

MEETING AGENDA

The City Council/Successor Agency of the City of Firebaugh

Vol. No. 20/01-06

Location of Meeting:

**Andrew Firebaugh Community Center
1655 13th Street, Firebaugh, CA 93622**

Date/Time:

January 6, 2020/6:00 p.m.

CALL TO ORDER

ROLL CALL

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

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

APPROVAL OF THE AGENDA

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 December 16, 2019.

PUBLIC HEARING

2. ORDINANCE NO. 19-07 - AN ORDINANCE OF THE CITY OF FIREBAUGH, COUNTY OF FRESNO, STATE OF CALIFORNIA, AMENDING ORDINANCE NO. 359, OF THE CITY OF FIREBAUGH, RELATING TO THE CLASSIFICATION OF THE ZONE OF PARTICULAR PARCELS OF REAL PROPERTY – SECOND READING.

Recommended Action: City Council received public comments & approves ord. 19-07.

3. PUBLIC HEARING TO DISCUSS THE STATE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) APPLICATION AND POSSIBLE ACTIVITIES AND PROJECTS.

Recommended Action: City Council received public comments, informational item only.

NEW BUSINESS

4. **RESOLUTION NO. 20-01 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING AN AGREEMENT FOR ARCHITECTURAL SERVICES RELATED TO A NEW FIRE STATION.**

Recommended Action: Council receives public comment & approves Res. No. 20-01.

5. **RESOLUTION NO. 20-02 - A RESOLUTION OF THE CITY OF FIREBAUGH APPROVING A CONSULTING AGREEMENT WITH CLAUDIA SOLIS FOR SOCIAL MEDIA MANAGEMENT AND AUTHORIZING CITY MANAGER TO SIGN SAID AGREEMENT.**

Recommended Action: Council receives public comment & approves Res. No. 20-02.

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, January 3, 2020 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. 19/12-16

Location of Meeting: Andrew Firebaugh Community Center
1655 13th Street, Firebaugh, CA 93622
Date/Time: December 16, 2019/6:00 p.m.

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

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

ABSENT:

OTHERS: City Attorney Jim Sanchez; City Manager/Acting Public Works Director, Ben Gallegos; Deputy Clerk, Rita Lozano; Finance Director, Pio Martin; Police Chief, Sal Raygoza; Fire Chief, John Borboa; Mario Gouveia, City Engineer, City Planner, Karl Schoettler, Wanda Breshears, & others.

PLEDGE OF ALLEGIANCE Council Member Jenkins led pledge of Allegiance.

APPROVAL OF THE AGENDA

Motion to approve agenda by Council Member Valdez, second by Council Member Perez; motion pass by 5-0 vote.

PUBLIC COMMENT None

REORGANIZATION

1. REORGANIZATION OF CITY COUNCIL.

A. Mayor New Mayor Elsa Lopez
B. Mayor Pro Tem Mayor Pro Tem Freddy Valdez

CONSENT CALENDAR

2. APPROVAL OF MINUTES – The City Council regular meeting on December 2, 2019.

3. WARRANT REGISTER – Period starting November 1, and ending on November 30, 2019.

November 2019	General Warrants	#38971 - #39104	\$ 816,062.45
	Payroll Warrants	#71161 - #71178	\$ 234,128.28
TOTAL			\$ 1,050,190.73

4. CITY OF FIREBAUGH 2020 HOLIDAY SCHEDULE.

5. CITY OF FIREBAUGH 2020 COUNCIL MEETING SCHEDULE.

6. CITY OF FIREBAUGH 2020 COMMITTEE ASSIGNMENT.

Motion to approve Consent Calendar by Council Member Valdez, second by Council Member Sablan; motion pass by 5-0 vote.

PUBLIC HEARING

7. **RESOLUTION NO. 19-58 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING AN AMENDMENT TO TENTATIVE SUBDIVISION MAP 2018-01 (CEN CAL BUILDERS (DEL RIO PLACE)).**

Open hearing time at 6:06 pm – Engineer of Cen Cal Project in Del Rio, stated originally PG&E said they would move the line but would need a 40 ft. easement but then changed their mind, the chance of the transmission line going underground is not likely,. Developer states it would kill the project because it is too costly and would take about too much time (PG&E would take about 2 years to give approval to move the line) - Closing hearing time at 6:22 pm

Motion to approve Res. No. 19-58 by Council Member Jenkins, second by Council Member Perez; motion passes by 4-1 vote. Valdez – No.

➤ *Council Member Sablan – abstained and left the room.*

8. **RESOLUTION NO. 19-68 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH ADOPTING A MITIGATED NEGATIVE DECLARATION FOR THE VALLEY HEALTH TEAM PROJECT (GENERAL PLAN AMENDMENT/ZONE CHANGE 2019-03 AND AMENDMENT TO CONDITIONAL USE PERMIT 2016-01).**

Open hearing time at 6:31 pm – Chris Gutierrez asked, “If the parking is for employees only, is there going to be a gate or security guard on patrol to keep others from parking there.” Jeff stated Staff will get to the facility early and will take most, if not all of the parking spaces prior to business hours. Hoping to be in operation in about 2 years, the building will have a complete new façade. - Closing hearing time at 6:33 pm.

Motion to approve Res. No. 19-68 by Council Member Jenkins, second by Council Member Perez; motion passes by 4-0 vote. Sablan – Abstained.

9. **RESOLUTION 19-69 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING GENERAL PLAN AMENDMENT 2019-03 (VALLEY HEALTH TEAM).**

Motion to approve Res. No. 19-69 by Council Member Jenkins, second by Council Member Perez; motion passes by 4-0 vote. Sablan – Abstained.

10. **ORDINANCE NO. 19-07 - AN ORDINANCE OF THE CITY OF FIREBAUGH, COUNTY OF FRESNO, STATE OF CALIFORNIA, AMENDING ORDINANCE NO. 359, OF THE CITY OF FIREBAUGH, RELATING TO THE CLASSIFICATION OF THE ZONE OF PARTICULAR PARCELS OF REAL PROPERTY – FIRST READING.**

Motion to approve Ord. No. 19-07 by Council Member Jenkins, second by Council Member Perez; motion passes by 4-0 vote. Sablan – Abstained.

➤ *Council Member Sablan – reentered the room.*

NEW BUSINESS

11. **RESOLUTION NO. 19-64 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING PAYMENT OF INVOICE FOR MUNICIPAL CODE SERVICES TO GENERAL CODE.**

Motion to approve Res. No. 19-64 by Council Member Sablan, second by Council Member Perez; motion passes by 5-0 vote.

12. **RESOLUTION NO. 19-65 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT DEFERRING BUILDING PERMIT FEES.**

Motion to approve Res. No. 19-65 by Council Member Sablan, second by Council Member Jenkins; motion passes by 5-0 vote.

13. **RESOLUTION NO. 19-66 - AUTHORIZING AND DIRECTING THAT APPLICATION BE MADE TO OBTAIN A GRANT UNDER THE SUSTAINABLE GROUNDWATER MANAGEMENT GRANT PROGRAM'S PLANNING GRANT – ROUND 3 AND TO ENTER INTO AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF WATER RESOURCES TO RECEIVE A GRANT FOR THE DELTA-MENDOTA SUBBASIN SUPPLEMENTAL GSP DEVELOPMENT PROPOSAL.**

Motion to approve Res. No. 19-66 by Council Member Jenkins, second by Council Member Sablan; motion passes by 5-0 vote.

14. **RESOLUTION NO. 19-67 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING A DEVELOPMENT AGREEMENT WITH ELEMENT 7 FIREBAUGH LLC FOR A COMMERCIAL CANNABIS BUSINESS.**

Motion to approve Res. No. 19-67 by Council Member Valdez, second by Council Member Sablan; motion passes by 3-2 vote. Jenkins & Lopez – no.

