthly, itemized Statement for services rendered. Time billed is broken into 1/10 (.10) hour increments, allowing for maximum efficiency in the use of attorney time. Invoices will clearly indicate the department or individuals for whom services were rendered.

Written responses to audit letter inquiries will be charged to Client on an hourly basis, with the minimum charge for such responses equaling .5 hours. Travel time shall be prorated if the assigned attorney travels for two or more clients on the same trip.

3. COSTS AND EXPENSES

In-office copying/electronic communication printing	\$ 0.25 per page
Facsimile	\$ 0.25 per page
Postage	Actual Usage
Mileage	IRS Standard Rate

Other costs, such as messenger, meals, and lodging shall be charged on an actual and necessary basis.

## CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
76951	03/12/2021	Printed	ACTION TOWING AND DIVE TEAM	EVIDENCE TOWS -FEB 2021		140.00
76952	03/12/2021	Printed	ADMINISTRATIVE SOLUTIONS	ACA REPORTING IRS FORM 1094/1095 ANNUAL FEE		1,159.00
76953	03/12/2021	Printed	ADVENTIST HEALTH	AMBULANCE OVERPAYMENT REIMB		1,550.00
76954	03/12/2021	Printed	AIRGAS USA LLC	OXYGEN SUPPLIES -CVTC	R	51.03
76955	03/12/2021	Printed	ALLEGIANCE BENEFIT PLAN	AMBULANCE OVERPAYMENT REIMB		1,166.76
76956	03/12/2021	Printed	MARK ALVES / ALVES ELECTRIC	INSTALL SPOT LIGHTS IN BOOKING ROOM -NEW PD		800.00
76957	03/12/2021	Void				
76958	03/12/2021	Void				
76959	03/12/2021	Void				
76960	03/12/2021	Printed	ARAMARK UNIFORM	UNIFORMS/TOWELS/FIRST AID KITS 2/4/21-3/4/21		1,451.55
76961	03/12/2021	Printed	AT&T	PD FIRE ALARM		103.41
76962	03/12/2021	Printed	AT&T	TELEPHONE 1/12-2/11/21		283.96
76963	03/12/2021	Printed	AT&T	TELEPHONE 2/1-2/28/21		192.50
76964	03/12/2021	Printed	AT&T	TELEPHONE 2/4-3/3/21		1,490.02
76965	03/12/2021	Printed	AT&T	TELEPHONE 2/4-3/3/21		153.56
76966	03/12/2021	Printed	AT&T	TELEPHONE 2/4-3/3/21		118.12
76967	03/12/2021	Printed	AT&T MOBILITY	TELEPHONE-MDT'S 1/12-2/11/21		1,577.86
76968	03/12/2021	Printed	BENNY BACA / COOL AIR SPECIALTY	INSTALL HEATER TIMER -STA 2		180.00
76969	03/12/2021	Printed	BANNER PEST CONTROL INC	PEST CONTROL -MARCH 2021		441.00
76970	03/12/2021	Printed	BOWEN ENGINEERING	BUSINESS LIC OVERPAYMENT REIMB - PAID TWICE		4.00
76971	03/12/2021	Printed	BRAND NEW DAY	AMBULANCE OVERPAYMENT REIMB		172.13
76972	03/12/2021	Printed	MARISSA A BRANDON	SAC TALENT FINALIST		166.67
76973	03/12/2021	Printed	JAY WESLEY BROCK / TOP DOG TRAINING CENTER	K9 MAINTENANCE 3/1/21		90.00
76974	03/12/2021	Printed	CALIFORNIA WATER SERVICE	WATER SERVICE -FEBRUARY 2021		10,818.48
76975	03/12/2021	Printed	ROD CARSEY	PLAN CHECKS -FEBRUARY 2021		564.14
76976	03/12/2021	Printed	CENTRAL SANITARY SUPPLY	JANITORIAL SUPPLIES		24.28
76977	03/12/2021	Printed	COMCAST	INTERNET SERVICE -MARCH 2021		821.45
76978	03/12/2021	Printed	COMMUNITY MEDICAL CENTER	BLOOD DRAWS -PD JAN 21		175.00
76979	03/12/2021	Printed	COMMUNITY MEDICAL CENTER	AMBULANCE OVERPAYMENT REIMB		263.80
76980	03/12/2021	Printed	CORELOGIC SOLUTIONS LLC	REALQUEST SERVICES -FEB 2021		481.25
76981	03/12/2021	Printed	COUNTY OF FRESNO	RMS/JMS/CAD ACCESS FEES-FEB 21		500.90
76982	03/12/2021	Printed	COUNTY OF FRESNO TREASURER	GIS TELECOMMUNICATION CHARGES - OCT & NOV 2020		2,755.61
76983	03/12/2021	Printed	DATAPATH LLC	NETCARE & ON SITE SUPPORT -MAR 21		9,100.00
76984	03/12/2021	Printed	PAUL DEMMERS	PER DIEM 2/22-3/7/21 MERCED HOSPITAL & FUEL REIMB		729.72
76985	03/12/2021	Printed	DEPARTMENT OF HEALTH CARE	AMBULANCE OVERPAYMENT REIMB		394.27
76986	03/12/2021	Printed	DEPARTMENT OF JUSTICE	BLOOD ALCOHOL ANALYSIS -JAN 21		245.00
76987	03/12/2021	Printed	JUAN CRUZ DIAZ	BUILDING INSPECTOR SERVICE -FEB 21		2,640.00
76988	03/12/2021	Printed	DURATECH USA, INC.	TABLETS AND WEBCAMS -FD		6,664.98
76989	03/12/2021	Printed	EMPLOYMENT DEVELOPMENT DEPT.	SUI QTRLY PMNT 10/1-12/31/20		4,665.04
76990	03/12/2021	Printed	JOEL A FEDOR / FEDOR PLUMBING	PIONEER VILLAGE RESTROOM WATER HEATER REPLACEMENT		1,370.26
76991	03/12/2021	Printed	FIVE CITIES EDA	3RD QUARTER DUES JAN-MAR 21		1,387.72
76992	03/12/2021	Printed	FRANCHISE TAX BOARD	CS#550680107		799.00
76993	03/12/2021	Printed	FRESNO OXYGEN	OXYGEN RENTALS		331.58
76994	03/12/2021	Printed	GAR BENNETT LLC	COMPRESSION COUPLING -2ND ST		34.68
76995	03/12/2021	Printed	GATEWAY ENGINEERING, INC.	ENGINEERING SERVICES -DEC 2020		10,365.00
76996	03/12/2021	Printed	JESUS GOMEZ	REIMBURSEMENT FOR STATION 1 DECALS		210.00
76997	03/12/2021	Printed	HEALTH COMP INCORPORATED	AMBULANCE OVERPAYMENT REIMB		661.14
76998	03/12/2021	Printed	HEALTHWISE SERVICES, LLC.	MEDICAL WASTE SERVICES	R	150.00
76999	03/12/2021	Printed	HENRY SCHEIN INC.	MEDICAL SUPPLIES		753.25
77000	03/12/2021	Printed	JESUS HERNANDEZ	REIMBURSEMENT FOR DMV MEDICAL CLASS B		74.00

# CHECK REGISTER REPORT

CHECK NUMBER	CHECK DATE	STATUS	VENDOR NAME	CHECK DESCRIPTION	CATEGORY	AMOUNT
77001	03/12/2021	Printed	INDUSTRIAL SAFETY LLC	SAFETY GLASSES -PW		155.43
77002	03/12/2021	Printed	JAMES W INGRAM / INGRAM DIGITAL ELECTRONICS	SIGNAL LIGHT REPAIRS		2,397.00
77003	03/12/2021	Printed	J'S COMMUNICATION INC.	SERVICE AGREEMENT -FEB 2021		1,041.42
77004	03/12/2021	Printed	JOHNSON CONTROLS SECURITY	SERVICE FOR FAILED TIMER TEST PW FIRE ALARM		724.00
77005	03/12/2021	Printed	KINGS INDUSTRIAL OCCUPATION	DRUG SCREENS -FD		66.00
77006	03/12/2021	Printed	KOEFRAN INDUSTRIES, INC.	EMPTY ANIMAL CONTROL FREEZER		163.86
77007	03/12/2021	Void				
77008	03/12/2021	Printed	LIEBERT, CASSIDY, WHITMORE	LITIGATION LEGAL FEES -JAN 21		48,271.50
77009	03/12/2021	Printed	HEATHER MCCOY / CENTRAL VALLEY FORENSIC NURSING	VICTIM EXAM 21-0589		1,500.00
77010	03/12/2021	Printed	MEDICARE NORTHERN CALIFORNIA	AMBULANCE OVERPAYMENT REIMB		202.39
77011	03/12/2021	Printed	MEDICARE NORTHERN CALIFORNIA	AMBULANCE OVERPAYMENT REIMB		639.92
77012	03/12/2021	Printed	METRO UNIFORM	FIRE & POLICE REVOLVING ACCT	R	844.28
77013	03/12/2021	Printed	FRANCISCO MORA	REFUND BUILDING PERMIT 21-0102		33.35
77014	03/12/2021	Void				
77015	03/12/2021	Printed	OFFICE DEPOT, INC.	OFFICE SUPPLIES		1,860.01
77016	03/12/2021	Printed	JASON PAK	SAC TALENT FINALIST		166.66
77017	03/12/2021	Printed	PG&E	UTILITIES -FEBRUARY 2021		1,646.33
77018	03/12/2021	Printed	PG&E	UTILITIES -FEBRUARY 2021		47.78
77019	03/12/2021	Printed	PG&E	UTILITIES -FEBRUARY 2021		23,841.16
77020	03/12/2021	Printed	SUMARTRA PRESLEY	SAC TALENT FINALIST		166.67
77021	03/12/2021	Printed	RAVE WIRELESS INC	ANNUAL RENEWAL OF MASS NOTIFICATION SYSTEM		5,000.00
77022	03/12/2021	Printed	GERALD REESER	GYM MEMBERSHIP REIMBURSEMENT		82.92
77023	03/12/2021	Printed	DANIEL ANTHONY RIVAS	CENTRAL VALLEY FIRE PREV. OFFICERS ASSOC MEMBERSHIP		30.00
77024	03/12/2021	Printed	MELINDA RODRIGUEZ NUNEZ	AMBULANCE OVERPAYMENT REIMB		1,624.80
77025	03/12/2021	Printed	SAMPSON, SAMPSON, AND PATTERSON	ACCOUNTING SERVICES -FEB 21		11,290.00
77026	03/12/2021	Printed	SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DIST	21/22 ANNUAL GENERATOR PERMIT - FD A ST		98.00
77027	03/12/2021	Printed	SELMA DISTRICT CHAMBER OF COMMERCE	DRIVE IN MOVIE RIGHTS REIMB.		465.00
77028	03/12/2021	Printed	STERICYCLE, INC.	STERI-SAFE OSHA COMPLIANCE -MAR 21		172.64
77029	03/12/2021	Printed	STERLING CODIFIERS INC.	ORDINANCE CODIFICATION 2020-01		308.81
77030	03/12/2021	Printed	STREAMLINE AUTOMATION SYSTEMS	FD INSPECTION PROGRAM		3,286.00
77031	03/12/2021	Printed	STRYKER SALES CORPORATION	MEDICAL SUPPLIES		494.21
77032	03/12/2021	Printed	SUN LIFE	EMPLOYEE INSURANCE -MARCH 21		3,212.94
77033	03/12/2021	Printed	SUPERIOR VISION INSURANCE INC	VISION INSURANCE -MARCH 21		2,028.64
77034	03/12/2021	Printed	SWANSON-FAHRNEY FORD	2021 GMC SIERRA		43,697.06
77035	03/12/2021	Printed	SYSTEMS & SPACE, INC.	POLICE DEPARTMENT WEAPONS RACK DEPOSIT	PDSA	3,079.50
77036	03/12/2021	Printed	TOWNSEND PUBLIC AFFAIRS, INC.	CONSULTING FEES -MARCH 2021		3,500.00
77037	03/12/2021	Printed	TRICARE WEST	AMBULANCE OVERPAYMENT REIMB		0.00
77038	03/12/2021	Printed	U.S. BANK EQUIPMENT FINANCE	COPY MACHINE LEASES -MAR 21		1,787.00
77039	03/12/2021	Printed	VINCENT COMMUNICATIONS INC	RADIO SUPPLIES AND LABOR		433.39
77040	03/12/2021	Printed	VORTEX INDUSTRIES, INC.	REPAIRS TO STEEL DOOR -STA 2		1,135.98
77041	03/12/2021	Printed	WASTE MANAGEMENT	TRASH REFUND 2332 SYLVIA ST		322.56
77042	03/12/2021	Printed	WASTE MANAGEMENT-USA WASTE	GARBAGE -FEBRUARY 2021		126,918.65
77043	03/19/2021	Printed	COSTANZO & ASSOCIATES	LEGAL FEES -JANUARY 2021		45,294.88
<b>TOTAL</b>						<b>406,302.86</b>

Grant: G PD State Appropriation: PDSA (457)

Reimbursement: R

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

April 5, 2021

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**ITEM NO:**

2.

