

# MEETING AGENDA

The City Council/Successor Agency of the City of Firebaugh  
Vol. No.18/11-05

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**Location of Meeting:** Andrew Firebaugh Community Center  
1655 13<sup>th</sup> Street, Firebaugh, CA 93622  
**Date/Time:** November 5, 2018/6:00 p.m.

## CALL TO ORDER

**ROLL CALL**  
Mayor Felipe Pérez  
Mayor Pro Tem Marcia Sablan  
Council Member Elsa Lopez  
Council Member Freddy Valdez  
Council Member Brady Jenkins

In compliance with the Americans with Disabilities Act, if you need special assistance to access the Andrew Firebaugh Community Center to participate at this meeting, please contact the Deputy City Clerk at (559) 659-2043. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the Andrew Firebaugh Community Center.

Any writing or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at City Hall, in the Deputy City Clerk's office, during normal business hours.

## PLEDGE OF ALLEGIANCE

## PUBLIC COMMENT

## CONSENT CALENDAR

Items listed on the calendar are considered routine and are acted upon by one motion unless any Council member requests separate action. Typical items include minutes, claims, adoption of ordinances previously introduced and discussed, execution of agreements and other similar items.

### 1. APPROVAL OF MINUTES – The City Council regular meeting on October 15, 2018.

## PUBLIC HEARING

### 2. THE CITY COUNCIL OF THE CITY OF FIREBAUGH TO CONSIDER AND DISCUSS POTENTIAL PROGRAMS FOR INCLUSION IN THE 2018 STATE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) APPLICATION - \$3 MILLION NOTICE OF FUNDING AVAILABILITY (NOFA).

**Recommended Action:** Council receives public comment & give staff direction to proceed.

### 3. THE CITY COUNCIL OF THE CITY OF FIREBAUGH TO HOLD PUBLIC HEARING FOR CLOSEOUT OF 15-CDBG-10568 GRANT.

**Recommended Action:** Council receives public comment & give staff direction to proceed.

### 4. RESOLUTION NO. 18-54 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH ACCEPTING COMPLETION OF THE SENIOR CENTER REHABILITATION PROJECT, AUTHORIZING THE CITY CLERK TO FILE NOTICE OF COMPLETION WITH FRESNO COUNTY AND AUTHORIZING THE CITY MANAGER TO RELEASE PAYMENT TO MARKO CONSTRUCTION GROUP.

**Recommended Action:** Council receives public comment & approves Res. No. 18-54.

**NEW BUSINESS**

5. **RESOLUTION NO. 18-55 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH ACCEPTING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER A PROGRAM DEVELOPMENT AGREEMENT WITH ENGIE SERVICES U.S., INC.**

**Recommended Action:** Council receives public comment & approves Res. No. 18-55.

**STAFF REPORTS**

**PUBLIC COMMENT ON CLOSED SESSION ITEM ONLY**

**CLOSED SESSION**

**ANNOUNCEMENT AFTER CLOSED SESSION**

**ADJOURNMENT**

**Certification of posting the Agenda**

I declare under penalty of perjury that I am employed by the City of Firebaugh and that I posted this agenda on the bulletin boards at City Hall, November 2, 2018 at 5:00 p.m. by Rita Lozano Deputy City Clerk.

# MEETING MINUTES

The City Council/Successor Agency of the City of Firebaugh  
Vol. No. 18/10-15

**Location of Meeting:** Andrew Firebaugh Community Center  
1655 13<sup>th</sup> Street, Firebaugh, CA 93622  
**Date/Time:** October 15, 2018/6:00 p.m.

**CALL TO ORDER** Meeting called to order by Mayor Sablan at 6:00 p.m.

**ROLL CALL PRESENT:** Mayor Felipe Pérez  
Mayor Pro Tem Marcia Sablan  
Council Member Elsa Lopez  
Council Member Freddy Valdez

**ABSENT:** Council Member Brady Jenkins

**OTHERS:** City Attorney Boranian; City Manager/Acting Public Works Director, Ben Gallegos; Deputy City Clerk, Rita Lozano; Finance Director, Pio Martin; Police Chief, Sal Raygoza; Fire Chief, John Borboa, City Engineer Mario Gouveia, Wanda Breshears, Natalia Carranza, Frances Saeed & others.

**PLEDGE OF ALLEGIANCE:** Council Member Valdez led pledge of Allegiance.

## PUBLIC COMMENT:

Craig Smith of Gill Ranch Storage provide an update, they capacity to provide approximately 20 billion cubic feet (Bcf) of underground natural gas storage. The local site offers a unique opportunity to access five interconnects and was developed in a joint agreement by Gill Ranch Storage, LLC, a subsidiary of NW Natural, and PG&E. Gill Ranch holds two trainings with safety responders, every four years PG& E requires the company ask the community to complete a questioner every 4 years to check on how Gill Ranch is doing as part of their outreach program.