STAFF REPORTS

- **Police Chief Sal Raygoza** – Department has been busy working on the stolen farm equipment case, following leads on others that may be involved in the case. Saturday, there will be a DUI check point, we've seen a lot of alcohol incidents and car accidents so the officers will heavily enforcing any alcohol matters over the next two weeks. School Patrol update, officers addressed the issues the school has been having and we are already seeing improvements at the High School but the problems are shifting to Bailey & Mills, so officers will alternate patrolling the schools. Mayor Lopez asked where the purchased K-9 equipment is being housed, Police Chief replied in Atwater with the Handler of the K-9.
- **Finance Director, Pio Martin** – Federal funding budget hasn't been approved, one concern, is if the meals that get delivered to the Senior Center will continue or be effected, they are hoping to have the federal budget approved by December 20, 2019. Attended League of Cities Training, staff is looking in to compliance issues, James is also looking into it, and the City may have to make some changes. Tara of RSG, wanted to speak with us about new funding available, but Ben is working with Paul Ashby on the same thing. Haven't heard much from the Auditors.
- **City Engineer, Mario Gouveia** – Most of the grant projects are coming to an end. Working on the design for next year's projects.
- **Deputy City Clerk, Rita Lozano** – CDBG has a new system for grant application, award notification and correspondences, working on setting it up, will share login information with Ben & Pio, so they have access.
- **City Attorney, James Sanchez** – new laws for the New Year, some with housing, regarding tiny houses, will keep everyone updated.
- **City Manager, Ben Gallegos** – Sal, Mario and I attended the West Hills College kick off meeting Police Chief went to go see the Coalinga Police Chief, to get their insight about dispensaries, they have 10 dispensaries, which has provided about 298 jobs, so we went to one of their dispensaries, which in the middle of town, their crime rate went down. Received great comments about the Parade, although there were some issues behind the scenes & a train accident, thank god no one got hurt. A lot of people liked the Christmas lights on the trees along the main street. This Wednesday, I'm going to do a staff appreciation day, here at the center. I will provide tacos for lunch, between 11:30 am to 1:00 pm, I want to thank the staff for doing a great job, and I received a lot of great comments about our community. "I tell everyone, it's not a one man show, it's a team effort." Council is invited to join. We haven't heard anything regarding the Maldonado Park or Swimming pool Grant applications, but did receive a

letter that it's under review. Both of the developments are going on, but they've slowed down due to the weather. We toured the model homes in Mendota to see what the houses will look like, we were told that they have about 80 on the waiting list for the homes in Firebaugh, so they expect to sell them fast. The Fire Chief is not feeling well, so he couldn't attend tonight. John found plans for the new Fire Station, it will look similar to Mendota's. We would like to bring next year changes to increase the limit for bids budget, as the proposed during a presentation at the previous meeting.

- **Council Member Valdez** – I'm going to echo what the City Manager said, it was a well-attended event as always, like anything you put on, there are always issues that go on the background but staff is more than capable of handling that, so again thanks to the staff for make sure it was as good as it was, further and foremost. Update on those grants, the meeting with the school, we discussed working together and going to Sacramento to keep pushing and make sure our community is not forgotten, push for the great things that are happening in our community. It's the end of the year, Merry Christmas to our Community and Staff, thank you for a very successful year, despite a couple of hurdles. I believe our community is moving up and in an upper direction with job creation, housing, project and I look forward to a new year with new things & ideas.
- **Council Member Sablan** – I what to remind everyone of the Christmas dinner on Christmas Day at the Middle School with Toys for tots.
- **Council Member Lopez** – I just want to echo too, the Parade was spectacular. I loved the video someone posted of the Parade, it came out really nice, hope you get to see it. I spoke with Ben about the lighting of the water tank, it looked so nice, so we talked about possibly doing it for other occasions. I think we feed over 200 people for the breakfast with Santa, it was very successful, I really appreciate Ben's help in finding the location and the people that hold the Zumba classes were out there helping us, they were very helpful. Merry Christmas everyone and see you next year.

PUBLIC COMMENT ON CLOSED SESSION ITEM ONLY

CLOSED SESSION

ANNOUNCEMENT

ADJOURNMENT

Motion adjourn by Council Member Valdez, second by Council Member Perez; motion pass by 5-0 vote at 7:08 p.m.

ORDINANCE NO. 19-07

AN ORDINANCE OF THE CITY OF FIREBAUGH, COUNTY OF FRESNO, STATE OF CALIFORNIA, AMENDING ORDINANCE NO. 359, OF THE CITY OF FIREBAUGH, RELATING TO THE CLASSIFICATION OF THE ZONE OF PARTICULAR PARCELS OF REAL PROPERTY

The City Council of the City of Firebaugh does ordain as follows:

SECTION 1. Section 25-2.1 of the Municipal Code of the City of Firebaugh is amended by changing the Zoning Map to redesignate one existing parcel zoned R-1 (Single Family Residential) to C-1 (Neighborhood Commercial) as shown on Map 1. The subject parcel is situated on the southeast corner of N Street and Zozaya Street.

SECTION 2. Severability. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance, as if such invalid portion thereof had been deleted.

SECTION 3. This ordinance shall take effect thirty (30) days after its passage.

SECTION 4. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance and to cause the same to be published once in a newspaper of general circulation, published in the County of Fresno.

I hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Firebaugh held on the 16th day of December, 2019, and passed and adopted at a regular meeting of the City Council held on the ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

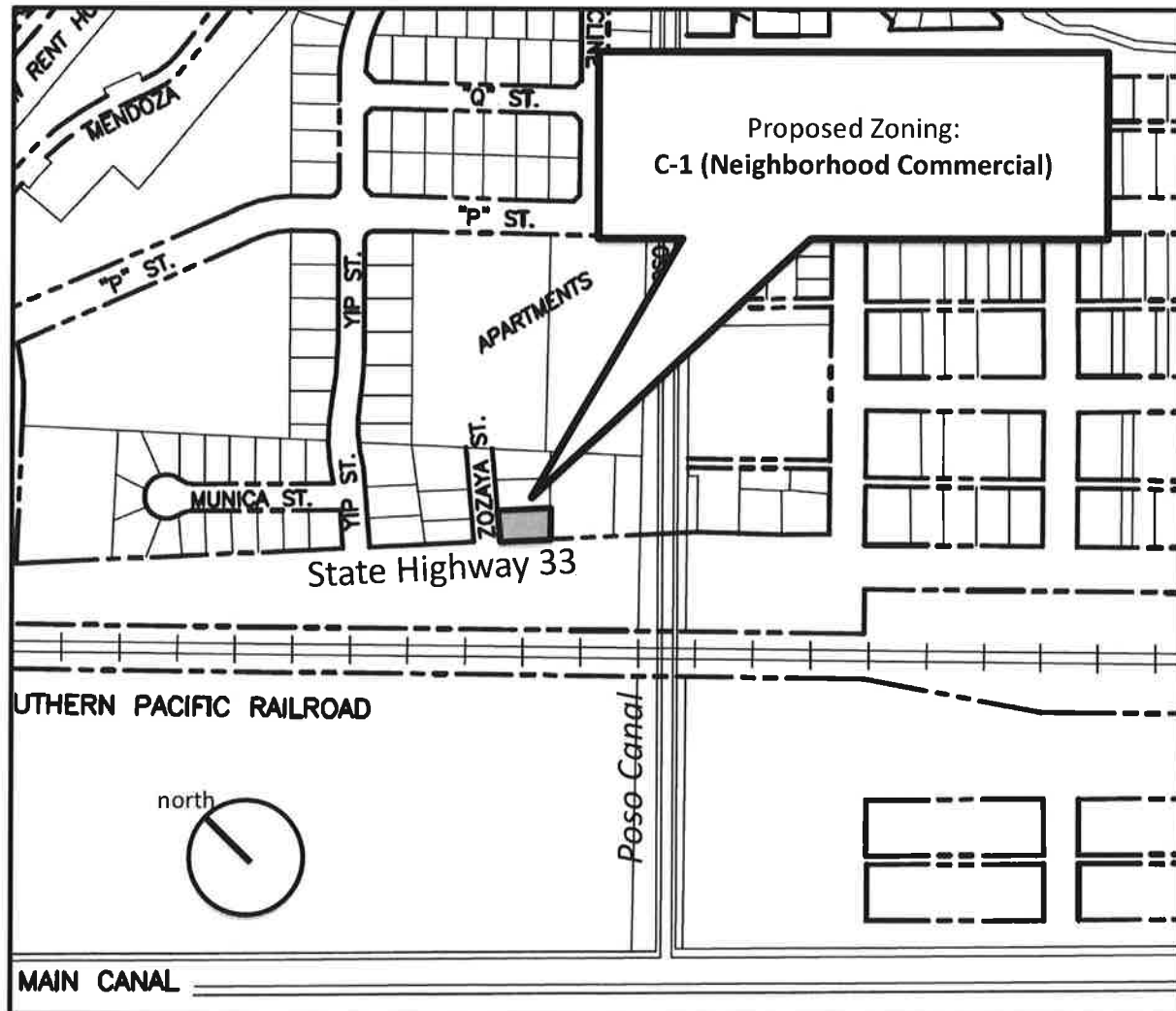
APPROVED:

ATTEST:

Marcia Sablan, Mayor

Rita Lozano, Deputy City Clerk

Map 1: Zone Change 2019-03



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Ben Gallegos, City Manager
DATE: January 6, 2020
SUBJECT: Public Hearing to Discuss the State Community Development Block Grant (CDBG) Application and possible activities and projects

RECOMMENDATION

Open Hearing and request public comment regarding the CDBG program and possible activities and projects to be considered for funding under the upcoming NOFA process.

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 – direct from HUD. 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) and where the City can apply for funding under a competitive application process.

HCD and CDBG staff, along with a redesign committee, has worked over the past two years redesigning the CDBG program as required by HUD direction due to the fact the State of California program expenditure rate of CDBG funds is at the bottom of the national expenditure list. Due to this major concern, many changes have occurred and will be implemented under the 2020 Notice of Funding Availability (NOFA) process.