**SUBJECT:**

Rockwell Pond Park Project Request for Qualifications (RFQ) for Professional Architectural and Engineering Services.

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**RECOMMENDATION:** Authorize the Request for Qualifications (RFQ) for Professional Architectural and Engineering Services for the Rockwell Pond Park Project open on April 6, 2021 and close for submittals on May 7, 2021.

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**BACKGROUND:** During the February 12, 2021 Special City Council meeting, Council authorized staff to submit a revised property site plan to the California State Parks and to proceed with the development of the park. The timeline of the RFQ is set based on additional time for the State's notification of the City's request and will proceed based on the exact location of the park site plan.

**DISCUSSION:** City Staff and Vanir Construction Management, Inc., the Park Project Management Firm, have developed the conceptual Rockwell Pond Park budget, attachment A and the Request for Qualifications (RFQ) for a Professional Architectural and Engineering Services for the design of the Rockwell Pond Park Project, attachment B.

The City of Selma would hereby solicit Statements of Qualifications (SOQs) from professional architectural firms to complete design of the Rockwell Pond Park Project. The architectural firms should have experience designing park complexes, as well as, experience working through the State of California grant requirement process. Upon closure of the RFQ timeline, all submittals will be evaluated and reviewed by City Staff. Those firms selected will be interviewed and reference checks will be conducted. Once completed, the recommendation regarding the selection of the firm will be brought before City Council for approval.

Funding for Architectural and Engineering Services will be covered through the Proposition 68 Grant Funding the City received for the development of the park. The RFQ conceptual park budget as outlined is \$9,615,588 and the overall conceptual project budget, including some off-site improvements is \$12,005,156, with additional infrastructure estimates relating to sewer, water, etc. still being compiled, but will be forthcoming. Staff will be further outlining the budget analysis and funding mechanisms at a future City Council meeting that will outline funding sources for design and construction of the park.

Budget elements of the park development include:

- Site Work (mobilization, surveying, clearing and grading, road and parking, etc.)
- Landscaping and Green Area (irrigation, control systems, etc.)
- Park Entrance Road (from DeWolf Avenue ending with a roundabout with potential for future tie in to the proposed commercial development)
- Recreation Area (including open space and lighting, basketball courts, upgraded water park and playground structure, centralized bathroom, walking and biking trails, etc.)
- Services and Park Energization (power onsite, security, sewer onsite, land bridge, water, etc.)
- Soft Costs (design and engineering, permits and fees, inspection, etc.)

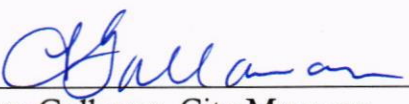
Staff also wanted to provide an update to the proposed site plan revision as directed by City Council. Staff had previously submitted all materials and attachments as requested to the State, with the last request being forwarded on Wednesday, March 24. The State had requested an updated Willing to Sell Letter from Fresno County with the updated proposed site plan.

<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).
N/A		None.
<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: Proposition 68 Grant  Fund Balance: \$4,416,000.00		None.

**RECOMMENDATION:** Authorize the Request for Qualifications (RFQ) for Professional Architectural and Engineering Services for the Rockwell Pond Park Project open on April 6, 2021 and close for submittals on May 7, 2021.

  
Mikal Kirchner, Director of Recreation

3.30.2021  
Date

  
Teresa Gallavan, City Manager

3-31-21  
Date



**PROJECT:** Selma Rockwell Park - Conceptual Cost Model Rev. 8  
**Location:** City Selma Rockwell Park - 28 AC

GROSS SF: 1,219,680

Date: 03/18/21

Revised on: 25-Mar-21

ITEM	ITEM DESCRIPTION	QTY / SF	UNIT	\$/SF	SUBTOTAL	Area %
<b>Site Work:</b>					<b>\$ 1,874,661</b>	
1	Mobilization / Surveying	1,146,499	SF			
2	Selective Demolition	243,936	SF			
3	Other Material Removal	97,574	SF			
4	Clearing, Grading & Earthwork (Assuming relatively good soil, no overex or engineered fill import, no expansive soils, and relatively level final grade with some mounds, etc....TBD with Geotech Report)	1,146,499	SF			
5	New Drainage System at Main Road (moved to Gateway Eng. Est., plus spillway and rip/rap to be included)	0	SF			
6	New Driveway to Parking - 250' x36' (moved to Gateway Eng. Est.)	9,000	SF			
7	Parking Lot Area Paving (assuming good soil) (two parking lots)	80,000	SF			
8	Parking Drainage System (Spillway & Rip/Rap included in Gateway Eng. Estimate for new Road into park) connect to new public road drainage	50,000	SF			
9	Parking Curb & Gutter (assuming good soil) (two parking lots)	80,000	SF			
10	Parking Lot Lighting / Flood Lights (two parking lots) to be connected to new public road street lighting.	10	ea			
11	Parking Striping (access road to be under Gateway's estimate)	75,000	SF			
12	Parking Landscaping, Trees & Green Area & Irrigation	81,000	SF			
13	Handicap Signage	5	EA			
14	Concrete Parkway Walkway - 1,000 LF @ 5' (assuming good soil)	5,000	SF			
15	Walking Trail (Concrete) - 3,300 LF @ 10" (assuming good soil)	33,000	SF			
16	Chain Link Fence w/ Gate (south side of park, along the pond, only)	3,000	LF			
17	Open Trash Enclosure w/ Metal Gates	2	EA			
<b>Landscaping &amp; Green Area:</b>					<b>\$ 1,748,716</b>	
18	Green Area Irrigation & Control System	914,760	SF			
19	Landscaping & Green Area - Seeding (w/ soil amendments)	914,760	SF			
20	Trees & Shrubs (limited)	243,936	SF			
<b>Recreation Area &amp; Restrooms</b>					<b>\$ 825,000</b>	
21	SR. Concrete Basketball Courts w/ lights - ~ 95'x50'	2	EA			
22	Soccer Field lights	6	EA			
23	Open Picnic Shelter 500 SF per unit w/ concrete pad	3	EA			
24	Picnic Table	6	EA			
25	Play Water Feature	1	LS			
26	ADA Restrooms - 1 Set of 8 Unisex (include a 5' wide chase in b/w) in one location	1	EA			
27	Other Enhanced Playing	5,000	SF			
28	Other Playing Area	0	SF			
29	Playground Equipment	1	LS			
30	Playground Resilient Surfacing	8,500	SF			
31	Open Picnic Seating	3	EA			
32	Storage / Security Building - 1,000 SF (Removed)	1,000	SF			
33	BBQ & Pits	5	LS			
34	Park Sign - 1 EA (one at park entrance)	1	LS			
<b>Services &amp; Park energization</b>					<b>\$ 2,784,027</b>	
35	Power Onsite Distribution	548,856	SF			
36	City Power Connection	1	LS			
37	Pathwalk Lights (Incl., but may need to be an add alternate)	80	EA			
38	Security & CCTV (Fixed Cameras, NOT PTZ)	10	EA			
39	4" Sewer Line & City Connection (2 restrooms locations)	1,250	LF			
40	6" Water line & City Connection w/ loop for irrigation (2 rest. Loc.)	1,850	LF			
41	4" Reclaim Irrigation Water connection	0	LF			
42	Drinking Fountain	4	EA			
43	Other Site Utilities	0	LS			
44	Partial Park Land Bridge Fill for Utility Connection - future development to Park (Gateway Eng. confirmed CY) -----	32,121	CY			
45	Land bridge Culvert 36"	1	LS			
46	Lift /Pump Station for Sewer	1	EA			
<b>Park and Site Direct Cost Subtotal</b>					<b>\$ 7,232,404</b>	
47	Design Contingency					
48	Contractor General Conditions (partially included above)					
49	OCIP and Builder's Risk					
50	Contractor Bond					
51	Contractor Mark-up					
52	Market Factor (Selma)					
53	Escalation (Construction Start Nov. 2022)					
<b>Conceptual Budget/Total Hard Construction Cost - Park and Site</b>					<b>\$ 9,615,588</b>	
54	Change Order Contingency			4.00%	\$ 384,624	
<b>Total Construction Hard Costs with CO Cont.</b>					<b>\$10,000,212</b>	



SOFT COSTS			
55	Design & Engineering Consultant Fees		
56	Preconstruction Costs		
57	Permits and Fees		
58	Inspection		
59	Material Testing and Special Inspection	\$1,454,945	
60	Project Management Fees		
61	Advertising, Messengering, Reimbursable		
62	Art and all associated Costs		
TOTAL PROJECT HARD & SOFT COSTS			\$11,455,156
63	Off-Site Improvement on DeWolf Avenue(Gateway Engineering Est., 3/3/21)	\$	550,000
64	Off-site improvement, Development of Road from DeWolf to Park (Gateway Engineering Estimate, 3/25/21)	\$	734,000
65	Off-site improv on new road., Sewer & Water from Farney to Site (Gateway Eng. to provide)		
TOTAL PROJECT HARD & SOFT COSTS (with Off-Sites)			\$12,005,156



## **CITY OF SELMA**

### **REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL ARCHITECTURAL & ENGINEERING SERVICES**

# **Rockwell Pond Park Project**

**1710 Tucker Street  
Selma, CA 93662**

**Mikal Kirchner, Director  
Recreation and Community Services  
City of Selma**

**April 6, 2021**

All materials submitted with this Proposal are subject to The Public Records Act  
(California Government Code sections 6250-6276.48)

**ADVERTISEMENT FOR ARCHITECTURAL & ENGINEERING SERVICES**  
**CITY OF SELMA – ROCKWELL POND PARK PROJECT**  
**ARCHITECTURAL & ENGINEERING SERVICES**

NOTICE IS HEREBY GIVEN that the City of Selma hereby solicits Statements of Qualifications (SOQs) from professional architectural firms to complete design on the Rockwell Pond Park Project. Individually sealed SOQ packets will be accepted by the City Clerk, City of Selma, 1710 Tucker Street, City Hall, Selma, California until **12:00 PM, Friday, May 7, 2021**.

Project Description: Provide architecture and engineering design for a fully functional and operational park complex. The park is being funded through the California State Parks Proposition 68 grant and will be developed between Highway 99 and DeWolf, just north of Floral Avenue, with a \$9,600,000 construction budget. The new 28-acre park's amenities will consist of, but is not limited to:

- Open Space - Youth Soccer and Football Lighted Practice Space
- Two Lighted Basketball Courts
- Water Play Park
- Playground Equipment ADA Compliant
- Picnic Shelters
- Walking/Jogging Trails
- Restrooms
- Parking

Architecture Firms submitting SOQ's for the Project shall submit their packages under seal and marked **"Firm Name, Rockwell Pond Park Project"**. Firms must provide one (1) original and five (5) hard copies of their Statement of Qualification package and one (1) CD-ROM.