Council Member Sablan ask for a moment of silence for Ex-Council Member Clem Borboa, whom recently passed away. Council Member Lopez recommend the City Honor Mr. Borboa' s with a Proclamation to his family for his years of service to Firebaugh

## CONSENT CALENDAR:

- APPROVAL OF MINUTES – The City Council regular meeting on October 1, 2018.**
- WARRANT REGISTER – Period starting September 1, and ending on September 30, 2018.**

September 2018	General Warrants	#37197 - #37304	\$ 463,382.16
	Payroll Warrants	#70033 - #70132	\$ 225,389.53
<b>TOTAL</b>			<b>\$ 688,771.69</b>

**Motion to accept minutes by Council Member Valdez, second by Council Member Sablan; motion pass by unanimous 4-0 vote.**

## STAFF REPORTS

- **Police Chief Sal Raygoza** – There has been increase in traffic accidents, both in & out of town, five accidents in this past week.
- **Fire Chief, John Borboa** – The new fire truck is in service, which is good because the first, second & third has been in & out, so equipment has just been swapped back and forth. Had an arson fire around 4:00 am at 600 P Street apartments.

- **Finance Director, Pio Martin** – Working with the auditor and Clayton on the water/sewer rate study. Working with AT&T to switch service and help save money, currently we are with Tele Pacific, offices that will change service is City Hall, Water Department & Senior Center. There will be a transition, Margaret Camacho is retiring, Friday is her last day, she was asked to attend council meeting but was unable today. City advertised in the Journal and Dos Palos newspaper for the open position, since Nancy will moved to Margaret's position. Expecting the rate study to be presented at the first meeting in November for Council's review, so changes may take effect in March on 2019. Rates could increase or decrease based on the results of the study.
- **City Engineer, Mario Gouveia** – Fresno COG awarded \$35,000 of RSTP funding to assist in funding 8<sup>th</sup> Street project. Will hold a pre-construction meeting for Q St project, hoping to begin construction by the end of the month or early November, it coordinate with the CDBG project & future projects.
- **Deputy City Clerk, Rita Lozano** – Working on Liability Claim, agendas for Council meeting, looking for the grant agreement, attend training, advertised for open position and other general office operations.
- **City Attorney Meggin Boranian** – attended training & meet, Sabrina Ashjian, she works in Sacramento with the cannabis control appeals panel, asked her if she would attend a council meeting to provide information to council.
- **City Manager Ben Gallegos** – attended ICSC was able to talk a vendor that was our number one anchor & now if they come, other businesses will be more interested to follow. Owner of the Burger King is also interested in bring more businesses, since he owns various franchises. EDC was a vital source, with them having a booth at the conference they assisted the city a lot. PAL was awarded \$3000 grant, which will help them with their soccer league. Toured the courthouse, it has multiple rooms that we were unaware of & negotiating with Fresno County on purchasing it. The Senior Center scheduled to be on the next agenda, all Council Members have toured the facility. Engie agreement will be on the next agenda too.
- **Council Member Valdez** – Attended our 3<sup>rd</sup> ICSC, schedule was filled with meeting & had other meeting not scheduled, getting new businesses in town will help the general fund that generally funds our Police & Fire (Public Safety). The store interested in coming will provided about 80% of the community's needs, so it was a great success.
- **Council Member Sablan** - with Ben & Freddy, attended a workforce meeting, they will provided HR services & training for businesses in town, they will hold a meeting sometime in January or February as outreach of services the can offer to the local businesses.
- ***Motion to enter closed session at 6:29 pm. by Council Member Valdez, second by Council Member Sablan; motion pass by unanimous 4-0 vote.***

#### **PUBLIC COMMENT ON CLOSED SESSION ITEM ONLY**

#### **CLOSED SESSION**

#### **3. Government Code Section 54957**

PUBLIC EMPLOYEE EMPLOYMENT: City Attorney.

***Motion to enter open session at 7:13 pm. by Council Member Valdez, second by Council Member Sablan; motion pass by unanimous 4-0 vote.***

#### **ANNOUNCEMENT**

***No Action to report***

#### **ADJOURNMENT**

***Motion adjourn by Council Member Valdez, second by Council Member Sablan; motion pass by unanimous 4-0 vote at 7:14 p.m.***

## CITY COUNCIL STAFF REPORT

<b>TO:</b>	Honorable Mayor and City Council	<b>DATE:</b> November 5, 2018
<b>FROM:</b>	Ben Gallegos, City Manager	
<b>PREPARED BY:</b>	Paul Ashby, Adams Ashby Group	
<b>SUBJECT:</b>	Potential Programs for Inclusion in the State Community Development Block Grant (CDBG) Application	

### **RECOMMENDATION**

Conduct Public Hearing and provide guidance on the projects/activities to potentially apply for.

### **BACKGROUND**

The U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) program authorizes the use of funds to assist low- and moderate-income families or aid in the prevention or elimination of slums or blight. There are two types of CDBG programs: “entitlement” and “non-entitlement”. Metropolitan cities and urban counties are entitled to receive annual grants under the “entitlement” program. Metropolitan cities are principal cities or Metropolitan Areas (MAs) or other cities within MAs that have populations of at least 50,000. Urban Counties are within MAs that have population of 200,000 or more excluding the population of metropolitan cities within their boundaries. The “non-entitlement” program is administered by the State Department of Housing and Community Development (HCD).