At this Public Hearing and as a key component of accessing CDBG funding, the City is required to conduct public outreach to the community regarding potential CDBG projects/activities that should be considered for the next and future applications. The Council must hold one public hearing to discuss the potential application(s) and allow for public input.

In order to be considered eligible, a suggested projects/activity 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 2020 State NOFA has not been released yet but based on discussion with HCD staff the total application may not exceed \$3,500,000 for Community Development Applications and \$5,000,000 for Economic Development Over the Counter (OTC) applications. You may apply for a maximum of three categories as outlined below but may not exceed \$3,500,000 in total application request, excluding the Economic Development OTC program which has a maximum of \$5,000,000.

- OTC Public Improvements (maximum grant of \$3,500,000). 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.
- OTC Public Facility (maximum grant of \$3,500,000). 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 \$600,000), for up to **two** services. Examples include childcare, 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.
- Planning and Technical Assistance (maximum grant of \$200,000) 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, NEPA and environmental plans. A 25% Cash Match is required for this item.
- Housing Programs (maximum grant of \$700,000):
 - 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.

OTC: Over the Counter

The term OTC was noted above for the Public Improvement and Public Facilities projects as these have been moved from the standard program funding application to a special Over the Counter application process. The Over the Counter application process now provides three types of application for funding consideration and is new to the CDBG program funding process. The goal of the OTC application is to expedite funding expenditures as the premise is the CDBG program will be funding projects that are ready to construct, require construction to begin based on milestones, and the result will be immediate expenditures therefore increasing their expenditure rate to HUD.

The Over the Counter process will allow three categories of funding:

1. Project is ready to bid – all designs are completed, environmental complete or ready to publish, bid documents complete.
2. Project is 30% designed, environmental started and needs additional funding to complete the design process.
3. Needs full funding to design and develop project

DISCUSSION

City staff has met and discussed potential projects that would be considered potential projects for this application:

1. Construction of new Fire Station (recommended)
2. Water Lines
3. Sewer Lines

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. The current open 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
2. Receive public comment
3. Close hearing
4. 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
5. Provide alternative direction to staff.

ATTACHMENT:

Conceptual Site Plan and Fire Station Layout

DATE 5/4/02	DRAWING A-1	PROJECT NAME 5402	SHEET NO. 1	SCALE 1"=10'	DATE 5/4/02	DRAWING 1	PROJECT NAME 5402	SHEET NO. 1	SCALE 1"=10'
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PROJECT NAME
5402

DATE
5/4/02

DRAWING
1

SCALE
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PROJECT NAME
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DATE
5/4/02

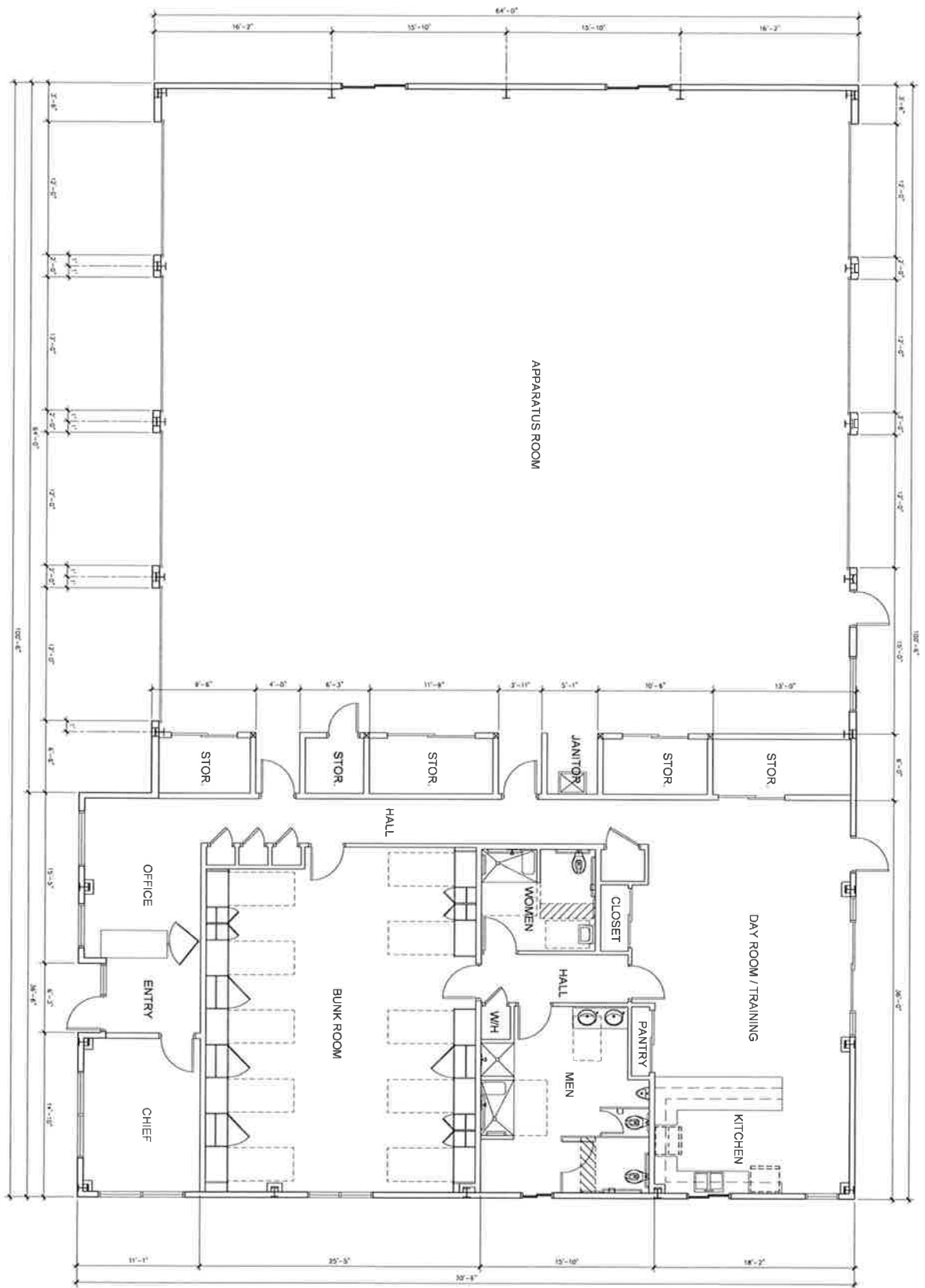
DRAWING
1

SCALE
1"=10'



FLOOR PLAN

SCALE: 1/4" = 1'-0"



'O' STREET

DATE 10/23/19 TIME 5:40Z A-2	DRAWING 5402	PROJECT FIREBAUGH FIRE STATION	SHEET 1 OF 1	FLOOR PLAN FIREBAUGH FIRE STATION 1575 11TH STREET FIREBAUGH CA 93622	 Integrated designs by SOMAN, Inc. ARCHITECTURE • ENGINEERING • INTERIOR DESIGN • PROJECT MANAGEMENT 6011 N. Francis, Suite 130 • Fresno, California 93710 Phone (559) 438-2881 • Fax (559) 438-2882 • E-mail: design@soman.com www.integrateddesignsby.com	REVISION REVISION DESCRIPTION NEW DATE REVISION REVISION DESCRIPTION NEW DATE
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RESOLUTION NO. 20-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING AN AGREEMENT FOR ARCHITECTURAL SERVICES RELATED TO A NEW FIRE STATION

WHEREAS, the City of Firebaugh ("City") desires an architect, experienced in design and construction of fire stations to provide services related to the design and construction of a new Fire Station; and

WHEREAS, Integrated Designs represents that it has the experience, license and ability to provide those architectural services to the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Firebaugh as follows:

1. The Agreement for Architectural Services between the City of Firebaugh and Integrated Designs By Somam, Inc. in the form attached as **Exhibit A** is approved.
2. The City Manager is authorized to execute the Agreement on behalf of the City.