SOQ correspondence and questions should be directed to Mikal Kirchner, Director, Recreation and Community Services at [MikalK@cityofselma.com](mailto:MikalK@cityofselma.com).

Architecture firms should, but not required to, have experience designing park complexes, as well as, experience working through the State of California grant requirement process. The pre-qualification package requires answers to questions contained in the selection criteria. City of Selma will use these documents as the basis for rating Architecture Firms in respect to their qualification to design the Project. City of Selma reserves the right to check other sources available to verify the information provided if needed. City of Selma will base its decision on objective evaluation criteria using the scoring methods described in the Request for Qualifications. The City may require interviews of the top three scoring firms to aide in the selection of the most qualified firm.

A non-mandatory **Pre-Proposal Conference will be held Tuesday, April 20, 2021 at 10:30am** at which time city staff will provide an overview of the RFQ and attendees can ask questions. The Pre-Proposal Conference will be held in the Council Chambers at City Hall, 1710 Tucker Street, Selma, California 93662.

# **REQUEST FOR QUALIFICATIONS**

## **CITY OF SELMA**

### **ROCKWELL POND PARK PROJECT ARCHITECTURAL & ENGINEERING SERVICES**

The City of Selma (City) hereby solicits Statements of Qualifications (SOQs) from professional architecture firms to complete design for the Rockwell Pond Park Project. The project will consist of the design of a fully functional and operational park complex.

#### **SECTION I-PROJECT DESCRIPTION**

The park is being funded through the California State Parks Proposition 68 grant and will be developed between Highway 99 and DeWolf, just north of Floral Avenue, with a construction budget of \$9,600,000. The new 28-acre park's amenities will consist of, but is not limited to:

- Open Space - Youth Soccer and Football Lighted Practice Space
- Two Lighted Basketball Courts
- Water Play Park
- Playground Equipment ADA Compliant
- Picnic Shelters
- Walking/Jogging Trails
- Restrooms
- Parking

#### **SECTION II-SCOPE OF WORK**

The Architecture Firm will work closely with the City, Recreation and Community Director, Construction Management firm and all required State agencies during the Schematic Design (SD), Design Development (DD) and Construction Document (CD) phases of the project. Multiple meetings with the City of Selma, Recreation and Community Director, Construction Manager, the Community at large and State of California will or may be required. The State meetings may take place in Sacramento, CA.

A. The design services by the Consultant may include, but are not be limited to:

- Program Verification Study at the outset of design
- Extensive coordination with utility agencies
- Architectural and engineering Construction Plans and Specifications (SD, DD and CD)
- Attend and present latest design at community outreach meetings (up to 2 max.) and City Council (up to 1 max.)
- Attend weekly design steering committee meetings (mostly virtual) with City and Construction Manager
- Responding to questions from potential Bidders
- Attend weekly Owner, Architect & Contractor (OAC) Meetings, either virtually or in-person, as necessary.

- Attend special meetings in person, as necessary, during construction to address design issues.
- Attending pre-bid, pre-construction, and post-construction meetings

B. Project Deliverables may include, but are not be limited to:

- Design project using Building Information Modeling (BIM) to LOD 300 for all design disciplines
- Schematic Design Plan Sets (100%)
- Design Development Plan Sets (100%)
- Construction Documents at the 50%, 95% and Final stages
  - At each level of design, two (2) sets of full-size plans and specifications shall be provided to the City or their consultants. BIM model shall be prov
  - Final Construction plans shall include three (3) full-size sets of plans, two (2) half-size (11" X 17") sets of plans, five (5) sets of specifications and special provisions, and electronic versions of each document in:
    - Word (2017 or higher version) and,
    - AutoCAD and,
    - BIM formats, as well as,
    - pdf versions of each document.
- Comparative Cost Estimate for each phase (100% SD, 100%DD & 95% CD) in the format approved by the City's Construction Manager.

C. Project Schedule:

- Provide a Master Schedule in a format acceptable to the City's Construction Manager to be updated after every milestone and follows the below proposed milestone schedule. The architect shall endeavor to reduce the time shown below and complete the project sooner.
- Design work shall be completed within a timely manner as to not create any delays with City and State Agency approvals.

KEY EVENTS	START DATES	COMPLETION DATES	DURATION (CALENDAR DAYS)
Schematic Design	7/5/21	8/27/21	40
Architect's Design & Cost Estimate Review	8/30/21	9/24/21	30
Design Development	9/27/21	1/07/22	103
Architect's Design & Estimate Review & Reconciliation	1/10/22	2/4/22	25
Construction Documents	2/7/22	7/29/22	172
Architect's Design & CITY's Cost Consultant Estimate Review & Reconciliation @ 95% CD	6/1/22	7/1/22	27
Architect Completes 100% CD & Attain Agency/Utility/AHJ Approvals	7/5/22	7/29/22	25
Construction Bids & Award	8/1/22	10/6/22	67

Notice to Proceed	10/7/22	10/14/22	15
Construction	10/17/22	10/16/23	240
Occupancy/Operational	10/17/23	11/3/23	18

### SECTION III-STATEMENT OF QUALIFICATIONS SELECTION CRITERIA

The Consultant will be selected through a qualification-based selection (QBS) process. Firms interested in providing consultant services must submit a Statement of Qualifications (SOQ) that addresses the following issues:

#### A. General Information (15 points)

1. Provide a general description of the firm/team that is proposing to provide design services. Explain the legal organization of the proposed firm/team. Provide an organization chart showing the key personnel.
2. Provide the following information:
  - a. List the California professional licenses held by the firm/team and the key personnel who will be assigned to this project. Provide how long the firm has been in existence.
  - b. Identify any contract(s) or subcontract(s) held by the firm or officers of the firm, which has been terminated within the last five (5) years. Identify any claims arising from the contract(s) which resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcomes.

#### B. Experience and qualifications of the firm/team (20 points)

1. Identify at least three park designs, or projects with similar features as a park, in which the firm served as Consultant within the past seven (7) years. Preference may be given to firms that have provided consulting services for park projects funded by the State of California State Parks.

For each comparable project identified, provide:

- Detailed description of project
- Role of the firm (specify whether Consultant or Subconsultant)
- Project Owner
- References (two names with telephone numbers and email addresses per project)

#### C. Experience of key personnel to be assigned to this project (25 points)

1. For each key personnel identified, list at least two (2) projects in which they have played a primary/major role. If a project selected for the key personnel is the same as the one selected for the firm, provide just the project name and the role of the key personnel. For other projects, provide:
  - Description of the project
  - Role of the personnel
  - Construction dates (scheduled versus actual)
  - Project Owner
  - References (two names with telephone numbers and email addresses per project)

2. Identify the home office location of key staff on this project and the percent of their work expected to be performed in Central California.
3. The City is interested in those personnel involved with the project design.
4. List any proposed sub-Consultants, including key staff names and the experience and qualifications of these individuals.

**D. Understanding of the project and approach to performing the required services (30 points)**

1. Discuss the major issues your team has identified on this project and how you intend to address those issues.
2. Describe your firm's design approach and team organization.
3. Describe the systems used for planning, scheduling, estimating and managing design and briefly describe the firm's experience on quality control and dispute resolution.
4. Describe your firm's experience with State funded projects.

**E. Overall evaluation of the firm/team and its perceived ability to provide the required services (10 points)**

This is to be determined by the selection panel members. No submittal response is required.

**SECTION IV-SUBMITTAL REQUIREMENTS**

Firms/individuals interested in the above project should submit an SOQ that clearly identifies this project on the cover of the SOQ **which includes a single-sided one-page 8½ X 11-inch cover letter plus a maximum of ten (10) single-sided pages** to address the SOQ criteria (excluding resumes but including organization chart). Resumes for each key team member shall be limited to a maximum of two (2) pages and should be attached as an Appendix to the SOQ. Pages that have project photos, charts and graphs will be counted towards the maximum page limitation.

Please provide **an original plus five (5) copies (total of six) of the SOQ by 12:00 noon on Friday, May 7, 2021.** Submittals may be mailed or hand-delivered to the City Clerk, City of Selma, 1710 Tucker Street, City Hall, Selma, California. SOQs shall be in a sealed envelope marked **"Firm Name, Rockwell Pond Park Project"**.

SOQs shall be mailed, or hand delivered, and may not be faxed or electronically transmitted to the City. SOQs received after the SOQ deadline will be returned to the sender unopened. Submitters must ensure delivery (not postmarking) by SOQ deadline.

Failure to comply with the following criteria set forth in this RFQ will be grounds for disqualification and will be strictly enforced:

- Receipt of submittal by the specified cut-off date and time
- The number of originals and/or copies of the submittal as specified
- Adherence to the maximum page requirement

**SECTION V-SELECTION PROCESS AND SCHEDULE**

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City of Selma  
Request for Qualifications for A/E Professional Services  
Rockwell Pond Park Project



A Selection Committee will evaluate each SOQ according to the SOQ Selection Criteria (Section III) noted above and will select the highest ranked firm. If the City is unable to select the best qualified firm, the City reserves the right to short-list up to three firms and will schedule and conduct interviews. The following tentative schedules for this project are as follows (with the City reserving the right to move up dates to make council meeting dates):

May 13, 2021	SOQ Review Complete
May 14, 2021	Shortlist Notification or Firm Selected
May 26 and/or 27, 2021	Interviews, <i>if needed</i>
May 27, 2021	Selected Firm with Rankings Notification, <i>if needed</i>
June 1, 2021	Selected Firm Fee Due
June 2 – 15, 2021	Negotiate w/ Selected Firm or subsequently ranked firms
June 21, 2021	Council Contract Approval
July 6, 2021	Notice to Proceed

The City will enter into negotiations with the selected firm and execute a contract upon completion of the negotiation of fees and contract terms for the City Council's approval. If the City is unsuccessful in negotiating a contract with the best qualified firm, the City may then negotiate with the second or third most qualified firm until a contract is executed or may decide to terminate the selection process.

## SECTION VI-OTHER REQUIREMENTS

- A. Certification Regarding Debarment (Exhibit D).** The firm or prime consultant shall complete the attached Form and submit with their SOQ. The Debarment Form is not included in the page count limitation.
- B. Addendum.** Any Addendums issued as part of the RFQ must be copied, signed, and included in the RFQ submittal as required, but will not be counted towards the page limit. Addendums should be included in the RFQ submittal and does not require page numbers.
- C. Insurance.** The firm shall indicate in the cover letter that they maintain insurance coverage of at least the amounts contained in the attached **Exhibit A**.
- D. City Rights.** The City reserves the right to evaluate the SOQs submitted, reject any or all SOQs, waive any informality or irregularity in any SOQ received, and be the sole judge of the merits of the respective SOQs received.

The proposer is entirely responsible for all costs associated with the preparation of this proposal. The City will not reimburse the selected firm/team for any work performed relative to the Scope of Work prior to the execution of a contract and a Notice to Proceed letter is received by the selected firm/team.

- E. Questions.** SOQ correspondence, questions pertaining to the consultant selection process or contract issues should be directed to Mike Kirchner, Director, Recreation and Community Services at [MikalK@cityofselma.com](mailto:MikalK@cityofselma.com). All questions must be submitted by **12:00 PM on April 30, 2021**. All questions will be answered by an addendum. Questions received after 12:00 PM on April 30, 2021 will not be answered.

- F. Consultant Information Form (Exhibit B).** The Consultant Information Form must be a separate page and is not included in the total page count. This page is not evaluated by the selection panel but is used by the City for administrative purposes.
- G. Sample Contract (Exhibit C).** A sample contract boilerplate is included in this RFQ.
- H. Ownership of Documents.** Upon submission of proposal documents, all such documents shall become the property of the City.