Therefore, staff requests that the Council review potential CDBG projects/activities and select the projects/activities that staff should consider including in the application. The Council must hold two public hearings to discuss the potential application(s) and allow for public input. This hearing serves as the first public hearing and will allow residents and organizations to comment on what types of eligible activities the City should apply for. The second public hearing would be to discuss and approve the application prior to submittal.

Selected projects/activities must meet one or more of the three National Objectives listed in CDBG Federal Statutes:

- Benefit to low and moderate income persons;
- Prevention or elimination of slums and blight; or
- Meeting an urgent community need which pose an immediate threat to the health and welfare of the community (State designates when the “urgent need” objective is allowed for a NOFA).

The benefit to low and moderate income persons is the most predominately used national objective. In order to benefit low- or moderate-income persons, the project/activity must either benefit an area that is comprised of at least 51% low- or moderate-income households, or the program benefits individually qualified households (i.e., each participating household is income certified).

The project/activity must also fall under one of the following categories. The 2018 State NOFA has not been released yet, but according to HCD staff it will allow eligible jurisdictions to apply for a maximum of **two** activities (e.g., “Public Improvements”, “Public Facility”, etc.) with total funding not to exceed \$3,000,000.

- **Public Improvements** (maximum grant of \$3,000,000). Project must be located in and serve a predominantly residential area. Examples include water and sewer facilities, flood and drainage facilities, accessibility related street improvements (i.e., curb ramps), and utilities.

- Public Facility (maximum grant of \$3,000,000). Examples include acquisition, rehabilitation or new construction of buildings used for public purposes such as training, health services, education, recreation, nutrition, shelter, day care, temporary housing and fire protection.
- Public Service (maximum grant of \$500,000), for up to **two** services. Examples include child care, health care, recreation programs, fair housing counseling, drug and alcohol abuse counseling and testing, homeless services, senior services, and nutrition services benefitting low- and moderate-income persons. For the “entitlement” program, a maximum of 15% of the City’s allocation can be allocated to this category.
- Planning and Technical Assistance (maximum grant of \$100,000) for **one** study. The product must show a connection to assisting with an eligible CDBG activity that, if implemented, meets a National Objective. Product(s) are submitted to the State at the time of completion. The grants require a five percent cash match to be expended prior to expenditure of CDBG funds. Examples include studies, analysis, data gathering, preparation of plans, and identification of action that will implement plans.
- Housing (maximum grant of \$1,000,000):
  - Homeownership Assistance Program: assistance with down-payment or closing costs.
  - Housing Rehabilitation Program for Single Family Homes: include repairs and improvements of owner-occupied units
  - Housing Combo Program (Homeownership Assistance Program and Housing Rehabilitation Program for Single Family Homes)
  - Multi-Family (five or more units at a specific site) Housing Rental Rehabilitation Project (with or without acquisition): includes repairs and improvements of renter-occupied units for sites where the majority of the tenants qualify as low- or moderate-income households.
- Business Assistance or Microenterprise Assistance (maximum grant of \$500,000 for either Business Assistance or Microenterprise Assistance, or \$500,000 for both). Examples of Business Assistance include financing of working capital, furniture, equipment, and property repairs/improvements. Examples of Microenterprise include business training, financing of working capital, furniture, equipment, and property repairs/improvements.

#### **50% Expenditure Rule / Waiver**

As enacted, Assembly Bill 723 (AB 723) allows applicants to request a waiver of the 50% Expenditure Rule (“Rule”). The Rules states an applicant shall be ineligible for any additional CDBG funds unless the applicant has expended at least 50 percent of CDBG funds awarded for any standard agreement executed in 2012 or later. AB 723 allows the director to waive the Rule, thus making an applicant eligible to apply for NOFA’s, including General NOFA’s, and receive CDBG funds.

**New to this NOFA**, the Department has implemented a waiver process for applicants who meet one of two criteria: the application is for a “shovel ready” project, or, the applicant received Special Drought and/or Disaster NOFA awards.

In order to be deemed “shovel ready” the following documentation must be submitted with the project application:

- Site Control
- All Funding In Place
- Evidence of Engineering Procurement
- Preliminary Project Plans/Specifications
- Project Budget and Schedule
- List of Local Permits

If awarded, the project will need to be in construction within 12 months of contract award by CDBG.