The foregoing resolution was approved and adopted at a regular meeting of the City Council of the City of Firebaugh held on the 6th day of January, 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Elsa Lopez, Mayor
City of Firebaugh

ATTEST:

Rita Lozano, Deputy City Clerk
City of Firebaugh

**AGREEMENT
FOR
ARCHITECTURAL SERVICES
BETWEEN
CITY OF FIREBAUGH
AND
INTEGRATED DESIGNS By SOMAM, INC.**

December 14, 2019

CITY OF FIREBAUGH
1133 P St.
Firebaugh, CA 93622

TABLE OF CONTENTS

DEFINITIONS	P- 1 -
RETENTION OF ARCHITECT: STANDARD OF CARE	- 2 -
DESCRIPTION OF PROJECT	- 2 -
COMPENSATION	- 2 -
BASIC SERVICES TO BE RENDERED BY ARCHITECT.....	- 5 -
ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT.....	- 16 -
RESPONSIBILITIES OF CITY	- 17 -
PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.....	- 18 -
WORKER'S COMPENSATION INSURANCE	- 20 -
ERRORS AND OMISSIONS INSURANCE.....	- 20 -
COMPLIANCE WITH LAWS	- 22 -
TERMINATION OF AGREEMENT	- 22 -
ARCHITECT AN INDEPENDENT CONTRACTOR.....	- 24 -
STANDARDIZED MANUFACTURED ITEMS.....	- 24 -
OWNERSHIP OF DOCUMENTS	- 24 -
LICENSING OF INTELLECTUAL PROPERTY	- 25 -
ACCOUNTING AND OTHER RECORDS OF ARCHITECT	- 25 -
INDEMNITY.....	- 26 -
TIME SCHEDULE.....	- 26 -
MISCELLANEOUS PROVISIONS	- 27 -

**AGREEMENT
FOR
ARCHITECTURAL SERVICES**

This Agreement for Architectural Services ("Agreement") is made and entered into by and between the City of Firebaugh, a California Municipal Corporation (the "City"), and Integrated Designs by Somam, Inc., license number C7915, (the "Architect"), with respect to the following recitals:

- A. City proposes to undertake the construction of improvement projects which require the services of a duly qualified and licensed architect.
- B. Architect represents that Architect is licensed to provide architectural/engineering services in the State of California and is specially qualified to provide the services required by the City, specifically the design and construction oversight of public facilities.
- C. The parties have negotiated the terms under which Architect will provide such services and reduce such terms to writing by this Agreement.

The Parties therefore agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 **Additional Services.** "Additional Services" shall mean those services in addition to the Basic Services that are provided by Architect and authorized in writing by the City, and as further defined in Article 6 below.

1.2 **Agreement.** "Agreement" shall mean this Agreement for Architectural Services.

1.3 **Architect.** "Architect" shall mean Integrated Designs by Somam, Inc. and its officers, shareholders, owners, partners, employees, agents and authorized representatives.

1.4 **Basic Services.** Architect's Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, structural, mechanical, and electrical engineering services, normally required to complete the Project, as further defined in Article 5.

1.5 **City.** "City" shall mean the City of Firebaugh, and its City Council members, employees, agents and authorized representatives.

1.6 **Construction Documents.** "Construction Documents" shall mean those documents which are required for the actual construction of the Project, including but not limited to the Agreement between City and Contractor, complete working drawings and specifications setting forth in detail sufficient for construction of the work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-

service-connected equipment and site work.

1.7 Contractor. "Contractor" shall mean one or more contractors ultimately selected to perform work on the Project or any replacement.

1.8 Project. "Project" shall mean the work of improvement described in Article 3 and the construction thereof, including the Architect's services thereon, as described in this Agreement.

1.9 Project Construction Cost. "Project Construction Cost" shall mean the estimate of total construction costs to the City as initially submitted by the Architect under this Agreement and accepted by the City, and as subsequently revised once the final scope is determined as outlined in Section 5.5.5.

1.10 Wrongful Acts or Omissions. "Wrongful Acts or Omissions" shall mean Architect's acts or omissions in breach of this Agreement, the applicable standard of care, or law.

ARTICLE 2 RETENTION OF ARCHITECT: STANDARD OF CARE

2.1 City retains Architect to perform, and Architect agrees to provide to City, for the consideration and upon the terms and conditions set forth below, the architectural and engineering services specified in this Agreement and related incidental services. The Architect agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. All services performed by the Architect under and required by this Agreement shall be performed (a) in compliance with this Agreement and (b) in a manner consistent with the level of care and skill ordinarily exercised by architects in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the services required by the City; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA"). Architect shall be responsible for the completeness and accuracy of the plans and specifications.

ARTICLE 3 DESCRIPTION OF PROJECT

3.1 The Project for which such architectural services shall be provided is described as a New Fire Station (approximately 6,000 sq. ft.) and Site Improvements at 1315 'O' Street, Firebaugh, California.

A. The Project is not intended to be split into multiple prime contracts.

ARTICLE 4 COMPENSATION

4.1 Basic Services

4.1.2 Invoices for Basic Services shall be made monthly in proportion to services performed within each phase as set forth below:

4.2.1 Compensation for all “Additional Services,” as defined in Articles 1 and 6 of this Agreement, shall be a time and materials charge based on the following:

Photocopying

8 1/2" x 11" Black & White	\$.10/copy
11" x 17" Black & White	\$.25/copy
8 1/2" x 11" Color	\$1.00/copy
11" x 17" Color	\$2.50/copy

All other costs

1.15 times SOMAM, Inc. cost

4.2.2 Architect shall keep complete records showing all hours worked and all costs and charges applicable to work not covered by the Base Fee. Architect will be responsible for Architect's consultants keeping similar records. City shall be given reasonable access to those records for audit purposes within ten (10) days of receipt of City's request.

4.3 **Reimbursable Expenses.** Architect shall not be reimbursed for expenses incurred in providing the Basic Services. City shall only reimburse Architect for expenses incurred in connection with providing any Additional Services and shall only include actual expenditures made by the Architect and the Architect's employees and consultants in the interest of the Project for the expenses and at the rates listed in Section 4.2.1 ("Reimbursable Expenses").

Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Architect must pay out of its compensation for Additional Services under Section 4.2.1, above; nor do they include expenses incurred in connection with Basic or Additional Services that result from Wrongful Acts or Omissions. Architect may not charge a mark-up on Reimbursable Expenses, except as expressly provided in this Agreement. Payment for all Reimbursable Expenses incurred in connection with Additional Services shall be made on a monthly basis. Invoices, receipts or other documentation to establish the validity of all Reimbursable Expenses shall be a prerequisite to City payment of such expenses.

4.4 Each payment to Architect for Basic and Additional Services satisfactorily performed, and Reimbursable Expenses reasonably incurred, shall be made in the usual course of City business after presentation by Architect of a properly documented and submitted monthly invoice approved by City's authorized representative designating the services performed, or Reimbursable Expenses incurred, the method of computation of the amount payable, and the amount payable. City shall pay approved invoices within sixty (60) days after proper submission by Architect, and Architect otherwise waives all rights and remedies under law related to receipt of payment. To be properly submitted, an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person's rate of compensation. Architect's invoice shall be submitted within ten (10) days of the end of the monthly billing period. If City disputes a portion of a properly submitted invoice, it shall notify Architect of the dispute and, upon Architect's written request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Architect shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, Architect shall continue to provide all services required by this Agreement and by law until the end of the Project, even if City and Architect cannot resolve all such disputes.

4.5 The Architect's compensation shall be paid at the time and in the amount noted, where the amount due to the Architect is not disputed, notwithstanding a Contractor-caused delay in completion of the project or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, City may withhold from payments to Architect to the extent that (i) Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor, and (ii) Wrongful Acts or Omissions caused City to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Architect is responsible under Section 5.7.20.

4.6 Should City cancel the Project under section 12.1 of this Agreement at any time during the performance of this Agreement, Architect shall, upon notice of such cancellation, immediately cease all work under this Agreement. In such event, Architect's total fee for all services performed shall be computed as set forth in Section 12.1.

4.7 Architect shall not accept compensation or other benefits from other persons related to the Project, including payments from manufacturers of construction materials that are specified in the design.

ARTICLE 5

BASIC SERVICES TO BE RENDERED BY ARCHITECT

5.1 General

5.1.1 Architect's Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, structural, mechanical, and electrical engineering services, normally required to complete the Project. The Basic Services also include the services described in this Article 5, below, including but not limited to bid package preparation, bid handling, preparation and processing of change orders, requests for information, and other contract administration duties. The City shall have the right to add or delete from the Architect's scope of services as it may determine is necessary for the best interests of the Project and/or the City. Architect shall expeditiously and diligently perform all of its work and obligations under this Agreement. Architect may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with City under Section 4.4, above. The Architect acknowledges that its priority is to complete the Project and the Architect's services, and that any payment disputes with the City under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

5.1.2 The Architect shall review the estimate described more fully below at each phase of Architect's services, also as defined below. If such estimates are in excess of the Project budget, the Architect shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever the Architect's services include the presentation to the City of Project Construction Cost, the Architect shall include a reasonable amount for contingency costs arising from, among other things, higher bids than anticipated, future increase in construction costs, and change orders based on unforeseen site conditions. However, any such contingency for change orders shall not affect Architect's compensation.

5.1.4 The Architect shall notify the City if there are any indicated adjustments in previously provided Project Construction Cost arising from market fluctuations or approved changes in scope or requirements based upon a mutually agreed upon index. Any such adjustments shall not affect Architect's compensation until bids are received and accepted.

5.1.5 At the City's request, the Architect and Architect's consultants shall cooperate with City and the City's consultants in verifying that Architect's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Construction Documents. If there are project meetings during the design and construction phases, Architect shall attend those meetings.

5.1.6 The Architect shall investigate existing conditions of facilities and thoroughly account for, and list in the construction documents, any pertinent conditions of such facilities, all in a manner that satisfies the standard of care and level of performance required by this Agreement. Architect's investigation required by this provision shall be limited to non-destructive evaluation.