## Exhibit A

### **PROFESSIONAL SERVICES CONTRACTS INSURANCE REQUIREMENTS**

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

#### **A. Minimum Scope & Limits of Insurance**

1. Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single Limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

#### **B. Specific Provisions of the Certificate**

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability and Auto Liability reflecting the following provisions:
  - a. *The CITY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the CONTRACTOR.*

- b. For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the CITY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
  - c. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the CITY.*
- 3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.
  - a. Waiver of Subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the contractor, its employees, agents and subcontractors. CONTRACTOR waives all rights against the CITY and its officers, agents, official, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.*

#### C. Deductibles and Self-Insured Retentions

The CITY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

#### D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the CITY Risk Manager.

#### E. Verification of Coverage

Prior to approval of this Agreement by the CITY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage and a copy of the declarations page from the policy in effect in a form acceptable to the CITY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The CITY reserves the right to require certified copies of all required insurance policies at any time.

**City of Selma**  
**Consultant Information Form**  
**ROCKWELL POND PARK PROJECT ARCHITECTURAL &**  
**ENGINEERING SERVICES**

(Exhibit B)

<b>Firm:</b>	
<b>Contact Person:</b>	
<b>Email Address:</b>	
<b>Address:</b>	
<b>City, State, Zip code:</b>	
<b>Fax Number:</b>	

Subconsultant	Type of Work

Note: The Consultant Information Form must be a separate page and is not included in the total page count. This page is not evaluated by the selection panel but is used by the City for administrative purposes.



**Exhibit C**  
**Sample Agreement**

**AGREEMENT**  
**FOR ARCHITECTURAL & ENGINEERING SERVICES**  
**FOR CITY OF SELMA ROCKWELL POND PARK PROJECT**

**I. INTRODUCTION**

**THIS AGREEMENT** is entered into as of \_\_\_\_\_, between the CITY OF SELMA, referred to as CITY, and “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” Group, Inc., a California Corporation, referred to as “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”, with reference to the following:

**II. RECITALS**

A. WHEREAS, the CITY has received a conditional grant award entitled “\_\_\_\_TO BE NAMED\_\_\_\_” (Grant), herein incorporated by reference, for the design and construction of the Rockwell Pond Park Project.

B. WHEREAS, the CITY desires to retain “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” to provide and perform architectural, engineering, and related services in connection with the design and construction of the Rockwell Pond Park Project (“Project”).

C. WHEREAS, the CITY desires “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” to design the project including “\_\_\_\_PROVIDE DESCRIPTION OF PROJECT\_\_\_\_” and prepare Schematic Design Documents, Design Development Documents and Construction Documents for review and approval.

D. WHEREAS, “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” is duly licensed as an architect under the laws of the State of California and is qualified and capable of providing and performing the services, work product and its other obligations under this Agreement in accordance with the terms hereof.

**ACCORDINGLY, IT IS AGREED:**

**III. SPECIFIC TERMS**

**TERM:** This Agreement shall commence on the date first written above and continue unless otherwise terminated as provided in this Agreement.

**SERVICES TO BE PERFORMED:** “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall provide

Services and authorized Additional Services, as more particularly enumerated in this Agreement, for and necessary to the Project, with its employees and Sub-Consultants, as identified and described in Exhibit "A" attached herein and incorporated herein by this reference. "\_\_\_\_NAME OF ARCHITECT\_\_\_\_"'s services hereunder shall be performed or provided as expeditiously as possible consistent with professional skill and care and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and completion of Project design and construction. The "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" shall complete the Services within the time frames and according to the tasks specified in the Schedule described below. Upon request of the CITY, the "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" shall submit for the CITY's approval a detailed schedule for the performance of the "\_\_\_\_NAME OF ARCHITECT\_\_\_\_"'s services which shall be adjusted as required as the Project proceeds, and which shall include allowances for periods of time required for the CITY's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. The "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" shall consult with the CITY to coordinate "\_\_\_\_NAME OF ARCHITECT\_\_\_\_"'s detailed schedule with the Project master schedule. This detailed schedule, when approved by the CITY, shall not, except for causes beyond "\_\_\_\_NAME OF ARCHITECT\_\_\_\_"'s control and through no fault or neglect of "\_\_\_\_NAME OF ARCHITECT\_\_\_\_", be exceeded by the "\_\_\_\_NAME OF ARCHITECT\_\_\_\_".

1. The design services by the Consultant may include, but are not be limited to:
  - a. Program Verification Study at the outset of design
  - b. Extensive coordination with utility agencies
  - c. Construction Plans and Specifications (SD, DD and CD)
  - d. Attend and present latest design at community outreach meetings (up to 2 max.) and City Council (up to 1 max.)
  - e. Attend weekly design steering committee meetings (mostly virtual) with City and Construction Manager
  - f. Responding to questions from potential Bidders
  - g. Attend weekly Owner, Architect & Contractor (OAC) Meetings, either virtually or in-person, as necessary.
  - h. Attend special meetings in person, as necessary, during construction to address design issues.
  - i. Attending pre-bid, pre-construction, and post-construction meetings
2. Project Deliverables may include, but are not be limited to:
  - a. Design project using Building Information Modeling (BIM) to LOD 300 for all design disciplines
  - b. Schematic Design Plan Sets (100%)
  - c. Design Development Plan Sets (100%)
  - d. Construction Documents at the 50%, 95% and Final stages
    - i. At each level of design, two (2) sets of full-size plans and specifications shall be provided to the City or their consultants. BIM model shall be prov
    - ii. Final Construction plans shall include three (3) full-size sets of plans,

two (2) half-size (11" X 17") sets of plans, five (5) sets of specifications and special provisions, and electronic versions of each document in:

1. Word (2017 or higher version) and,
  2. AutoCAD and,
  3. BIM formats, as well as,
  4. pdf versions of each document.
- e. Detailed and Comparative Cost Estimate for each phase (100% SD, 100%DD & 95% CD) in the format approved by the City's Construction Manager.

**Required Deadlines:**

KEY EVENTS	START DATES	COMPLETION DATES	DURATION (CALENDAR DAYS)
Schematic Design	7/5/21	8/27/21	40
Architect's Design & Cost Estimate Review	8/30/21	9/24/21	30
Design Development	9/27/21	1/07/22	103
Architect's Design & Estimate Review & Reconciliation	1/10/22	2/4/22	25
Construction Documents	2/7/22	7/29/22	172
Architect's Design & CITY's Cost Consultant Estimate Review & Reconciliation @ 95% CD	6/1/22	7/1/22	27
Architect Completes 100% CD & Attain Agency/Utility/AHJ Approvals	7/5/22	7/29/22	25
Construction Bids & Award	8/1/22	10/6/22	67
Notice to Proceed	10/7/22	10/14/22	15
Construction	10/17/22	10/16/23	240
Occupancy/Operational	10/17/23	11/3/23	18

**PAYMENT FOR SERVICES AND METHOD OF PAYMENT:** The CITY shall pay “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” the Firm Fixed Contract Price of **\$XXXXXXXX** for the Services set forth in the attached Exhibit “B”, with payment in accordance with the terms hereof. The Contract Price includes “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’s fee, travel expense, telecommunications services expense, printing and reproduction expense, postage and handling expense, personnel expense, inclusive of all benefits and burdens, insurance and all other administrative or overhead associated with or arising out of performance of this Agreement. The Firm Fixed Contract Price covers all “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’s costs and expenses except as provided in this section. Services shall be invoiced in a format that is consistent with Exhibit A, including a description of services rendered, the task involved, and, the rate/cost and units of such service. Each invoice shall

be detailed enough to allow the CITY of SELMA Auditor to track charges to the services provided and expenses incurred in accordance with Exhibit A, using normal accounting procedures. The form of invoice shall be acceptable to the Auditor. Payment shall be made in accordance with the normal payment cycle of the CITY; and, CITY shall endeavor to see that payment is made within thirty (30) days following approval of an invoice by the designated Owner Representative and the Auditor. Charges which are found by the Auditor not to constitute an allowable cost shall not be paid. Payments may also be reduced or increased below of above invoiced amounts to allow for overpayments or underpayments made on preceding invoices. Expenses and other costs must be allowable under the Grant and the related state agreements the CITY has entered into.

## **USE OF DESIGN DOCUMENTS**

**Ownership.** All of the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’s work product, including instruments of service, working drawings, master plans, preliminary sketches, architectural and engineering presentation drawings, structural and other engineering calculations or computations and estimates, prepared by or on behalf of the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” under this Agreement are and shall remain the property of the CITY. Upon the termination of this Agreement, the CITY may use any portion of the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’s work product, including instruments of service (whether they are completed or in progress) for any purpose, in the sole and exclusive discretion of the CITY. In the event of any reuse of “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’s work product by or through CITY, CITY has a duty to indemnify, defend and hold “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” harmless from any and all claims, causes of action, damages, losses, liability and expenses, including but not limited to attorney’s fees, resulting from the use of “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’s work product on other projects. Except for marketing and business development purposes, “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall not, without the prior consent and approval of the CITY which may be granted, withheld or restricted in the sole and exclusive discretion of the CITY, reproduce or otherwise use any documents owned by the CITY pursuant to this Agreement.

**CAD/BIM DATA.** In the event that “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” utilizes Computed Aided Drafting (CAD) and/or building information modeling (BIM), at each stage of its submission of Schematic Design Documents, Design Development Documents and Construction Documents to the CITY pursuant to the terms hereof, “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall also submit corresponding deliverables.

**ARCHITECT’S STANDARD OF CARE.** “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” represents that it has the qualifications, skills and licenses necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein. “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall provide the Services and authorized Additional Services: (i) using recognized industry standards professional skill and judgment; (ii) acting with due care and in accordance with professional standards of care and the terms hereof; and (iii) in accordance with all applicable laws, codes, rules or regulations.



## **CITY'S RESPONSIBILITIES.**

CITY's Requirements. CITY will provide full information regarding requirements for the Project, including a program which state CITY's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements ("CITY's Program").

CITY's Budget. CITY and "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" will mutually agree in writing to an overall budget for the Project including the Cost of the Work, CITY's other costs and reasonable contingencies related to all of these costs ("CITY's Budget"). Specific examples of contingencies to be included in CITY's Budget include but are not limited to: (1) variations in design; (2) unknowns and variables in market and bidding conditions; and, (3) unknowns and variables in the construction process including, but not limited to: (i) unforeseen underground and otherwise concealed conditions; (ii) changes in laws, codes, or regulations; (iii) changes in CITY's Program or functional needs; (iv) changes in available materials or systems; (v) incidental changes normally associated with the Work; (vi) changes required to obtain the Sustainable Design Objective; and variation required as a result of Fast Track Scheduling. CITY has a duty to update CITY's Budget as the Project progresses and inform "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" of any material changes to CITY's Budget occurring after it is agreed to by "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" and CITY.

Survey & Other Project Site Information. CITY will furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information will include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey will be referenced to a Project benchmark. CITY is solely responsible for obtaining the legal right(s) to use the CITY's property as intended and will, at its own cost and expense, obtain all easements, right-of-ways and other property rights required to design and construction the Project.

Existing Facility Information. If the Services involve existing facilities, CITY will provide as-built/ record drawings, floor plans, diagrams, lay-outs, specifications and other documentation relevant to such facility. CITY has a duty to notify "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" of any conditions beyond those which are apparent by non-intrusive observations of the existing facility. "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" has no obligation to perform destructive testing or investigate concealed or unknown conditions.

Information, Approvals & Decisions. CITY, its consultants and designated representatives will render decisions, approvals and provide information in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Services.

Sufficiency of Information. The services, decisions, approvals, information, surveys, reports and other information required by this Article will be furnished at CITY's expense,

and “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” is entitled to rely upon the accuracy and completeness thereof. Prompt written notice will be given to “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” if CITY becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

CITY's Other Consultants. CITY will furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”. CITY will require its consultants to maintain professional liability insurance and other liability insurance as appropriate to the services provided.