*The City currently has an open contract with CDBG for their 2017 application which includes a sewer line replacement project and new VFW Hall building. The City has not expended any of these dollars yet, thus a waiver process will be necessary in order for the City to apply this round as 50% of those funds will not have been expended yet.*

***Due to the waiver process being used, the City would be eligible to apply for 1 activity/project listed above for a maximum application amount of \$3 million.***

### **DISCUSSION**

City staff has meet and discussed potential projects that may fit the criteria of the waiver process. Based on the stringent requirements, staff developed the following projects that are under consideration, but by no means is this all-inclusive:

1. Well #12 Rehabilitation
2. Waterline Replacements on Cline and Zozaya Street
3. HUD Water Storage Tank (probably not feasible)
4. Sewer Lines in Downtown Area (probably not feasible)

### **FISCAL IMPACT**

The City's grant consultant for CDBG, Adams Ashby Group, will be completing the application. The application cost is an eligible expenditure under the City's open contract with general administration funds. It is believed that the grant will have enough funds to cover this cost, with no additional funds being needed. If awarded, CDBG funds are 100% grant.

### **RECOMMENDATIONS**

1. Open the public hearing, receive public comment, review potential projects and select the projects for inclusion in the State CDBG application, and provide direction for staff to proceed with preparing an application; or
2. Provide alternative direction to staff.

## STAFF REPORT

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TO: Mayor and Council Members of the City of Firebaugh  
FROM: Ben Gallegos, City Manager  
DATE: November 5, 2018  
SUBJECT: 15-CDBG-10568 Closeout and Public Hearing

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### RECOMMENDATION

- Open Public Hearing
- Receive Public Comment(s)
- Close Public Hearing.
- Direct staff to submit final reports and closeout package to the State

### HISTORY

In 2015, the City received \$2,000,000 from CDBG under the General Allocation NOFA. The funds were allocated towards the following activities:

- Waterline Replacement Project
- Senior Center Rehabilitation
- Code Enforcement program

The City is required to hold a public hearing to discuss the grant accomplishments and submit a closeout certification to the State. Upon direction from the Council, staff will submit the final closeout package to CDBG.

### DISCUSSION

The City was very successful in expending their CDBG dollars and expended all CDBG monies within the 3-year grant program. A total of \$2 million dollars will be reimbursed from the State upon closeout package and final draw requests being sent to the State which will occur in November.

The City was recently awarded another CDBG grant from their 2017 application for sewer line replacements and a complete rehabilitation of the VFW Hall. Both of these projects are expected to start design in 2019.

### FISCAL IMPACT

The CDBG funds of \$2 million were 100% grant funded and all the dollars were expended from this grant. In addition to the CDBG funds, the City spent an additional \$58,000 (approximately) to cover costs for the senior center that exceed the grant allotment, which staff was aware of and budgeted for.

**\*PUBLIC HEARING REQUIRED\***



## CITY COUNCIL STAFF REPORT

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TO: Honorable Mayor and City Council DATE: November 5, 2018

FROM: Ben Gallegos, City Manager

PREPARED BY: Paul Ashby, Adams Ashby Group

SUBJECT: Resolution Accepting Completion of the Senior Center Rehabilitation Project, Authorizing the City Clerk to file Notice of Completion with Fresno County and Authorizing the City Manager to Release Payment to Marko Construction Group.

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### **RECOMMENDATION**

1. Accept the work as complete
  2. Authorize the City Clerk to record a Notice of Completion with Fresno County
  3. Authorize the City Manager to release retention payment upon lien period expiring to Marko Construction Group
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### **BACKGROUND**

The City of Firebaugh awarded the Senior Center Rehabilitation Project to Marko Construction Group, Inc. on November 20, 2017. The total contract amount was \$786,828.00.

### **DISCUSSION**

Project construction started in January of 2019 with a rehabilitation of the senior center, which included but was not limited to: New kitchen, new roof, HVAC, electrical work, windows, siding, paint, entry way, bathrooms, etc.

A change order in the amount of \$8,431.33 was issued for a small amount of extra work that was needed that increased the contract total minimally. Total project costs were \$795,259.33 for construction.

Final inspection has been performed and the work has been found to be in compliance with the plans and specifications. Therefore, the work should be accepted as complete and Notice of Completion filed. Retention payment will be due to Marko Construction Group in the amount of \$39,763.04.

### **FISCAL IMPACT**

The bulk of the construction dollars provided by CDBG was 100% grant. The contract did exceed allowable grant dollars thus additional funds were needed to close the construction gap. The funding breakdown is as follows:

CDBG	\$691,858.33
USDA CF Program	\$45,130.00
Local Monies	\$58,271.00
Total	\$795,259.33

### **ATTACHMENTS:**

1. Resolution and Notice of Completion

**RESOLUTION NO. 18-54**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH ACCEPTING COMPLETION OF THE SENIOR CENTER REHABILITATION PROJECT, AUTHORIZING THE CITY CLERK TO FILE NOTICE OF COMPLETION WITH FRESNO COUNTY AND AUTHORIZING THE CITY MANAGER TO RELEASE PAYMENT TO MARKO CONSTRUCTION GROUP**

**WHEREAS**, the City advertised the Project on August 15, 2017; and

**WHEREAS**, the City opened publicly opened bids on October 3, 2017; and

**WHEREAS**, the City Council awarded a contract to Marko Construction Group in the amount of \$786,828.00, on November 20, 2017; and

**WHEREAS**, final inspections have been completed and final acceptance as been recommended; and

**WHEREAS**, upon approval of the final acceptance of the Project by the City Council, the City Clerk will record a Notice of Completion with Fresno County and the City Manager will release retention payment to the contractor.