5.1.7 Architect shall provide adequate employees to perform its duties and responsibilities under this Agreement. All personnel provided by Architect shall be qualified to perform the services for which they are provided. Architect shall obtain City's written approval of each employee of Architect who provides services under this Agreement, and written approval of each change of employees who are providing such services. City may, upon thirty (30) days' written notice, cause Architect to remove a person from the Project if he/she has failed to perform to City's satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Architect shall provide them immediately.

5.1.8 Architect is an agent of City and shall reasonably represent the City at all times in relation to the Project.

5.1.9 Architect shall be fully licensed as required by law at all times when providing services under this Agreement.

5.2 Consultants

5.2.1 Architect's Consultants. The Architect shall employ or retain at Architect's own expense, engineers and other consultants necessary to Architect's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants retained or employed by Architect for this Project shall be approved by City prior to their commencement of work. The Architect's consultants shall be employed or retained to provide assistance during all aspects of the Project and will include, in addition to design services: review of schedules, shop drawings, samples, submittals, and requests for information. The Architect's Consultants shall also conduct periodic inspections of the site to determine conformance with the Project design and specifications and shall participate in the final inspections and development of any "punch list" items. Architect must disclose to City all such consultants employed or retained, and the compensation paid to those retained.

5.2.2 City's Consultants. Architect shall confer and cooperate with the City's project

inspector ("Project Inspector"), if any, or designee, and any consultants retained by City, as may be requested by City or as reasonably necessary. City may retain a construction manager to assist City in performance of City's duties for the Project.

5.2.3 The Architect shall procure a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the City, and the City shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

5.2.4 Architect shall assist the City to procure chemical, mechanical or other tests required for proper design, tests for hazardous materials and borings or test pits necessary for determining subsoil conditions. The cost of any such tests shall be borne by the City, and the City shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

5.3 Conceptual Design Phase

5.3.1 The Architect shall review all information concerning the Project delivered or communicated by the City to the Architect to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the City.

5.3.2 The Architect shall provide a preliminary evaluation of the City's Project, schedule and construction budget requirements, each in terms of the other.

5.3.3 The Architect shall review with the City alternative approaches to the design and construction of the Project, and shall include alternatives that may reduce the cost of the Project.

5.3.4 Based on a mutual understanding of the City's budget and scope of work requirements, the Architect shall prepare for the City Council's written approval, conceptual design documents, which include but are not limited to, conceptual design studies, site utilization plans, a description of the Project showing, among other things, the scale and relationship of the components of the Project, preparation of a written estimated statement of Project Construction Cost and a written time schedule for the performance of the work that itemizes constraints and critical path issues. The conceptual design documents shall represent approximately 10% complete design. The Project Construction Cost shall be based on current area, volume and other unit costs, shall conform to City's total construction cost budget, and shall include reasonable contingencies for all construction and construction management work. The written schedule shall conform to City's milestone and completion deadline requirements. Nevertheless, Architect is

encouraged to make recommendations to City regarding additional benefits that could be realized by increasing the City's total construction cost budget, or by altering the City's completion deadlines. If City incorporates any recommended changes, then Architect shall revise the conceptual design documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until the City Council approves them in writing. Architect shall attend, and present at, as many meetings of the City Council as may be necessary to obtain the Council's approval of the conceptual design documents.

5.3.5 The Architect shall submit to the City a preliminary Project Construction Cost based on current area, volume and other unit costs.

5.4 Design Development Phase

5.4.1 Following the City Council's written approval of the conceptual design documents, including the estimate of Project Construction Cost and schedule, Architect shall provide all necessary architectural and engineering services to prepare design development documents for the City Council's written approval, which fix and describe the size and character of the project and which shall include, but are not limited to, site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required. During the design development phase, Architect will keep the Project within all budget and scope constraints set by the City. The design development documents shall represent a 50% complete design. The design development documents shall include a revised Project Construction Cost, and a revised construction schedule. The revised Project Construction Cost shall be based on current area, volume and other unit costs. The revised Project Construction Cost shall conform to City's total construction cost budget and shall include reasonable contingencies for all construction and construction management work. The revised construction schedule shall conform to City's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to City regarding additional benefits that could be realized by altering the City's total construction cost budget or completion deadlines. If City incorporates any recommended changes or otherwise does not approve the submitted design development documents, then Architect shall revise the design development documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until the City Council approves them in writing. Architect shall attend, and present at, as many meetings of the City Council as may be necessary to obtain the Council's approval of the design development documents.

5.4.2 The Architect shall assist the City and its consultants in the preparation and/or modification of the Storm Water Pollution Prevention Plan if any such plan is required for this Project.

5.4.3 Architect shall prepare necessary documents for and oversee the processing of City's application for and obtaining of required approvals from the State Fire Marshall and other agencies exercising jurisdiction over the Project. Architect shall also be responsible for the preparation and

submission of any required applications, notices or certificates to public agencies as required by law. Architect shall provide a copy of all such documents to the City.

5.4.4 The Architect shall advise the City of any adjustments to the preliminary Project Construction Cost.

5.4.5 Architect shall identify areas of construction for which unit pricing shall be required as part of the Contractor's bid.

5.4.6 Architect shall provide at no expense to the City one complete set of preliminary plans for the review and written approval of the City and one set for each public agency having approval authority over such plans for their review and approval at no expense to the City.

5.5 Construction Documents and Plan Check Phases

5.5.1 Following the City Council's written approval of the design development documents, including the Project Construction Cost and construction schedule, the Architect shall prepare Construction Documents for the written approval of the City Council consisting of 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. Architect shall review and determine that the drawings and specifications are, among other things, complete, accurate, and coordinated so as to eliminate errors, omissions and conflicts, especially between the work of a (sub)consultant and other (sub)consultants or the Architect; and Architect may not shift its responsibility for completeness, accuracy and coordination to the Contractor, except on a clearly designated design-build project. Architect shall also update the construction schedule and the Project Construction Cost for written approval of the City Council. The Construction Documents shall conform to, comply with, and satisfy all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA"). As part of the Construction Documents, Architect shall prepare an accurate set of drawings indicating dimensions and locations of existing buried utility lines, which shall be included in the bid packages. If the Project is intended to be split into multiple prime contracts, then the Construction Documents shall be structured in order to maximize the ability to create multiple prime bid packages for the Project, and shall identify the bid packages to be created.

5.5.2 Architect shall consult with, and involve, the City in development of the bid documents and bid package, and shall forward them to the City for written approval prior to their use. If the City is using a multiple prime delivery method for the Project with multiple bid packages, then Architect shall consult with and involve the City in identification and development of the bid documents and bid packages, and shall forward them to the City for written approval prior to their use.

5.5.3 Prior to submission of the Construction Documents to any government agencies exercising jurisdiction over the Project, the Architect shall submit the Construction Documents to the City for an opportunity to review them for various issues, including but not limited to

constructability, scheduling, general completeness, clarity, consistency, coordination, cost-effectiveness, value engineering, identification of possible add/delete bid alternatives, time of construction, and suitability for separation of the Project design, plans and specifications into bid packages for various categories and/or portions of the work. However, such review by City is not required and does not affect Architect's obligations under this Agreement.

5.5.4 After approval by the City Council and any constructability review, the Architect shall submit the Construction Documents to any government agency(ies) exercising jurisdiction over the Project from whom approval is required, and make the necessary corrections to secure such agency's approval. At Architect's expense, Architect shall arrange for the scanning of the agency-approved Construction Documents and for the return of the originals and an electronic copy to the appropriate agency(ies).

5.5.5 The Architect shall give the City, at the time of agency-approval of the final form of the Construction Documents, Architect's final estimate of Project Construction Cost and construction schedule, which shall be given final written approval by the City Council along with the Construction Documents. The revised Project Construction Cost shall be based on current area, volume and other unit costs, and on a mutually acceptable recognized building cost index, and shall include a reasonable contingency. In preparing the revised estimate of Project Construction cost and construction schedule for the Construction Documents, the Architect shall consult with, and involve, the City in the process to maximize accuracy and completeness. The revised Project Construction Cost estimate shall conform to City's total Project budget, and the revised construction schedule shall conform to City's milestone and completion deadline requirements. Architect shall attend, and present at, as many meetings of the City Council as may be necessary to obtain the Council's written approval of the Construction Documents.

5.6 Bidding and Negotiations Phase

5.6.1 Following agency- and City Council's written approval of Construction Documents and City Council's written acceptance of Architect's final estimate of Project Construction Cost and construction schedule, Architect shall continue to work with the City in finalizing the bid documents and bid package, as described in Section 5.5.2, above. Architect shall reproduce the bid documents and bid package in the number requested by the City and distribute them among interested contractors. Architect shall also assist the City in obtaining bids, and shall assist the City in evaluating contract proposals or bids and substitutions proposed by contractors, and in awarding the bids. All sets of Construction Documents, which does not include those for the use of the Architect or its consultants, requested by the City in excess of one shall be reproduced at City's expense.