## **COST OF THE WORK.**

Cost of the Work. The term “Cost of the Work” means the total estimated cost to CITY of all elements of the Project designed or specified by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” and includes the cost at current market rates of labor and materials furnished by CITY and equipment designed, specified, selected or specially provided for by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”, plus a reasonable allowance for the Contractor's overhead and profit. Cost of the Work does not include the compensation of “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” and its Subconsultants, the cost of the land, rights-of-way, financing, contingencies for changes in the Work and other costs that are the responsibility of CITY.

Responsibility to Design to Budget. CITY will retain an experienced cost consultant to review the Drawings, Specifications and other documents prepared by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” and its Subconsultants at the 90% Construction Document level and to prepare estimates of the Cost of the Work. “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall be responsible to provide estimates at Schematic Design level and Design Development level to ensure project is within Budget. “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” and CITY's cost consultant's estimates will include appropriate contingencies for refinement of design, bidding or negotiating, price escalation, reasonable fluctuations in market conditions, and reasonable change orders occurring during construction of the Work. “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” may review the cost consultant's estimates for “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”'s guidance in completion of its Services. “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” is entitled to rely on the accuracy and completeness of any estimate of the Cost of the Work prepared by the CITY's cost consultant. “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” will report to CITY any material errors, omissions, inaccuracies and inconsistencies noted in the cost consultant's estimates during its review.

Reconciling Estimates of the Cost of the Work. “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” will modify the Drawings, Specifications or other documents to reconcile a difference between CITY's Budget and an estimate of the Cost of the Work at no additional cost to the CITY. “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall be responsible to design the project to the CITY's Budget. Any costs to regain compliance with the CITY's Budget shall be solely borne by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”.

Limited Liability. “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” does not warrant or

represent that the actual bids or negotiated prices will not vary from CITY's Budget or from any estimate of Cost of the Work agreed to by "\_\_\_\_NAME OF ARCHITECT\_\_\_\_". "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" does not warrant or represent that the final Cost of the Work will not exceed the CITY's Budget. "\_\_\_\_NAME OF ARCHITECT\_\_\_\_"'s sole responsibility and liability with regard to the CITY's Budget is to modify the Deliverables and Tender Documents in accordance with this Article.

#### **IV. GENERAL TERMS**

##### **1. INDEPENDENT CONTRACTOR STATUS:**

This Agreement is entered into by both parties with the express understanding that "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" or any of its agents, employees or officers as an agent, employee or officer of CITY.

"\_\_\_\_NAME OF ARCHITECT\_\_\_\_" agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of CITY. Subject to any performance criteria contained in this Agreement, "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" shall be solely responsible for determining the means and methods of performing the specified services and CITY shall have no right to control or exercise any supervision over "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" as to how the services will be performed. As "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" is not CITY'S employee, "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" is responsible for paying all required state and federal taxes. In particular, CITY will not:

Withhold FICA (Social Security) from "\_\_\_\_NAME OF ARCHITECT\_\_\_\_"'S payments.

Make state or federal unemployment insurance contributions on "\_\_\_\_NAME OF ARCHITECT\_\_\_\_"'S behalf.

Withhold state or federal income tax from payments to "\_\_\_\_NAME OF ARCHITECT\_\_\_\_".

Make disability insurance contributions on behalf of "\_\_\_\_NAME OF ARCHITECT\_\_\_\_".

Obtain unemployment compensation insurance on behalf of "\_\_\_\_NAME OF ARCHITECT\_\_\_\_".

Notwithstanding this independent contractor relationship, CITY shall have the right to monitor and evaluate the performance of "\_\_\_\_NAME OF ARCHITECT\_\_\_\_" to assure compliance with this Agreement.

**COMPLIANCE WITH LAW AND GRANT DOCUMENTS:** "\_\_\_\_NAME OF



ARCHITECT\_\_\_\_” shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”S employees, “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment. The “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” will be subject to and follow the rules, regulations and requirements of the Grant.

**GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in SELMA CITY, California.

**RECORDS AND AUDIT:** “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall make such records available within the CITY to the Auditor of the CITY and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

**CONFLICT OF INTEREST:**

(a) “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” for this purpose, from making any decision on behalf of CITY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any CITY decision which has the potential to confer any pecuniary benefit on “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” or any business firm in which “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” has an interest, with certain narrow exceptions.

(b) “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the CITY designated representative and provide all information needed

for resolution of this question.

**INSURANCE:** Prior to approval of this Agreement by CITY, “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall file with the submitting department evidence of required insurance as set forth in **EXHIBIT C** attached. Insurance policies shall not be used to limit “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’S liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

**INDEMNIFICATION:** To the full extent permitted by law, “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall hold harmless, defend and indemnify CITY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including CITY property, arising from, or in connection with, the performance of this Agreement due to the negligence, recklessness, or willful misconduct of “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” or its agents, officers and employees. This indemnification specifically includes any claims that may be made against CITY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against CITY alleging civil rights violations by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on CITY for “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’S failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

#### **TERMINATION:**

Without Cause: CITY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. CITY will pay to the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” the compensation earned for work performed and not previously paid for to the date of termination. CITY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” and its sub-contractors of any and all plans, specifications and estimates, and other documents prepared by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” in accordance with this Agreement. No sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or

- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement.

In addition, CITY may terminate this Agreement based on:

- (6) material misrepresentation, either by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” or anyone acting on “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’s behalf, as to any matter related in any way to CITY’s retention of “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”, or
- (7) other misconduct or circumstances which, in the sole discretion of the CITY, either impair the ability of “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” to competently provide the services under this Agreement, or expose the CITY to an unreasonable risk of liability.

CITY will pay to the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” of any and all plans, specifications and estimates, and other documents prepared by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” by the date of termination in accordance with this Agreement. CITY will not pay lost anticipated profits or other economic loss, nor will the CITY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’s scope of work exceeds the unpaid balance of the agreement, the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” must pay the difference to the CITY. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

(c) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’s services have been terminated by the CITY, said termination will not affect any rights of the CITY to recover damages against the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”.

(d) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of CITY for which “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’s services are to be performed, may immediately suspend performance by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” to

comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

(e) **Delivery of Documents to CITY:** In the event of suspension or termination as provided in this Article, all finished or unfinished documents or other work product prepared by the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” or by any person or entity retained by the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” for the Project up to the date of such suspension or termination, including but not limited to, all conceptual design, schematic design, design development and construction contract documents, data, studies, surveys, estimates, drawings, maps, models, photographs and reports, shall be delivered to the CITY and shall become the CITY’s property. At the CITY’s option, the “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall cause any and all contracts and subcontracts related to planning, design or construction administration to be assigned to the CITY upon the suspension or termination of this Agreement and “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” thereupon shall be relieved of any continuing responsibility for all such assigned contracts for work performed thereunder after the date of such assignment.

**LOSS OF FUNDING:** It is understood and agreed that if the funding is either discontinued or reduced for this project for the CITY, that the CITY shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least thirty (30) days prior written notice of such termination.

**NOTICES:**

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**CITY:**

**With A Copy To:**

**Phone No.:** \_\_\_\_\_

**Fax No.:** \_\_\_\_\_

**“\_\_\_\_NAME OF ARCHITECT\_\_\_\_”:**

**Phone No.:** \_\_\_\_\_

**Fax No.:** \_\_\_\_\_

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

**ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, CITY is relying on the personal skill, expertise, training and experience of “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” and “\_\_\_\_NAME OF ARCHITECT\_\_\_\_”’S employees and no part of this Agreement may be assigned or subcontracted by “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” without the prior written consent of CITY.

**DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

**FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

**CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

**HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

**NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

**WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

**EXHIBITS AND RECITALS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

**CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any



code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

**ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” and CITY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

**ASSURANCES OF NON-DISCRIMINATION:** “\_\_\_\_NAME OF ARCHITECT\_\_\_\_” shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

It is recognized that both the Contractor and the CITY have the responsibility to protect CITY employees and CITYs from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, Contractor agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The CITY, in its sole discretion, has the right to require Contractor to replace any employee who provides services of any kind to CITY pursuant to this Agreement with other employees where CITY is concerned that its employees or CITYs may have been or may be the subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude CITY from terminating this Agreement with or without cause as provided for herein.

**COUNTERPARTS:** This Agreement may be executed simultaneous in two or more counterparts, each of which is deemed an original. When proving this Agreement, it is only necessary to product the counterpart signed by the party against who such proof is presented.

**THE PARTIES**, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

**CITY OF SELMA**

Date: \_\_\_\_\_ BY \_\_\_\_\_  
Mayor

ATTEST: XXXXXXXXXXXXX  
CITY Administrative Officer/Clerk of the CITY  
Council of the CITY of Selma.

By \_\_\_\_\_  
Deputy Clerk

“\_\_\_\_NAME OF ARCHITECT\_\_\_\_”

Date: \_\_\_\_\_ By \_\_\_\_\_  
TITLE \_\_\_\_\_

Date: \_\_\_\_\_ By \_\_\_\_\_  
TITLE \_\_\_\_\_

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Approved as to Form  
CITY Counsel

By \_\_\_\_\_  
Deputy

Date \_\_\_\_\_



## Exhibit D

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS

#### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification of explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participation to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participation knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participation shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12459. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the

department or agency entering into this covered transaction, without modification, in all lower tier covered transaction and in all solicitations for lower tier covered transaction.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transaction authorized under paragraph 6 of these instruction, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

#### CERTIFICATION

- 1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
  - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
  - b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c) Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated cause or default.

- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Name of Agency or Company

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

**April 5, 2021**

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**ITEM NO:** 3.

**SUBJECT:** Consideration of a Resolution Approving a Building Inspection Services Agreement with Willdan Engineering, Inc.

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**RECOMMENDATION** City Staff requests approval of an agreement with Willdan for Building Inspection services while our in-house inspector is unavailable.

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**DISCUSSION:** The City of Selma currently has a contract with Juan Diaz, a retired County of Fresno building official, for building inspection services while our staff Building Inspector is unavailable. Mr. Diaz plans to fully retire at the beginning of April and the City is in need of a replacement until the City's Building Inspector becomes available.

The Community Development Department proposes to engage Willdan's services going forward for Building Inspection services. Willdan is available up to 3 days a week (potentially more), depending on the City's needs.

Of the four firms and individuals contacted for quotes, staff received the following quotes:

Willdan Engineering, Inc. - **\$90/hour** (includes travel/mileage)

CSG Consultants, Inc. - **\$90/hour** (includes travel/mileage)

<b>COST:</b>		<b>BUDGET IMPACT:</b>
<ul style="list-style-type: none"> <li>• Not to Exceed <b>\$28,080</b> through <b>June 30, 2021</b></li> <li>• Not to Exceed <b>\$216,000</b> through <b>June 30, 2023</b> (full contract length), depending on the City's needs for additional support.</li> </ul>		<ul style="list-style-type: none"> <li>• Up to \$28,080 through June 30, 2021</li> <li>• Up to \$216,000 through June 30, 2023</li> </ul>
<b>FUNDING:</b>		<b>ON-GOING COST:</b>
Funding Source: General Fund Fund Balance: FY 2018-19 \$4,566,411		TBD based on availability of staff building inspector

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**RECOMMENDATION** City Staff requests approval of an agreement with Willdan Engineering, Inc. for Building Inspection services.

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/s/

03/31/2021

\_\_\_\_\_  
Fernando Santillan, Community Development Director

\_\_\_\_\_  
Date

/s/

03/31/2021

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

\_\_\_\_\_  
Date

**RESOLUTION NO. 2021-**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF SELMA  
AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENT WITH  
WILLDAN ENGINEERING, INC. FOR BUILDING INSPECTION SERVICES**

**WHEREAS**, the City of Selma is authorizing the City Manager to execute an agreement with Willdan Engineering, Inc. for City building inspection services; and

**WHEREAS**, the expense of this program is partially covered by Building Permits and the General Fund.

**NOW, THEREFORE**, the City Council of the City of Selma does hereby resolve that the authorization is approved.

**I, Reyna Rivera**, City Clerk of the City of Selma, do hereby certify that the foregoing Resolution was duly adopted at a regular meeting of the City Council of the City of Selma on the 5<sup>th</sup> day of April 2021, by the following vote, to wit:

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

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Scott Robertson, Mayor

ATTEST:

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Reyna Rivera  
City Clerk

## CITY OF SELMA

### PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of \_\_\_\_\_ ("Effective Date"), between the City of Selma, a municipal corporation ("City") and Wildan Engineering, 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 April 5, 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 Cost Allocation & User Fee Study, 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 \_\_\_\_\_ (\$\_\_\_\_\_) 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. 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.