**Now, Therefore, Be It Resolved** that the City Council of the City of Firebaugh hereby:

1. Adopts a resolution to accept the Senior Center Rehabilitation Project.
2. Authorizes the City Clerk to record a Notice of Completion with Fresno County.
3. Authorizes the City Manager to release retention and final payments to Marko Construction Group.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Firebaugh held on November 5, 2018 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Felipe Perez, Mayor

\_\_\_\_\_  
Rita Lozano, Deputy City Clerk

**ATTEST:**

I, hereby certify that the forgoing resolution was regularly introduced, passed and adopted at a regular meeting of the City Council of the City of Firebaugh this 5<sup>th</sup> day of November 2018.

\_\_\_\_\_  
Rita Lozano, Deputy City Clerk, City of Firebaugh

RECORDING REQUESTED BY  
City Clerk of the City of Firebaugh  
AND WHEN RECORDED MAIL TO:

Name **City of Firebaugh**  
Street Address **1133 P Street**  
City & State **Firebaugh, CA 93622**

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

## NOTICE OF COMPLETION

Notice is hereby given that:

1. The undersigned is owner or corporate officer of the owner of the interest or estate stated below in the property hereinafter described:
2. The full name of the owner is City of Firebaugh
3. The full address of the owner is 1133 P Street, Firebaugh, CA 93622
4. The nature of the interest or estate of the owner is in fee.  
(If other than fee, strike "In Fee" and Insert, for example, "purchaser under contract of purchase," or "lessee")
5. The full names and full addresses of all persons, if any, who hold title with the undersigned as joint tenants or as tenants in common are:  

NAMES	ADDRESSES
<u>N/A</u>	
6. A work of improvement on the property hereinafter described was completed on 11/01/2018. The work done was:  
Senior Center Rehabilitation Project
7. The name of the contractor, if any, for such work of improvement was Marko Construction Group, Inc.  
(If no contractor for work of improvement as a whole, insert "none") (Date of Contract)
8. The property on which said work of improvement was completed is in the city of Firebaugh,  
County of Fresno, State of California, and is described as follows: The major work consisted of new kitchen, bathrooms, flooring, lighting, electrical work, plumbing, ADA accessibility, siding, new roof, painting, new HVAC, entry way and more. All work was completed at the City of Firebaugh Senior Center.
9. The street address of said property is 1601 Thomas Conboy Ave, Firebaugh, CA 93622  
(If no street address has been officially assigned, insert "none")

Dated: 11/05/2018

\_\_\_\_\_  
Signature of owner or corporate officer of owner  
named in paragraph 2 or his agent

## VERIFICATION

I, the undersigned, say: I am the City Manager of \_\_\_\_\_ the declarant of the foregoing  
("President of," "Manager of," "A partner of," "Owner of," etc.)  
notice of completion; I have read said notice of completion and know the contents thereof; the same is true of my own knowledge.  
I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 20 18, at City of Firebaugh, California.  
(Date of signature) (City where signed)

\_\_\_\_\_  
(Personal signature of the individual who is swearing that the contents of the notice of completion are true)

**RESOLUTION NO. 18-55**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH ACCEPTING  
AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER  
A PROGRAM DEVELOPMENT AGREEMENT WITH ENGIE SERVICES U.S., INC.**

**WHEREAS**, the City of Firebaugh, has received a Program Development Agreement with ENGIE Services U.S., Inc. for energy assessment recommendations and related administrative services, which is attached and incorporated herein by this reference; and

**WHEREAS**, the City Council does hereby accept and agrees with the terms and conditions set forth in the Agreement; and

**WHEREAS**, the City Council wishes to appoint the City Manager as the designated City representative to execute and administer said Agreement.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Firebaugh that it does hereby authorize the City Manager, Benjamin Gallegos, to execute and administer said Agreement.

The foregoing Resolution was approved and adopted at a regular meeting of the City Council of the City of Firebaugh held on the 5<sup>th</sup> day of November, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

**APPROVED:**

**ATTEST:**

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**Felipe Perez, Mayor**

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**Rita Lozano, Deputy City Clerk**



## PROGRAM DEVELOPMENT AGREEMENT

This PROGRAM DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this \_\_\_ day of October 2018, between ENGIE Services U.S. Inc. ("ENGIE Services U.S."), having its principal offices at 500 Twelfth Street, Suite 300, Oakland, CA 94607, and the City of Firebaugh, with offices located at 1133 P Street, Firebaugh, CA 93622 ("Firebaugh") and together with ENGIE Services U.S. the "Parties" and each of Firebaugh and ENGIE Services U.S. a "Party").