5.6.2 Architect's estimate of Project Construction Cost at the time of agency approval of the Construction Documents shall be current as of that date. Should bids be received more than ninety (90) days after the date of that Project Construction Cost, the Architect's total construction cost shall be escalated by the cost-of-construction in the then current mutually agreed upon recognized building cost index.

5.6.3 Should the lowest responsible and responsive bid received on a bid package exceed

Architect's most recent approved estimate of Project Construction Cost for that bid package (or amount adjusted according to the then current mutually agreed upon recognized building cost index) as accepted by City by more than ten percent (10%), Architect shall, on request by City and as part of Architect's Basic Services, make such changes in the plans and specifications as shall be necessary to bring new bids within ten percent (10%) of such Project Construction Cost. In making such changes, Architect will exercise Architect's best judgment in determining the balance between the size of the Project, the type of construction, and the quality of the construction to achieve a satisfactory project within ten percent (10%) of Architect's Project Construction Cost. To avoid the potential for bids to exceed the estimate by more than 10% at bid opening, the Architect may, as an alternative, include in the Construction Documents one or more deductive alternatives so that Architect and City may evaluate different means to achieve a satisfactory project within ten percent (10%) of the Architect's Project Construction Cost.

5.6.4 Either on its own or in cooperation with the City, the Architect shall review the qualifications of all bidders for the construction of the Project, and shall make recommendations to the City as to whether, in the Architect's professional opinion, a bidder meets the minimum requirements.

5.7 Construction Phase

5.7.1 The construction phase shall begin on the date stated in the official Notice to Proceed and, solely for purposes of payment of the Architect, shall be deemed complete upon City's written approval of Architect's final certificate for payment to Contractor, provided that such certification and payment shall not constitute an admission by Architect or City that the Project has been completed in accordance with Construction Documents or in conformance with this Agreement.

5.7.2 All instructions to the Contractor shall be forwarded through the Architect unless otherwise directed by the City. The Architect shall advise and consult with the City in the general administration of the Project. The Architect will have authority to act on behalf of the City only to the extent provided in the Construction Documents, unless the City grants additional authority in writing.

5.7.3 The Architect shall timely provide City with copies of all of its correspondence with the Contractor.

5.7.4 The Architect shall provide prompt and timely direction to the City's project inspectors and/or Contractor as to the interpretation of Construction Documents. Architect shall respond to all requests for information ("RFI's") from a Contractor within fourteen (14) calendar days of receipt, unless the subject of the RFI is impacting, or may impact, the critical path of the Project and is causing, or may cause, delay, in which case the Architect shall respond as soon as reasonably possible, if not immediately. If the Architect is not able to take action within the time required due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within seven (7) calendar days of receipt of the RFI, and shall notify the City and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response,

when the Architect expects to be able to issue a response, and what action, if any, should be taken by City or Contractor in the meantime to mitigate delays and/or costs.

5.7.5 Based on information provided by the Contractor and Architect's own knowledge of the Project (including documents in Architect's possession or reasonably available to it), Architect shall require the Contractor to prepare an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the City upon completion of the Project. While Architect cannot guarantee precise accuracy of such drawings, Architect shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Construction Documents. Architect shall have no responsibility for their conformity to field conditions. Except that in the event that the Architect, consistent with standards of due care, becomes aware of non-conformity with field conditions, Architect shall have a duty immediately to notify the City in writing. Architect shall also assemble and deliver to City all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of Contractor.

5.7.6 The Architect shall be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, *et seq.* The Architect may delegate this responsibility to a Contractor if such power to delegate was included in the Construction Documents and bid package. Architect shall require the Contractor to provide a copy of all such notifications to the City.

5.7.7 The Architect shall, at all times, have access to the Project wherever it is in preparation and progress. To the extent reasonably possible given Contractor's work in progress, the City shall provide such access so that the Architect may perform its functions under the Agreement and Construction Documents.

5.7.8 In the discharge of its duties of observation and interpretation, the Architect shall require Contractors to comply with the Construction Documents, and shall guard the City against defects and deficiencies in the work of the Contractor. The Architect shall advise and consult with the City and inspectors concerning the Contractor's compliance with the Construction Documents and shall assist the City and inspectors in securing the Contractor's compliance.

5.7.9 The Architect shall visit the site, both as the Architect deems necessary and as requested by the City to maintain familiarity with the quality and progress of the Project, to determine that the Contractor's work substantially complies with all documents, drawings, plans and specifications and that the Project is progressing in substantial accordance with the Construction Documents. Such observations are to be distinguished from any inspection provided by the Project Inspector unless Architect has agreed in writing to serve as the City's Project Inspector.

5.7.10 The Architect shall notify the City promptly of any significant defect in materials, equipment or workmanship, and of any default by any Contractor in the orderly and timely prosecution of the Project. Architect will exercise reasonable care in the discharge of Architect's obligation to discover significant defects and faults.

5.7.11 The Architect shall review and approve, take exception to, or take other appropriate action upon all schedules, shop drawings, samples and other submissions of the Contractor to determine general conformance with the Project design and specifications as set forth in the Construction Documents. All such action shall be taken within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case Architect shall take such action as soon as possible. If Architect is not able to take such action within the required time due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the City and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by City or Contractor in the meantime to mitigate delays and/or costs. The Architect will have the authority to reject work and materials which do not conform to the Construction Documents. The Architect's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the Architect's reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Construction Documents, the Architect will have authority to require special inspection or testing of the work or materials in accordance with the Construction Documents whether or not such work or materials be then fabricated, installed or completed. The Architect will also recommend substitution of materials or equipment when, in the Architect's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Construction Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

5.7.12 Architect shall assist the City in requiring Contractor to provide assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

5.7.13 The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The Architect shall not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees or of any other persons performing portions of the Project not employed or retained by Architect, unless due to Wrongful Acts or Omissions.

5.7.14 The Architect shall make such regular reports as shall be required by agencies having jurisdiction over the Project and keep the City informed in writing of the progress of the Project.

5.7.15 The Architect will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the City or Architect is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Architect nor the City is trained or licensed in the recognition or remediation

of Hazardous Substances.

When construction is properly completed, Architect shall provide such certification as to Hazardous Substances as is required of architects by agencies having jurisdiction over such projects.

5.7.16 Based on the Architect's observations, and an evaluation of each Project Application for Payment, the Architect will estimate the amount of work completed by Contractor, and assist the City in (a) determining the amount owing to the Contractor, and (b) issuing Project Certificates for Payment incorporating such amount, all in accordance with the Construction Documents. The Architect's estimation of the amount of work completed by Contractor shall constitute representations by the Architect to the City that the quality of the completed work is in accordance with the Construction Documents based upon Architect's observations of the completed work and that the Contractor is entitled to payment for the completed work.

5.7.17 Notwithstanding anything else in this Agreement, as a part of its Basic Services, the Architect shall assist the City in evaluating and responding to claims, disputes and other matters in question between the Contractor and the City, including but not limited to claims made against the City as a result of alleged or claimed Wrongful Acts or Omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the City at no cost to the City. Architect agrees to toll all statutory periods of limitations for City's claims, lawsuits or other proceedings against Architect which arise out of, or are related to, any claims by Contractors against City until Contractors' claims are fully and finally resolved. This tolling period commences upon a Contractor's initial submission of a notice of claim, change order request or claim. At any time, City may terminate the tolling period effective ten (10) days after written notice to Architect, and after such termination, City may pursue claims, lawsuits or other proceedings against Architect.

5.7.18 The Architect will provide construction advice to the City on apparent deficiencies in construction, both during construction and after acceptance of the Project.

5.7.19 The Architect shall recommend, prepare and process the necessary change orders. Payment of fees to the Architect as a result of change orders shall be handled as follows:

5.7.19.1 City-initiated change orders. If a change order is initiated by the District, the Architect's fee for services related to such change order shall be paid as an Additional Service under Articles 4 and 6. If a change order is solicited by the District but not subsequently authorized by the District, the Architect shall be paid for time spent on the proposed change order as an Additional Service.

5.7.19.2 Change orders due to Architect. When a change order is necessitated as a result of Wrongful Acts or Omissions, the Architect's services in connection with that change order are not compensable and Architect shall not include those services on any invoice.

5.7.19.3 Change orders beyond City or Architect control. If a change order is necessitated as a result of changes in law, in-field changes required by governing agencies after

document approval, unknown, unforeseeable or hidden conditions, or actual conditions inconsistent with available drawings of existing conditions, such change orders shall be handled in the same manner as City-initiated change orders.

5.7.20 Notwithstanding any other provision of this Agreement, in the event a change order is caused by, or necessitated as a result of Wrongful Acts or Omissions, or the City otherwise incurs costs or damages as a result of Wrongful Acts or Omissions, the Architect shall be responsible for the following:

5.7.20.1 In the event of such a change order, Architect shall be responsible for the difference between (a) what the contractor would have added to its original bid for the Project if the Wrongful Act or Omission had not occurred (i.e., the "added value" portion of the change order), and (b) what the contractor charges the City in the change order. The amount of added value of any change order work shall be based on the circumstances of the Architect's Wrongful Act or Omission and the change order work necessitated by the Wrongful Act or Omission. It is the parties' intent that the City should pay no more than what the City would have paid if the Wrongful Act or Omission had not occurred.