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: \_\_\_\_\_, City Attorney



To Consultant:

Willdan  
2014 Tulare Street, Suite 515  
Fresno, CA 93721

**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 an 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"**  
Willdan Engineering

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

By:  \_\_\_\_\_  
Patrick Johnson, P.E.  
Director of Building and Safety

**Attest:**

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

**Approved as to form:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney

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

## EXHIBIT A

### SCOPE OF SERVICES

#### **Building Inspection Services**

Our inspectors are ICC certified and fully experienced to perform residential, commercial and industrial inspections for compliance to the approved plans and related documents. The inspections will be performed in accordance with the City's adopted version of the California Building Code, California Residential Code, Green Building Standards Code, California Mechanical Code, California Plumbing Code, California Electrical Code, and the State and Federal regulations for Accessibility, Noise and Energy Conservation, California Fire Code and provisions of Title 19 and NFPA.

Inspection staff will be available to meet with City staff, builders, developers, and citizens to provide assistance and resolve any inspection issues that may arise. Inspectors shall attend and participate in required meetings with other City inspection and plan review staff, property owners, contractors and/or design professionals.

Inspectors will review the permit package to verify that the on-site condition is consistent with the appropriate records for square footage, setbacks, heights, and other requirements that may be applicable. Inspectors will comply with the City's procedures for reporting inspection results, use City inspection correction forms, make appropriate entries onto the permit documents, and follow City procedures prior to finalizing a building permit.

Willdan will verify that all inspection records, including daily records of what was inspected which will be recorded on the job card, and permit copy entered into the City's Building and Safety computer system. We will employ such techniques as necessary to minimize delays to builders and provide helpful advice and counsel to builders, owners, engineers and architects as to enhance the orderly flow of the construction process yet maintaining an effective level of enforcement. Inspectors shall ensure that any construction changes are documented and approved by appropriate City staff.

#### **CASp SERVICES**

Willdan can provide CASp certified inspectors to the City as required by **Senate Bill No. 1608**, specifically **CHAPTER 549** which reads as follows:

*(d) (1) Commencing July 1, 2010, a local agency shall employ or retain at least one building inspector who is a certified access specialist. The certified access specialist shall provide consultation to the local agency, permit applicants, and members of the public on compliance with state construction-related accessibility standards with respect to inspections of a place of public accommodation that relate to permitting, plan checks, or new construction, including, but not limited to, inspections relating to tenant*

*improvements that may impact access. If a local agency employs or retains two or more certified access specialists to comply with this subdivision, at least one-half of the certified access specialists shall be building inspectors who are certified access specialists.*

### **Additional Building and Safety Services**

Willdan recognizes that the immediate need for the City of Selma is for building inspections services, however, Willdan will assist the City of Selma for additional Building and Safety services as requested.

EXHIBIT B

RATE SCHEDULE

The Willdan rate for building inspection services is \$90.00 dollars an hour. The rate is comprehensive and includes project management and any additional costs incurred by Willdan in performance of this contract (ie: mileage, uniforms and officer equipment or supplies).

## 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.

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.

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ITEM NO: 4.

**SUBJECT:** Consideration of a Professional Services Agreement with Gateway Engineering Incorporated for City Engineering Services

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**RECOMMENDATION:** Authorize City Manager to execute a Professional Service Agreement with Gateway Engineering, Inc. for City Engineering Services

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**DISCUSSION:** On October 5, 2020, Council executed a contract renewal with Gateway Engineering for Contract City Engineering Services. This contract authorized Gateway to complete all engineering services including capital improvement projects, development review and consulting, and other day-to-day services. In an effort to maximize consultant services to better service the community and economic development, staff has requested a termination of Gateways current contract and an execution of a new contract that is primarily on a project basis.

This new contract will allow the flexibility to bring on an additional engineering firm that can assist with the day-to-day services. In addition, it will remove the first right of refusal clause within Gateway's current contract. Staff has identified all outstanding projects and will assign these duties accordingly. This process will increase capacity to address more projects and customer service needs.

The attached professional services agreement outlines the revised scope of work and new rate schedule. Since this revised contract is on a project basis, the financial impact will primary be in the grant and capital project funds.

Staff requests authorization for the City Manager to execute a revised Professional Service Agreement with Gateway Engineering for the term of two years.

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**RECOMMENDATION:** Authorize City Manager to execute a Professional Service Agreement with Gateway Engineering, Inc. for City Engineering Services

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/s/

04/01/2021

Isaac Moreno, Assistant City Manager

Date

/s/

04/01/2021

Teresa Gallavan, City Manager

Date

## CITY OF SELMA

### PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of April 5, 2021 ("Effective Date"), between the City of Selma, a municipal corporation ("City") and Gateway Engineering, 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 April 30, 2023 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 Engineering 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,

(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 One Hundred Forty Thousand Four Hundred (\$140,400) 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. 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. 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, or otherwise disposed of by the City without the permission of the Consultant. In the event of termination or suspension, with the use of the documents and files, the City agrees to indemnify and hold harmless, to the fullest extent permitted by law, Gateway Engineering, Inc., its officers, directors, employees or subconsultants, against any and all damages, liabilities or costs, including reasonable attorneys' fees that may arise from use of the documents and files. 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. Drawings, designs, recommendations and reports not stamped and signed by a registered professional shall not be utilized for the intended use.

## **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) 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 negligence by the Consultant in 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. 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: Hilda Montoy, Interim City Attorney  
Montoy Law Corporation  
2440 Tulare Street, Suite 410  
Fresno, CA 93721

To Consultant: Gateway Engineering Inc.  
Attn: Daniel Bond, PE  
405 Park Creek Drive  
Clovis, CA 93611

#### **11. ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, 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 an 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.

#### **12. 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.

**13. 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.

**14. 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.

**15. 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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"**  
**Gateway Engineering, Inc.**

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

By: \_\_\_\_\_  
Daniel Bond, PE, President

**Attest:**

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

**Approved as to form:**

By: \_\_\_\_\_  
Hilda Montoy, Interim City Attorney

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

## EXHIBIT A

### SCOPE OF SERVICES

Consultation on development projects/permits. The "Consultant" shall review project plans and proposals by private parties, for compliance with City Code and other applicable requirements. He/She shall meet with residents, contractors, developers, engineers, etc. as requested.

Provide services on grant management: The "Consultant" shall assist in grant management for regional, state, and federal programs.

Provide permit review and inspection services. The "Consultant" shall be available to review various types of permit applications for private utility improvements, residential/commercial improvement and other common permit applications. He/She shall conduct site inspections associated with such permits and applications as needed.

Analyze/study improvement projects. The "Consultant" will be required to prepare preliminary engineering analysis, cost estimates and feasibility studies for various Public Works improvements.

Prepare bid/contracts. The "Consultant" will be requested to prepare detailed plans, specifications, bid and contract documents for Public Works construction projects, including State, Federal, and Community Development Block grant projects. In addition, the "Consultant" will prepare a final cost estimate, required applications of approval of the construction by other governmental agencies, and assist the City in negotiating the acquisition of any necessary right-of-way or easement.

Capital project tracking. The "Consultant" will track and monitor project status and specific milestone completion. He/She will facilitate discussions and decisions necessary to keep projects on schedule.

Monitor budgets. The "Consultant" will process payments for all State, Federal, and local grant funding, monitor budget expenditures and assist with review of contracts, proposals, invoices and Purchase Orders.

Document management. The "Consultant" will create and store computer files, paper copies, and other types of records and files of work performed for the City using the systems designated by the Assistant City Manager.

Geographic Information System (GIS). The "Consultant" will create GIS files as requested

EXHIBIT B

RATE SCHEDULE

<u>Employee Classification</u>	<u>Hourly Rate</u>
Senior Engineer	\$170 / hr
Senior Land Surveyor	\$170 / hr
Associate Engineer	\$140 / hr
Associate Land Surveyor	\$130 / hr
Staff Engineer	\$110 / hr
Engineering Tech	\$100 / hr
Land Surveying Tech	\$110 / hr
Assistant Engineering Tech	\$ 80 / hr
Assistant Surveying Tech	\$ 75 / hr
GIS Technician	\$ 80 / hr
Clerical	\$ 70 / hr
Expert Witness	\$300 / hr
<u>Survey Crews (Non-Prevailing Wage)</u>	<u>Hourly Rate</u>
One man crew	\$160 / hr
Two-man crew	\$240 / hr
<u>Survey Crews (Prevailing Wage)</u>	<u>Hourly Rate</u>
One man crew	\$225 / hr
Two-man crew	\$300 / hr
<u>Reimbursable Expenses</u>	Actual cost +15%



## 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.

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**ITEM NO:** 5.

**SUBJECT:** Consideration of a Professional Services Agreement with Yamabe & Horn, Inc. for Interim City Engineering Services

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**RECOMMENDATION:** Approve a Professional Service Agreement with Yamabe & Horn, Inc. for Interim City Engineering Services and Authorize City Manager to execute.

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**DISCUSSION:** With the transition of Gateway Engineering from the City's full-time Engineering Consultant to a project based agreement, staff has requested letters of interest for interim services. Staff received proposals from Yamabe & Horn, Inc. (Y&H) and QK Inc. Both proposals include similar rate structures but Y&H's was slightly lower.

These interim services will manage our day-to-day engineering services while staff executes a Request for Proposals (RFP). This process consists of a scoring panel, reference checks, financial analysis, and a formal panel interview. This RFP will be executed on April 12<sup>th</sup> and will close May 10<sup>th</sup>.

With the execution of this interim contract and Gateway's revised agreement, there will be capacity to address more City projects and customer service needs. The scope of work identified in the interim agreement will be to manage the following categories:

- Advisory Services
- Capital Project Management
- Other Duties as requested

Full detail of this scope of work is outlined in the attached professional services agreement, Exhibit A, in addition to the rate schedule in Exhibit B.

Staff requests approval of the Professional Service Agreement with Yamabe & Horn, Inc. for Interim City Engineering Services and authorization for the City Manager to execute.

<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).
Remaining fiscal year is estimated at \$46,800		
<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: FY 2018-19 \$4,566,411		

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**RECOMMENDATION:** Approve Professional Service Agreement with Yamabe & Horn, Inc. for Interim City Engineering Services and Authorize City Manager to execute.

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/s/	04/01/2021
_____ Isaac Moreno, Assistant City Manager	_____ Date
/s/	04/01/2021
_____ Teresa Gallavan, City Manager	_____ Date



## **CITY OF SELMA**

### **PROFESSIONAL SERVICES AGREEMENT**

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of APRIL 5, 2021 ("Effective Date"), between the City of Selma, a municipal corporation ("City") and YAMABE AND HORN ENGINEERING, 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 OCTOBER 5, 2021 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 civil engineering and land surveying services for 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 One Hundred Thousand Dollars (\$100,000) 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. 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: Selma Legal Counsel

To Consultant: Yamabe and Horn Engineering, Inc.  
2985 N. Burl Avenue, Suite 101  
Fresno, CA 93727

**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 an 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"**  
Yamabe and Horn Engineering, Inc.