WHEREAS, ENGIE Services U.S. is an energy services and solutions company with the technical and management capabilities and experience to perform an integrated energy assessment (an "Assessment") and to identify supply-side and/or demand-side energy conservation measures ("ECMs");

WHEREAS, Firebaugh desires to enter into an agreement to have ENGIE Services U.S. perform an Assessment in accordance with the scope of work set forth in Attachment A (the "Scope of Work") for the sites listed on Part I of Attachment B (the "Sites"), and to deliver recommendations, described in the Scope of Work, identifying energy improvements and operational changes to be installed or implemented at the Sites (the "Recommendations"); and

WHEREAS, the primary purpose of the Assessment and the Recommendations is to provide an engineering and economic basis for the implementation of the ECMs identified in the Recommendations, in furtherance of which the Parties intend to negotiate and execute a contract providing for, among other things, engineering, procurement, installation, construction and training services (an "Energy Services Contract");

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1. ASSESSMENT AND RECOMMENDATIONS

ENGIE Services U.S. agrees to complete the Assessment and to present Recommendations to Firebaugh within ninety (90) calendar days after the date on which ENGIE Services U.S. receives the information listed in Part I of Attachment A (the "Required Information"). Firebaugh agrees to deliver the Required Information to ENGIE Services U.S. no later than thirty (30) calendar days after the date hereof.

Firebaugh agrees to assist ENGIE Services U.S. in performing the Assessment by (i) providing ENGIE Services U.S. with access to key decision makers and stakeholders of the City of Firebaugh, (ii) providing ENGIE Services U.S. its employees and agents, such access to the Sites and other relevant facilities of Firebaugh as ENGIE Services U.S. deems necessary and (iii) providing, or causing Firebaugh's energy suppliers to provide, complete and accurate data concerning energy usage and costs related to the Sites and other relevant facilities. ENGIE Services U.S. will be entitled to rely upon the accuracy and completeness of all information provided to ENGIE Services U.S. by Firebaugh and Firebaugh's energy suppliers. ENGIE Services U.S. will promptly provide written notice to Firebaugh if ENGIE Services U.S. determines there is any incorrect data included in the information provided by Firebaugh or Firebaugh's energy suppliers, but ENGIE Services U.S. will have no obligation to correct or confirm any such information unless otherwise specified in the Scope of Work. Any change(s) in the Scope of Work will be set forth in a writing executed by the Parties.

### 2. COMPENSATION / TERMINATION

ENGIE Services U.S. will perform the Assessment at no cost to Firebaugh.

Each of Firebaugh and ENGIE Services U.S. reserves the right to terminate this Agreement at any time during the course of the Assessment, by delivery of written notice to the other. If ENGIE Services U.S. determines that the projected savings from implementation of the ECMs identified during the Assessment cannot result in a paid-from-savings project which complies with California Government Code Sections 4217.10 through 4217.18, the Assessment and this Agreement will be terminated by ENGIE Services U.S.

### 3. INSURANCE

ENGIE Services U.S. will maintain, or cause to be maintained, for the duration of this Agreement, the insurance coverage outlined in (A) through (F) below, and all such other insurance as required by applicable law. Evidence of coverage will be provided to Firebaugh via an insurance certificate.

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

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

- B. Commercial General Liability insurance with limits of:

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

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

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

- D. Professional Liability insurance with limits of:

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

Coverage to be written on a claims-made form.

- E. Umbrella/Excess Liability Insurance. Limits as follows:

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

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

- F. Policy Endorsements.

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

### 4. INDEPENDENT CONTRACTOR

ENGIE Services U.S., and the agents and employees of ENGIE Services U.S., its subcontractors and/or consultants, are acting in an independent capacity in the performance of this Agreement, and not as public officials, officers, employees, consultants, or agents of the City of Firebaugh for purposes of conflict of interest laws or any other applicable law. This Agreement may not be construed to represent the creation of an employer/employee or principal/agent relationship. ENGIE Services U.S. will act in an independent capacity and retain sole discretion in the manner and means of carrying out its activities under this Agreement. ENGIE Services U.S. is free to work for other entities while under contract with Firebaugh.

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## 5. ENERGY SERVICES CONTRACT

As it is the intent of Firebaugh and ENGIE Services U.S. to pursue cost effective energy retrofits and ECMs at the Sites pursuant to an Energy Services Contract, both Parties agree to enter into good faith negotiations of an Energy Services Contract immediately following completion of the Assessment.

## 6. WORK PRODUCT

Firebaugh will not, by virtue of this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Assessment or the Recommendations. The Recommendations, and all data, proposals, plans, specifications, flow sheets, drawings, and other work product prepared or produced by ENGIE Services U.S. hereunder ("Work Product") and furnished directly or indirectly, in writing or otherwise, to Firebaugh under this Agreement will remain ENGIE Services U.S.'s property and will be used only in connection with work performed by ENGIE Services U.S. ENGIE Services U.S. will be deemed the author and owner of such Work Product and will retain all common law, statutory and other reserved rights, including copyrights. The Work Product may not be used by Firebaugh as a basis for facility construction or implementation of ECMs developed herein by any entity other than ENGIE Services U.S., without the prior written agreement of ENGIE Services U.S. Any unauthorized use of the Work Product will be at Firebaugh's sole risk and without liability to ENGIE Services U.S., and Firebaugh agrees to defend, indemnify and hold harmless, ENGIE Services U.S., its subcontractors, and their directors, employees, subcontractors, and agents from any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature (collectively, "Losses") associated with or resulting from such use.