5.7.20.2 In addition, Architect shall be responsible for any other costs or damages which the City incurs as a result of Wrongful Acts or Omissions including but not limited to any delay damages the City pays to, or cannot collect from, Contractor or any third party.

The City may backcharge, and withhold payment from, the Architect for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the contract amount at the time of collection. When City so backcharges and withholds, upon Architect's request City and Architect shall meet and confer in good faith in an effort to reach agreement on (a) whether a Wrongful Act or Omission occurred, (b) whether it caused the change order expense, (c) what damages have been incurred by City, and (d) what portion of the damages are attributable to Architect as described above. If City and Architect do not reach agreement on all four of these items when meeting and conferring, then City and Architect shall use mediation in good faith to resolve the dispute. If mediation fails, then either City or Architect can initiate a court action to resolve the dispute.

5.7.21 The Architect shall provide a color schedule of all finish materials in the Project for the City's review and approval.

5.7.22 The Architect shall assist the City in determining the date of final completion and make a final detailed on-site review of the job with representatives of the City and the Contractor. Architect shall also perform a warranty review with City 30-60 days before expiration of the specified warranty on the Project.

5.7.23 The Architect shall assist the City in issuing the final certificate for payment and any other documents required to be recorded by law or generally accepted architectural or construction contract practice upon compliance with the requirements of the Construction Documents, provided that such certification shall not constitute an admission that the Project has been completed in accordance with Construction Documents or in conformance with this Agreement.

5.7.24 Architect shall make reasonable professional efforts so that the finished project complies with all standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Architect has violated any of the above-referenced laws, or City, because of Wrongful Acts or Omissions, has violated any of the above-referenced laws, Architect shall remedy the violation at its own cost. **Architect shall indemnify, defend and hold the City harmless under Article 18.1 of this Agreement for any breach of this paragraph arising from, pertaining to, or related to Architect's negligence, recklessness or willful misconduct.** The Architect shall not be responsible for acts or omissions of the Contractor or of any other persons performing portions of the Project not employed or retained by Architect, nor shall Architect be responsible for any subsequent changes in the law or any regulation applicable to disabled access or any subsequent differing interpretation of the laws or regulations applicable at the time Architect's design is reviewed by such agency(ies) having jurisdiction over the Project. In the event that the Architect is or becomes aware of possible non-compliance with the foregoing standards, Architect shall have a duty immediately to notify the City in writing of the possible non-compliance.

5.8 **Use of Previously Prepared Materials.** In the event that there exist previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect, whether supplied by City or by Architect, which are relied upon, altered or otherwise utilized by Architect, Architect shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Architect under this Agreement.

ARTICLE 6

ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT

6.1 "Additional Services" shall be provided by Architect if authorized in writing by City. No additional compensation shall be paid to Architect for performing these Additional Services unless the City and the Architect agree in writing as to the amount of compensation for such services prior to such services being rendered, consistent with the rates and reimbursements set forth in Article 4.2.1 and as otherwise set forth in this Agreement. Any work performed by Architect without written authorization OR without written agreement on compensation shall be presumed to be Basic Services.

6.2 The following is a list of services that are not included in the Basic Services to be provided under this Agreement, and will be performed only in accordance with Article 6.1, above:

6.2.1 providing financial feasibility or other special studies;

6.2.2 providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase;

6.2.3 providing coordination of Project performed by separate contractors or by the City's own forces;

6.2.4 providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor;

6.2.5 making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the City's approval of Construction Documents or are due to other causes not within the control of the Architect;

6.2.6 providing consultation concerning replacement of any work damaged by fire or other cause during construction of the Project, and furnishing services as may be required in connection with the replacement of such work;

6.2.7 providing services made necessary by the default of the Contractor;

6.2.8 preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, other than when resulting from Architect's or its consultants' alleged Wrongful Acts or Omissions;

6.2.9 providing services of consultants for other than the normal architectural, soils, structural, mechanical and electrical engineering services for the Project;

6.2.10 at the City's request, selecting moveable furniture, equipment or articles which are not included in the Construction Documents;

6.2.11 providing services related to change orders requested by the City but which are not subsequently authorized (see the second sentence of Section 5.7.19.1, above); and

6.2.12 providing any other services not otherwise included in the Agreement and not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 7 RESPONSIBILITIES OF CITY

It shall be the duty of City to:

7.1 pay all fees required by any reviewing or licensing agency;

7.2 designate a representative authorized to act as a liaison between the Architect and the City in the administration of this Agreement and the Construction Documents;

7.3 furnish, at the City's expense, the services of a Project Inspector, or designate an appropriate City employee for such role;

- 7.4 review all documents submitted by the Architect and advise the Architect of decisions thereon within a reasonable time after submission;
- 7.5 issue appropriate orders to Contractors through the Architect;
- 7.6 furnish existing soil investigation or geological hazard reports, which the City shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect;
- 7.7 furnish the services of a hydrologist or other consultants not routinely provided by the Architect when such services are reasonably required by the scope of the Project and are requested by the Architect;
- 7.8 provide asbestos review and abatement, identifying materials which may qualify for same;
- 7.9 furnish available as-built drawings for buildings and utilities systems related to the Project, which the City shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Architect. The City will also provide information regarding programmatic needs and specific equipment selection data;
- 7.10 furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Construction Documents, which the City shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Architect; and
- 7.11 furnish prompt notice of any fault or defects in the Project or nonconformance with the Construction Documents of which the City becomes aware. However, the City's failure to do so shall not relieve the Architect of Architect's responsibilities under Title 21, Title 24, and/or other applicable law for this Project and under this Agreement).

PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

- 8.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the City a certificate of insurance, Additional Insured Endorsement and Declarations Page for the period covered by this Agreement, for public liability and property damage with an insurance carrier satisfactory to the City, under forms satisfactory to the City, to protect the Architect and City against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other City facilities or equipment, resulting from acts of commission or omission by the Architect, or otherwise resulting directly or indirectly from the Architect's operations in the performance of this Agreement. The City shall be named as an additional insured on all such policies.
- 8.2 The following insurance shall be maintained by the Architect in full force and effect during

the entire period of performance of this Agreement, including any extensions, and shall be written, to the extent reasonably available, on an "occurrence" basis: Commercial general liability insurance shall be in amounts not less than One Million Dollars (\$1,000,000) per occurrence or bodily injury, personal injury, and property damage; Automobile liability insurance covering motor vehicles shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. If liability insurance is not reasonably available on an occurrence basis, Architect shall provide liability insurance on a claims-made basis.

8.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability. Said insurance shall also include a waiver of any subrogation rights as against the City.

8.4 Should any of the required insurance be provided under a claims-made form, Architect shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Nothing herein shall in any way limit or diminish Architect's obligations to the City under any provision, including any duty to indemnify and defend the City.

8.5 The Architect's insurance policies shall contain a provision for thirty (30) days written notice to the City of cancellation or reduction of coverage. The Architect shall name, on any policy of insurance required, the City as an additional insured. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. Architect shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the City for approval subject to the following requirements. Thereafter Architect shall produce a certified copy of any insurance policy required under this Article upon written request of the City.

8.6 At the time of making application for any extension of time, Architect shall submit evidence that all required insurance will be in effect during the requested additional period of time.

8.7 If the Architect fails to maintain such insurance, the City may, but shall not be required to, take out such insurance to cover any damages of the above-mentioned classes for which the City might be held liable on account of the Architect's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Architect under this Agreement.

8.8 Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to

which the Architect may be held responsible for the payment of damages resulting from the Architect's operations.

8.9 Each of Architect's consultants shall comply with this Article, and Architect shall include such provisions in its contracts with them.

8.10 Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the City.

8.11 Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination of this Agreement.

ARTICLE 9 WORKER'S COMPENSATION INSURANCE

9.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the City satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out, for the period covered by this Agreement, workers' compensation insurance with an insurance carrier satisfactory to the City for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. Said policy shall also include employer's liability coverage no less than one million dollars (\$1,000,000.00) per accident for bodily injury and disease. All such insurance shall include a waiver of any subrogation rights as against the City. If the Architect employs any engineer, expert, consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the City immediately upon employment. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the City.

9.2 Prior to the commencement of services under this Agreement, the Architect shall furnish to the City satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to the City. During the course of Architect's services, if Architect ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Architect shall furnish such satisfactory proof of insurance to the City. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the City.

ARTICLE 10 ERRORS AND OMISSIONS INSURANCE

10.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the City satisfactory proof that the Architect has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) aggregate. If errors and omissions insurance is not reasonably available on an occurrence basis, Architect shall provide errors and omissions insurance on a claims-made basis.

10.2 Each of Architect's professional sub-consultants (including consultants of Architect's) shall comply with this Article 10, and Architect shall include such provisions in its contracts with them.