By: \_\_\_\_\_  
Scott Robertson, Mayor

By: \_\_\_\_\_  
Brandon Broussard, Principal

**Attest:**

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

**Approved as to form:**

By: \_\_\_\_\_  
City Attorney

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

## EXHIBIT A

### SCOPE OF SERVICES

#### Advisory Services

- (1) Attendance at meetings of the City Council. The "City Engineer" shall attend those special meetings or work sessions of the City Council where matters before the City Council require the expertise of, or presentation by, the "City Engineer", or, as otherwise requested. In the cases of these matters, and in the event that the "City Engineer's" attendance is required or requested at any City Council meeting, it is expected that the "City Engineer" shall prepare staff reports and/or any other documents necessary for meeting. Regular meetings are held on the first and third Monday evening of each month.
- (2) Advising Officials. The "City Engineer" shall advise City officials, employees, etc. through telephone conferences, meetings, and correspondence.
- (3) Consultation on City utilities and facilities. The "City Engineer" shall furnish advice and consultation on the operation, maintenance, and permitting of the City's storm water drainage system, transportation system, and other City-owned facilities under the direction of the Assistant City Manager.
- (4) Consultation on development projects/permits. The "City Engineer" shall review project plans and proposals by private parties, for compliance with City Code and other applicable requirements. He/She shall meet with residents, contractors, developers, engineers, etc. as requested.
- (5) Provide services on grant applications and management: The "City Engineer" shall assist in grant applications and management for regional, state, and federal programs. Experience with Federal Grant Applications and processes is preferred.
- (6) Provide permit review and inspection services. The "City Engineer" shall be available to review various types of permit applications for private utility improvements, residential/commercial improvement and other common permit applications. He/She shall conduct site inspections associated with such permits and applications as needed.
- (7) Attendance at meetings of Project Review Committee (PRC). The "City Engineer" shall participate as a member of the PRC under the direction of the Assistant City Manager. He/she shall review site plans and furnish comments in advance of the PRC meetings and assist applicants in understanding the Code requirements. PRC meetings are scheduled as needed.

(8) Working Hours at City Hall. The “City Engineer” shall hold office hours at City Hall to assist staff and the public on an as-needed basis. He/She will be a licensed Engineer that is authorized to sign and seal engineering plans.

(9) Attendance at meeting for Fresno Council of Government (FCOG). The “City Engineer” shall participate as a representative of the City of Selma all Technical Advisory Committees for FCOG. Addition, any other FCOG related meetings as requested by the Assistant City Manager.

#### Public Works Construction Projects

(1) Analyze/study improvement projects. The "City Engineer" will be required to prepare preliminary engineering analysis, cost estimate and feasibility studies for various Public Works improvements.

(2) Prepare bid/contracts. The "City Engineer" will be requested to prepare detailed plans, specifications, bid and contract documents for Public Works construction projects. In addition, the "City Engineer" will prepare a final cost estimate, required applications of approval of the construction by other governmental agencies, and assist the City in negotiating the acquisition of any necessary right-of-way or easement.

(3) Review bids. The "City Engineer" shall assist the City in the review of bids submitted for construction, in the selection of qualified contractors and in the inspection of construction work. The "City Engineer" will provide general supervision of the contractor for Public Works construction projects.

#### Capital Project Management

(1) Identify capital projects. The “City Engineer” will identify current and possible future capital projects and document budget, scope, schedule, status, organizational responsibility (including other Professional Engineering Firms) and funding sources.

(2) Organize and prioritize all capital projects. The “City Engineer” will develop regular reporting and monitoring processes to ensure implementation and completion of scheduled project tasks.

(3) Capital project tracking. The “City Engineer” will track and monitor project status and specific milestone completion. He/She will facilitate discussions and decisions necessary to keep projects on schedule.

(4) Identify and report significant deficiencies. The “City Engineer will identify and report concerns regarding meeting capital projects goals to the Assistant City Manager on a weekly basis.

(5) Monitor budgets. The “City Engineer” will process payments for all State, Federal ,and local grant funding, monitor budget expenditures and assist with review of contracts, proposals, invoices and Purchase Orders.

(6) Document management. The “City Engineer” will create and store computer files, paper copies, and other types of records and files of work performed for the City using the systems designated by the Assistant City Manager. The professional services consulting agreement entered into by and between the City and City Engineer shall specify the scope of included services. The City reserves the right to enter into additional agreements with the City Engineer for specified projects (e.g. the design or construction observation of major public improvements), to contract with third parties for such services, or if within the scope of the City Engineer agreement, utilize the same to provide for such services. The City anticipates that the negotiation of the scope of services and the format of payment for such services shall be a collaborative undertaking between the City and the successful respondent, but requests that each respondent provide a proposal outlining their suggested approach (e.g. monthly retainer for a specified amount of work; hourly; hourly plus expenses; blended approach; etc.)

#### Other Duties Required

- (1) Geographic Information System (GIS). The “City Engineer” will create and maintain a GIS database for City streets, storm drain, and other mapping needs.
- (2) Pavement Management System. The “City Engineer” will maintain and update City owned pavement management software.
- (3) Monthly Report. The “City Engineer” will provide a monthly report outlining project activities and updates.

**EXHIBIT B**  
**RATE SCHEDULE**

**YAMABE & HORN ENGINEERING, INC.**

CIVIL ENGINEERS – LAND SURVEYORS  
2985 N Burl Avenue, Suite 101, Fresno, CA 93727  
(559) 244-3123, FAX (559) 244-3120

<b>2021 FEE SCHEDULE</b>		
PRINCIPAL ENGINEER	\$ 195	per hour
EXPERT WITNESS	\$ 265	per hour
CIVIL ENGINEER V	\$ 170	per hour
CIVIL ENGINEER IV	\$ 165	per hour
CIVIL ENGINEER III	\$ 160	per hour
CIVIL ENGINEER II	\$ 140	per hour
CIVIL ENGINEER I	\$ 135	per hour
PROJECT MANAGER II	\$ 150	per hour
PROJECT MANAGER I	\$ 140	per hour
ASSISTANT ENGINEER III	\$ 125	per hour
ASSISTANT ENGINEER II	\$ 120	per hour
ASSISTANT ENGINEER I	\$ 110	per hour
LAND SURVEYOR II	\$ 155	per hour
LAND SURVEYOR I	\$ 135	per hour
ASSISTANT SURVEYOR II	\$ 125	per hour
ASSISTANT SURVEYOR I	\$ 115	per hour
GIS ANALYST	\$ 115	per hour
GIS TECHNICIAN	\$ 105	per hour
CONSTRUCTION MANAGER II	\$ 140	per hour
CONSTRUCTION MANAGER I	\$ 130	per hour
PROJECT SERVICES ADMINISTRATOR	\$ 85	per hour
INSPECTOR II PREVAILING WAGE	\$ 150	per hour
INSPECTOR I PREVAILING WAGE	\$ 140	per hour
CAD MANAGER	\$ 115	per hour
CAD DRAFTER II	\$ 105	per hour
CAD DRAFTER I	\$ 95	per hour
CLERICAL	\$ 75	per hour
2-PERSON SURVEY CREW	\$ 200	per hour
2-PERSON SURVEY CREW PREVAILING WAGE	\$ 250	per hour
1-PERSON SURVEY CREW	\$ 160	per hour
1-PERSON SURVEY CREW PREVAILING WAGE	\$ 160	per hour
TRAVEL	\$ 0.56	per mile
SUBCONSULTANTS	Cost plus 10%	
PRINTING	Cost plus 10%	

Effective February 2021

Notes:

- 1) Prevailing wage rates are shown for Fresno County.
- 2) Approved OT for Inspectors and Surveyors shall be billed at 1.5x (OT) or 2.0X (Holidays) as appropriate



## 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:**

April 5, 2021

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**ITEM NO:** 6.

**SUBJECT:** Council request to discuss the City of Selma executive order suspending, temporarily, any city regulations that would prohibit outdoor operation of city businesses

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**RECOMMENDATION:** As a Council request, Staff has placed the item on the agenda for discussion and direction.

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**DISCUSSION:**

Councilmember Mendoza-Navarro requested staff to discuss the Public Space Use program for COVID affected businesses. The Order was ratified and approved on August 3, 2020.

Staff will be providing a verbal presentation.

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**RECOMMENDATION:** As a Council request, Staff has placed the item on the agenda for discussion and direction.

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/s/ 04/01/2021

\_\_\_\_\_  
Tracy Tosta, Administrative Analyst

\_\_\_\_\_  
Date

/s/ 04/01/2021

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

\_\_\_\_\_  
Date

**CITY OF SELMA  
EMERGENCY SERVICES DIRECTOR EXECUTIVE ORDER 20-3**

**AN EXECUTIVE ORDER OF THE EMERGENCY SERVICES DIRECTOR OF THE  
CITY OF SELMA, CALIFORNIA, TEMPORARILY SUSPENDING CITY  
REGULATIONS THAT WOULD PROHIBIT OUTDOOR OPERATION OF CITY  
BUSINESSES**

WHEREAS, section 2-4-5 and 2-4-6 of the Selma Municipal Code empowers the Director of Emergency Services, in the event of the proclamation of a "State of Emergency" by the Governor of California, or a local emergency by the City Council, to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council; and

WHEREAS, the President of the United States has declared a State of National Emergency related to the spread of the COVID-19 virus and the Governor has proclaimed a State of Emergency for the State of California and issued Executive Orders directing measures to mitigate the spread of cases of COVID-19 within the State of California; and

WHEREAS, the City Council of the City of Selma adopted Resolution No. 2020-14R, declaring a local emergency related to the COVID-19 virus on March 16, 2020; and

WHEREAS, the closure of businesses due to COVID-19 has resulted in severe economic hardship for many business in Selma; and

WHEREAS, on July 13, 2020, the California Department of Public Health ordered the closure of indoor operations for certain types of businesses, including but not limited to: gyms and fitness centers; places of worship; protests; offices for non-essential critical infrastructure sectors; personal care services (including nail salons, massage parlors, and tattoo parlors); hair salons and barbershops; and malls. The order allows certain businesses to operate outdoors if they follow industry-specific State guidance, including the use of face coverings and social distancing; and

WHEREAS, the list of businesses ordered to halt in-door service may expand at any time and this Order is intended to cover those businesses as well; and

WHEREAS, the Director of Emergency Services has determined that there is a need to take temporary measures to ensure that no City of Selma regulations prevent businesses within the City from operating outdoors, provided outdoor operation of those businesses is in compliance with any and all federal, state, or county laws, regulations, license requirements, and health directives, including social distancing requirements, and provided outdoor operation of those businesses is in compliance with the requirements of this Executive Order and State industry guides.

**NOW, THEREFORE, BE IT PROCLAIMED** by the Director of Emergency Services of the City of Selma that:

**SECTION 1.** The above recitals are true and correct. Emergency measures are necessary to protect the health, safety, and wellbeing of the citizens of Selma from the effects of the COVID-19 pandemic.

**SECTION 2.** Notwithstanding any provision of the Selma Municipal Code, all businesses operating in the City, including non-profits and other organizations (collectively, "Businesses"), are temporarily permitted to operate outdoors, if restrictions for indoor operations have been implemented upon them, and are subject to compliance with the following requirements:

- (a) Businesses shall comply with all State and County health orders, State executive orders, State and County laws, State and County regulations, and all industry-specific State guidance, including the use of face coverings and social distancing. Businesses are not permitted to operate outdoors if doing so would violate any State or County health order, State executive order, State or County law, State or County regulation, or any industry-specific State guidance.
- (b) Businesses shall comply with the requirements of all industry-specific licensing and permitting authorities. Businesses are not permitted to operate outdoors if doing so would violate any industry-specific license or permit held by the Business.
- (c) Access required under the Americans with Disabilities Act (ADA) shall be maintained at all times.
- (d) Businesses may operate on City sidewalks, but not within the public right-of-way if it were to limit access to other businesses or if activities would limit access required under the ADA. Outdoor activities on city sidewalks will be limited to no more than ten (10) people who must be directly receiving or providing the business services.
- (e) Businesses shall comply with all City noise regulations (Selma Municipal Code Title 6, Chapter 17).
- (f) Live music and amplified sound are prohibited, unless a permit has been issued by the City.
- (g) Business shall provide conveniently located outdoor waste and recycling receptacles for customers, and shall ensure that all trash is cleaned up at the end of each day.
- (h) Outdoor operation is only allowed between the hours of 7:00 a.m. and 10:00 p.m., unless otherwise permitted by the City.
- (i) Businesses shall comply with all requirements of the California Fire Code. All entrances and exits in Business establishments shall remain unobstructed at all times. Fire hydrants must remain unobstructed at all times.
- (j) Each Business shall establish a buffer of at least 10-feet, marked by a physical barrier, including but not limited to cones or a rope, separating customer and staff occupied spaces from vehicular traffic in streets or parking lots.