## 7. LIMITATION OF LIABILITY

The liability of a defaulting Party, in connection with this Agreement or any analysis, report, recommendations, or other deliverables provided hereunder, will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Additionally, each Party waives any claims for negligence against the other Party to the greatest extent permitted by law. In no event will ENGIE Services U.S. be liable to Firebaugh for any Losses which collectively exceed the amount of the Assessment Fee, regardless of whether such amounts arise out of breach of contract, guarantee or warranty, tort, product liability, contribution, strict liability or any other legal theory.

## 8. NONDISCRIMINATION; COMPLIANCE WITH LAWS

ENGIE Services U.S. will comply with all applicable laws, rules, regulations and policies, including, but not limited to, those relating to nondiscrimination, accessibility and civil rights.

The Parties acknowledge and agree that ENGIE Services U.S. is not a municipal advisor and cannot give advice to Firebaugh with respect to municipal securities or municipal financial products absent Firebaugh being represented by, and relying upon the advice of, an independent registered municipal advisor. ENGIE Services U.S. is not subject to a fiduciary duty with regard to Firebaugh or the provision of information to Firebaugh. Firebaugh will consult with an independent registered municipal advisor about the financing option(s) appropriate for Firebaugh's situation.

ENGIE Services U.S. cannot guarantee that Firebaugh will receive funding from any energy efficiency rebate, incentive, and/or loan program(s) (collectively, "Incentive Funds"); ENGIE Services U.S. expressly disclaims any liability for Firebaugh's failure to receive any portion of the Incentive Funds, and Firebaugh acknowledges and agrees that ENGIE Services U.S. will have no liability for any failure to receive all or any portion of the Incentive Funds.

## 9. FORCE MAJEURE

Neither Party will be considered to be in default in the performance of any material obligation under this Agreement (other than the obligation to make payments) when a failure of performance will be due to an event of Force Majeure. The term "Force Majeure" will mean any cause beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which, despite using commercially reasonable efforts, it has been unable to overcome. Neither Party will be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its

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obligations under this Agreement by reason of an event of Force Majeure will give prompt written notice of such fact to the other Party.

#### **10. INTEGRATION; AMENDMENT; COUNTERPARTS**

This Agreement constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement may not be amended except by a writing executed by both Parties. No oral amendment shall be enforceable, even if supported by new consideration. Except as otherwise provided herein, the terms and provisions of this Agreement will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by email shall be effective as delivery of a manually executed counterpart of this Agreement.

#### **11. DISPUTE RESOLUTION; APPLICABLE LAW; VENUE; SEVERABILITY**

If a dispute arises out of or relates to this Agreement, or the transaction contemplated by this Agreement (a "Dispute"), either Party may initiate the dispute resolution process set forth in this Section 11 by giving notice to the other Party. Senior executives for the Parties will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation.

If the Dispute is not settled by senior management conference, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association ("AAA"). Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator.

If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration. Either Party may initiate arbitration proceedings by notice to the other Party and the American Arbitration Association. The following provisions apply to all arbitration proceedings pursuant to this Article: (i) The place of arbitration will be the American Arbitration Association office closest to where the Assessment was performed; (ii) one arbitrator will conduct the arbitral proceedings in accordance with the Commercial Arbitration Rules and Mediation Procedures (excluding the Procedures for Large, Complex Commercial Disputes) of the American Arbitration Association currently in effect ("Arbitration Rules") (to the extent of any conflicts between the Arbitration Rules and the provisions of this Agreement, the provisions of this Agreement prevail); (iii) the Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense, and any counterclaim or reply (in the discretion of the arbitrator, the production of additional documents that are relevant and material to the determination of the Dispute may be required); (iv) the arbitrator does not have the power to award, and may not award, any punitive, indirect or consequential damages (however denominated); all arbitration fees and costs are to be shared equally by the parties, regardless of which Party prevails, and each Party will pay its own costs of legal representation and witness expenses; (v) the award must be in the form of a reasoned award; (vi) the Dispute will be resolved as quickly as possible, and the arbitrator will endeavor to issue the arbitration award within six (6) months after the date on which the arbitration proceedings were commenced; and (vii) the award will be final and binding and subject to confirmation and enforcement proceedings in any court of competent jurisdiction.

If any term of this Agreement is declared by a court to be illegal, invalid or unenforceable, the legality, validity and enforceability of the other terms of this Agreement will not be affected or impaired thereby, and the rights and obligations of the Parties will be enforced as if the illegal, invalid or unenforceable term were revised to the minimum extent necessary to make such term legal, valid and enforceable.