- (k) Shafer, Ringo, Lincoln, and Bretlinger parks may be utilized by Businesses that do not have any other outdoor options. Park use will be limited to 25 persons per Business including any staff or volunteers.
- (l) A valid Certificate of Insurance designating the City of Selma as an Additional Insured, or other proof of insurance acceptable to the Director of Emergency Services, will be required prior to implementing outdoor operations. The form *Public Space Use Notice for COVID-19 Affected Businesses* and the incorporated Waiver of Liability must be submitted to the City of Selma and Approved by the City Manager. Approval can be revoked by the City Manager at any time for violation of any condition set forth by any governing agency including this Order.


**SECTION 3.** Nothing in this Order is intended to or shall be deemed to waive or suspend any provision of state or federal law, any Executive Order issued by the California Governor, any Health Order issued by the State Public Health Officer or County of Fresno Health Officer, or any private agreement, covenant, or lease regarding the use of private property.

**SECTION 4.** This Order shall remain in effect until terminated by the City Council or until the City Council declares an end to the local state of emergency caused by COVID-19, whichever occurs first.

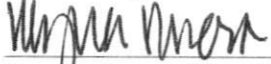
**SECTION 5.** This Order shall be presented to the City Council of the City of Selma for ratification and approval at its August 3, 2020 meeting, pursuant to Selma Municipal Code section 2-4-6 and 2-4-7.

**SECTION 6.** This Order shall be enforceable and violations shall be subject to penalties under Selma Municipal Code Chapter 2-4-10 and 1-4-1 Violations of this Order shall be a misdemeanor.

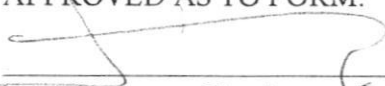
The foregoing Executive Order was approved this 3rd day of August, 2020.

  
Teresa Gallavan, City Manager/Director of Emergency Services

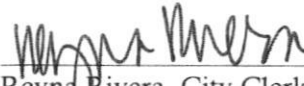
8-11-20  
Date

  
Reyna Rivera, City Clerk

APPROVED AS TO FORM:

  
Neal Costanzo, City Attorney

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Selma, California this 3rd day of August, 2020.

  
Reyna Rivera, City Clerk

Page 3 of 3



CITY OF SELMA  
Economic Development Department  
1710 Tucker Street Selma CA 93662

**PUBLIC SPACE USE NOTICE FOR COVID-19 AFFECTED BUSINESSES**

Park /Location: \_\_\_\_\_

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

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

Business Address: \_\_\_\_\_

Business Phone: \_\_\_\_\_

Mobile Phone: \_\_\_\_\_

Day(s) of Week: ☐ M ☐ Tu ☐ W ☐ Th ☐ F ☐ Sa ☐ Su

**FEES REQUIRED FOR PARKS**

Cleaning Charge \$20.00 per hour to clean and payment costs to repair any damage to the park or shelter. (Billed after rental)

**Checks payable to:**

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

Business Activity Type:

- ☐ **Fitness/Gym**
- ☐ **Place of Worship**
- ☐ **Personal Service**
- ☐ **Hair Salon/Barber**
- ☐ **Other:** \_\_\_\_\_

**\*Organized sports and practices are not deemed authorized business activities and are not allowed under this use.**

Beginning Date: \_\_\_\_\_

Estimated End Date: \_\_\_\_\_

Time: \_\_\_\_\_

From: \_\_\_\_\_:\_\_\_\_\_AM/PM

To: \_\_\_\_\_:\_\_\_\_\_AM/PM

Estimated Attendance: \_\_\_\_\_

**STATEMENT OF UNDERSTANDING/WAIVER OF LIABILITY**

The undersigned hereby accepts and agrees to comply with all City Policies, Ordinances, State Laws and rules and regulations. Applicant further agrees to hold the City of Selma, Officers and employees, free and harmless from the loss, damage, liability, cost or expenses that may arise incident to the use or occupation of the required park, facility or equipment for the business or their patrons. Undersigned also understands that:

1. Schools are not considered parks and no business activities will be permitted on school grounds or other public spaces not approved by the City of Selma.
2. Alcoholic beverages are prohibited in City Parks (Selma City Code Section 9-8-4(s))
3. Electricity and Restrooms will not be made available at any park
4. Any business related activity in Selma's public spaces may only be performed by businesses with a valid business license in the City of Selma.
5. **CLEANING AND DAMAGE PAYMENT FOR PARKS:** No deposit is required at time of notice. However, as the person responsible for utilizing the listed park at the above mentioned time, I understand I will be billed for cleaning and damages should they occur.
6. **10-10-23.1: PARKING IN PARKS AND OTHER RECREATIONAL AREAS:** No person shall drive or park a vehicle in a public park or recreation area, except by special permit issued by the Police Department. Authorized signs shall be posted at all entrances to parks or recreation areas giving notice of this Section. (Ord. 694,7-3-72, eff. 8-4-72).
7. Businesses shall comply with all State and County health orders, State executive orders, State and County laws, State and County regulations, and all industry-specific State guidance, including the use of face

coverings and social distancing. Businesses are not permitted to operate outdoors if doing so would violate any State or County health order, State executive order, State or County law, State or County regulation, or any industry-specific State guidance.

8. Businesses shall comply with the requirements of all industry-specific licensing and permitting authorities. Businesses are not permitted to operate outdoors if doing so would violate any industry-specific license or permit held by the Business.
9. Access required under the Americans with Disabilities Act (ADA) shall be maintained at all times.
10. Businesses may operate on City sidewalks, but not within the public right-of-way if it were to limit access to other businesses or if activities would limit access required under the ADA. Outdoor activities on city sidewalks will be limited to no more than ten (10) people who must be directly receiving or providing the business services.
11. Businesses shall comply with all City noise regulations (Selma Municipal Code, Title 6, Chapter 17).
12. Live music and amplified sound are prohibited, unless a permit has been issued by the City.
13. Business shall provide conveniently located outdoor waste and recycling receptacles for customers, and shall ensure that all trash is cleaned up at the end of each day.
14. Outdoor operation is only allowed between the hours of 7:00 a.m. and 10:00 p.m., unless otherwise permitted by the City.
15. Businesses shall comply with all requirements of the California Fire Code. All entrances and exits in Business establishments shall remain unobstructed at all times. Fire hydrants must remain unobstructed at all times.
16. Each Business shall establish a buffer of at least 10-feet, marked by a physical barrier, including but not limited to cones or a rope, separating customer and staff occupied spaces from vehicular traffic in streets or parking lots.
17. Shafer, Ringo, Lincoln, and Bretlinger parks may be utilized by Businesses that do not have any other outdoor options. Park use will be limited to 25 persons per Business including any staff or volunteers.
18. A valid Certificate of Insurance designating the City of Selma as an Additional Insured, or other proof of insurance acceptable to the Director of Emergency Services, will be required prior to implementing outdoor operations. The form Public Space Use Notice for COVID-19 Affected Businesses and the incorporated Waiver of Liability must be submitted to the City of Selma and Approved by the City Manager. Approval can be revoked by the City Manager at any time for violation of any condition set forth by any governing agency including this Order.

Signature of Authorized Business Agent/Owner: \_\_\_\_\_ Date: \_\_\_\_\_

**Temporary approval by the Director of Emergency Services:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**PHONE NUMBERS: in an emergency dial 9-1-1**

SELMA POLICE DEPARTMENT Non-Emergency (559) 896-2525 SELMA FIRE DEPARTMENT Non-Emergency (559) 891-2211

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

April 5, 2021

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**ITEM NO:**

7.

**SUBJECT:**

Council request to discuss and for more information on Enhanced Infrastructure Financing Districts (EIFDs) and what is needed and being done to make EIFDs a tool the City could use in the future

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**RECOMMENDATION:** As a Council request, Staff has placed the item on the agenda for discussion and direction.

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**DISCUSSION:**

Councilmember Mendoza-Navarro requested more information on EIFDs and what is needed and being done to make EIFDs a tool the City could use in the future.

Staff will be providing a verbal presentation.

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**RECOMMENDATION:** As a Council request, Staff has placed the item on the agenda for discussion and direction.

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/s/

Teresa Gallavan, City Manager

04/01/2021

Date

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# ENHANCED INFRASTRUCTURE FINANCING DISTRICTS

COUNCIL REQUEST FROM COUNCIL MEMBER MENDOZA-NAVARRO

APRIL 5, 2021







## EIFDS

- Redevelopment – Lite
- Tax Increment revenues are the same *ad valorem* property taxes already paid by property owners, so **no additional property taxes required**
- Uses portion of tax-increment from 1% *ad valorem* property tax, but can't use increment from educational agencies (e.g., School District, Community College Districts)
- Needs local taxing agencies to cooperate by giving up portion of their *ad valorem-based* property tax revenues and in-lieu motor vehicle license fee revenues
- May be utilized to fund any public improvements with useful life of 15 years or more that provide community benefit (e.g., no private development except industrial projects)





## EIFD

- Legislative body must establish Public Financing Authority to administer EIFD (3 members from legislative body and 2 members representing the general public)
- No election required to form district (can be established by Public Financing Authority)
- Public Financing Authority needs to adopt Infrastructure Financing Plan and eventually decide when to sell bonds
- Unlike redevelopment, no blighted area requirement or 20% affordable housing requirement
- Pass-through of revenues back to public taxing agencies are individually negotiated with each agency
- 55% election vote required within EIFD to sell bonds



## EIFDS – ELIGIBLE PUBLIC IMPROVEMENTS

- Roads, highways, streets, parking facilities and transit facilities
- Sewer, reclamation and water facilities
- Flood control facilities, retention bases and drainage channels
- Childcare facilities
- Libraries
- Parks, open space and recreational facilities
- Solid waste facilities
- Brownfield restoration and other environmental mitigation
- Military base reuse
- Affordable housing
- Port facilities
- Improvements related to fighting climate change
- Note: EIFD funding cannot finance public services



## EIFDS - FORMATION

- City Council adopts Resolution of Intention to establish EIFD and appoints Public Financing Authority ("PFA")
- PFA meets and orders preparation of Infrastructure Financing Plan ("IFP")
- PFA distributes draft IFP to property owners located within proposed EIFD
- At least 60 days after distribution, PFA holds public hearing, approves IFP, and adopts Resolution of Formation for the EIFD
- If future bond sale is proposed, property owners cast ballots, with 55% support necessary to approve future bond sales
- \*Note - State of California Noticing Requirements not included in schedule



## EIFDS - RESTRICTIONS

- Bonds cannot be sold until after tax increment is generated, so EIFDs are often used as a reimbursement mechanism
- Municipalities don't commit funding to EIFD unless project is actually constructed
- Municipalities sacrifice portion of future General Fund revenues to EIFD, which can ultimately impact General Fund
- Fiscal analysis of impact on General Fund is a mandatory component of the Infrastructure Financing Plan
- Successor agency to redevelopment agency must have received a Finding of Completion from State Dept. of Finance prior to Dec. 31, 2015, and all litigation must have been resolved by the courts
- Existing housing units lost due to EIFD must be replaced





## PATH(S) TO BEING ABLE TO USE EIFD

- Change legislation so can obtain Finding of Completion or so not needed to create EIFD
- Discuss with attorney other options
- FOC was being pursued as part of settlement w/DOF
- Been working with CrisCom, legislative consultants, to make legislative change and seek any other options with DOF
  - Tried to join with legislation introduced last year by Senator Skinner
  - Tried to include in Omnibus bill