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



IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Agreement.

**ENGIE SERVICES U.S.:**

**FIREBAUGH:**

**ENGIE Services U.S. Inc.**

**City of Firebaugh**

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

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

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

## ATTACHMENT A

### SCOPE OF WORK

#### I. Required Documents (Needed to Proceed)

##### A. Firebaugh will provide the following detailed documentation:

1. Most recent three (3) years of audited financial statements.
2. Actual utility company invoices for all utilities serving the Sites, for a minimum of two (2) years, and preferably three (3) years, immediately prior to the date hereof, with, beginning with the most recently completed month.
3. Utility company demand interval recordings of 15/30-minute electrical demand for characteristic months of the year, where available.
4. Record drawings (AutoCAD or hard copy) for the Sites:
  - a. electrical
  - b. mechanical
  - c. structural
  - d. modifications and remodels
  - e. site landscaping
5. AutoCAD or hard copy of 8 ½" x 11" or 11" x 17" floor and roof plans of all Sites, as well as information on the age, type and condition of buildings and roofs.
6. A list of key contacts at each Site, including Firebaugh personnel knowledgeable of the electrical, HVAC, lighting and controls systems.

#### II. Scope of Work

The Integrated Energy Assessment (the "Assessment") will be performed as described below:

- A. Perform detailed review of documents delivered above.
- B. Perform site surveys to identify potential ECMs and distributed/renewable generation technologies including proposed locations and potential improvements to the working environment. Survey consists of:
  1. Site walk to observe and capture data on energy using equipment including data regarding nameplate, condition, and operating parameters.
  2. Shading analysis
  3. Data logging if necessary
- C. Perform Utility Analysis and Solar Photovoltaic Production Analysis:
  1. Identify current rate schedule and analyze electrical usage and model load profile for each site
  2. Determine expected solar photovoltaic production curve for proposed sites
  3. Overlay electrical load profile with expected solar photovoltaic production curve to "right size" the solar systems and identify rate restructuring opportunities
- D. Prepare a post-inspection status update to present preliminary findings.
  1. Calculate energy use and cost for all viable ECMs: Calculation methodology will be determined by ENGIE Services U.S., and may include spreadsheet analysis or other accepted tools following the methodology of ASHRAE or other nationally recognized authority and shall be based on sound engineering principles
  2. Operational and maintenance savings, if any, will be identified as a separate line item.
  3. Prepare a proposed "Project Cost" and a list of "Services to Be Provided," in anticipation of ENGIE Services U.S. and Firebaugh entering into an Energy Services Contract to design, construct, install, and monitor the proposed ECMs. The proposed Project Cost is conditioned on prompt execution of the Energy Services Contract and the condition that hazardous substance or abnormal subsurface/soil condition issues are not present.
  4. Provide the financial analysis and the Energy Services Contract to Firebaugh.

5. Meet with Firebaugh to review the options proposed and assemble a package of options which is compatible with Firebaugh's investment and infrastructure improvement goals and review the project cost and list of services to determine next steps.

**III. Technologies to be Considered:**

- A. The technologies listed below will be considered during the performance of assessments:
  1. LED lighting and control upgrades
  2. HVAC upgrades/replacements/addition
  3. VFD upgrades
  4. Solar photovoltaic projects
  5. Water meter installations
  6. Construction of new building

## ATTACHMENT B

### FIREBAUGH SITE INVENTORY

#### PART I: SITES INCLUDED IN ASSESSMENT

Building Name	Address (All sites in Firebaugh, CA 93622)	Square Feet
<b>City Sites with Targeted ECMs</b>		
Sewer Plant	SW SW SW 34 12 14	NA
Water Site #2	LEVEE & VASQUEZ DR WATER	NA
Water Site #1 - Water Booster Pump	<del>1/2 MI N/O ROAD 7-1/2, ES SAN JOAQUIN RIVER</del>	NA
Booster Pump	NW NW 33-12-14	NA
75HP	NW NW 28-12-14	NA
Well Site #16	<del>1/2 MI N/O AVE 7, E/O SAN JOAQUIN RIVER</del>	NA
Well #11 - 60HP PUMP PARK	ES CITY PARK AT 16 <sup>TH</sup>	NA
Main Lift Station	SE SE 20 12 14	NA
Well Site #15	<del>1/2 MI N/O AVE 7, E/O SAN JOAQUIN RIVER</del>	NA
Well #17	NE SW SE 28 12 14	NA
Fire Department (City Hall)	1575 11th Street	9,220
Water Pump	SW SW 34-12-14	NA
City Hall	1133 P Street	3,450
Head Start	1777 Thomas Conboy Avenue	1,740
Learning Center	1668 11th Street	2,240
Senior Center	1601 Thomas Conboy Avenue	2,467
Public Works	1666 11th Street	3,200
Rodeo Park Lighting	SW NW SEC 28-12-14	NA
Communication Tower	1666 11th Street	NA

#### PART II: SITES NOT INCLUDED IN ASSESSMENT

Sites not mentioned above