10.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.

10.4 Should any of the required insurance be provided under a claims-made form, Architect shall maintain coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policy. Nothing herein shall in any way limit or diminish Architect's obligations to the City under any provision, including any duty to indemnify and defend the City.

10.5 Architect shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the City for approval. Thereafter Architect shall produce a certified copy of any insurance policy required under this Article upon written request of the City.

10.6 At the time of making application for any extension of time, Architect shall submit evidence that all required insurance policies will be in effect during the requested additional period of time.

10.7 If the Architect fails to maintain such insurance, the City may, but shall not be required to, take out such insurance, and may deduct and retain the amount of the premiums from any sums due the Architect under this Agreement.

10.8 Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Architect may be held responsible for the payment of damages resulting from the Architect's operations.

10.9 Each of Architect's consultants shall comply with this Article, and Architect shall include such provisions in its contracts with them.

10.10 Insurance companies providing the above policies shall be legally authorized, licensed and

admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the City.

10.11 Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination of this Agreement.

ARTICLE 11 COMPLIANCE WITH LAWS

11.1 Architect shall be familiar with, and Architect and Architect's design shall comply with all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law, and the Americans with Disabilities Act ("ADA"), those CDBG regulations outlined in Exhibit B.

ARTICLE 12 TERMINATION OF AGREEMENT

12.1 **Termination by City** – This Agreement may be terminated or the Project may be canceled by the City for the City's convenience and without cause at any time immediately upon written notice to the Architect. In such event, the Architect shall be compensated for (a) all Basic and Additional services completed, and Reimbursable Expenses incurred, pursuant to this Agreement through the date of termination, (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the City in writing, and (c) any costs incurred by reason of such termination; but less any amounts the City is entitled to withhold under law or this Agreement. Upon the City's written request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

For any material breach of contract by the Architect, the City may also terminate the Agreement for cause by delivering written Notice of Intent to Terminate to the Architect. Such Notice shall include the following: (1) A description of such material breach, and (2) a date not less than fourteen days (14) after delivery of the notice by which the Architect must cure such breach. In response to such Notice, if the Architect fails to cure, and fails to reasonably commence to cure, the breach(es) by the deadline set by the Notice, then the City may terminate the Agreement through written notice delivered to the Architect, which shall be effective upon such delivery. In such event, the Architect shall be compensated for all services completed pursuant to this Agreement through the date of termination, together with compensation for such services performed after termination which are authorized by the City in writing, but less any amounts the City is entitled to withhold under law or this Agreement. Upon the City's written request and authorization, Architect shall perform any and all services necessary to complete the work in progress as of the date of the termination.

12.2 **Termination by Architect** – For any material breach of contract by the City other than one related to a payment or invoice dispute as described in Section 4.4 of this Agreement, the Architect

may terminate the Agreement by delivering written Notice of Intent to Terminate to the City. Such Notice shall include the following: (1) A description of such material breach, (2) a date not less than fourteen (14) days after delivery of the notice by which the City must cure such breach or reasonably commence to cure such breach, (3) the status of work completed as of the date of the Notice of Intent to Terminate, and (4) a description and cost estimate of the effort necessary to complete the work in progress. In response to such Notice, if the City fails to cure, and fails to reasonably commence to cure, the breach by the deadline set by the Notice, then Architect may terminate the Agreement by written notice delivered to the City within ten (10) days of the cure deadline, which shall be effective upon such delivery.

In the event of such termination by Architect, Architect shall be compensated for all Basic and Additional Services completed, and Reimbursable Expenses incurred, pursuant to this Agreement through the date of termination, together with compensation for such Basic and Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the City in writing. Upon the City's written request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

12.3 Miscellaneous Termination Provisions

12.3.1 Following the termination of this Agreement for any reason whatsoever, the City shall have the right to utilize any designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by the Architect, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under applicable law. Architect shall promptly make any such documents or materials available to the City upon request without additional compensation.

12.3.2 In the event of the termination of this Agreement for any reason whatsoever, all designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect or any of its agents pursuant to this Agreement shall immediately upon request by the City be delivered to the City. Architect may not refuse to provide such writings or materials for any reason whatsoever, including but not limited to a possessory interest lien for any claim the Architect may have against the City or a claim by the Architect to an ownership interest in the intellectual property embodied in the documents or materials. The City will indemnify the Architect pursuant to Section 16.2.

ARTICLE 13
ARCHITECT AN INDEPENDENT CONTRACTOR

13.1 It is specifically agreed that in the making and performance of this Agreement, the Architect is an independent contractor and is not and shall not be construed to be an officer or employee of the City. Architect is engaged in an independently established trade, occupation, or business to perform the services required by this Agreement and is hereby retained to perform work that is outside the usual course of City's business. Architect is free from the control and direction of City in connection with the manner of performance of the work. Architect understands and agrees that Architect and Architect's employee, agents, and consultants shall not be considered officers, employees, agents, partners, or joint venturers of City, and are not entitled to benefits of any kind or nature provided to employees of City and/or to which City's employees are entitled. Architect agrees to advise everyone it designates or hires to perform any duty under this Agreement that they are not employees of City.

ARTICLE 14
STANDARDIZED MANUFACTURED ITEMS

14.1 The Architect shall consult and cooperate with the City in the use and selection of manufactured items to be used in the Project. Manufactured items, including but not limited to paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor coverings, shall be standardized to the City's criteria so long as the same does not interfere seriously with the building design or cost.

ARTICLE 15
OWNERSHIP OF DOCUMENTS

15.1 All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect pursuant to this Agreement shall be and shall remain the property of the City for all purposes, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under applicable law.

15.2 The Architect will provide the City with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect pursuant to this Agreement, and will retain, on the City's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Architect's files for a period of no less than fifteen (15) years. Architect shall promptly make available to City any original documents it has retained pursuant to this Agreement upon request by the City.

ARTICLE 16 LICENSING OF INTELLECTUAL PROPERTY

16.1 This Agreement creates a non-exclusive and perpetual license for the City to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect pursuant to this Agreement, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under applicable law. The Architect shall require any and all subcontractors and consultants to agree in writing that the City is granted a similar non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

16.2 The compensation for this Project includes compensation not only for any use in connection with this Project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to this Project, but also for any re-use by the City in relation to other projects. The only other term or condition of such re-use shall be that if the City re-uses the plans prepared by the Architect and retains another certified architect or structural engineer for the preparation of those plans for the re-use, the City shall indemnify and hold harmless the Architect and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by applicable law.

16.3 Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Architect or its consultants prepares or causes to be prepared pursuant to this Agreement. **Architect shall indemnify, defend and hold the City harmless pursuant to Article 18.1 of this Agreement for any breach of Article 16 arising from, pertaining to, or related to Architect's negligence, recklessness or willful misconduct.** The Architect makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect and provided to Architect by the City.

ARTICLE 17 ACCOUNTING AND OTHER RECORDS OF ARCHITECT

17.1 Architect's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles. City has the right to audit Architect's records and files

regarding any of the work Architect performed for City on the Project during or after the Project. City shall be given reasonable access to Architect's records and files for audit purposes within ten (10) days of receipt of City's request. Architect shall keep and maintain these records and files for ten (10) years.

ARTICLE 18 INDEMNITY

18.1 Architect Indemnification. To the fullest extent permitted by law, including California Civil Code section 2782.8, the Architect shall defend, indemnify, and hold harmless the City, the City Council, each member of the Council, and their officers, agents and employees ("City Indemnitees") against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Architect, the Architect's officers, employees, or consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement. Architect's obligation for the costs of defense of such claims shall be limited to the Architect's proportionate share of liability, in accordance with California Civil Code section 2782.8. Notwithstanding the foregoing, in the event that one or more defendants named in such a claim is unable to pay its share of defense costs due to bankruptcy or dissolution of the defendant's business, Architect shall meet and confer with other parties to the claim regarding unpaid defense costs. For purposes of this Article 18.1 only, "claims" means all claims, demands, actions and suits brought by third parties for any and all losses, liabilities, costs, expenses, damages and obligations, and the defense obligation shall include but not be limited to payment of the City's attorneys' fees, experts' fees, and litigation costs incurred in defense of a claim. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Architect.

18.2 City Indemnification for Use of Third Party Materials. The City shall defend, indemnify, and hold harmless the Architect and its employees against any and all copyright infringement claims by any design professional formerly retained by the City arising out of Architect's completion, use or re-use of that former design professional's designs or Construction Documents in performing this Agreement. Architect shall be entitled to such indemnification only if each of the following conditions are met: (a) Architect actually re-draws or completes such other designs or Construction Documents; (b) Architect complies with the provisions of Article 5.8 regarding use of materials prepared by other design professionals; (c) City has supplied Architect with the previously prepared documents or materials; and (d) City expressly requests that the Architect utilize the designs or Construction Documents in question. By providing this or any other indemnification in this Agreement, City does not waive any immunities.

ARTICLE 19 TIME SCHEDULE

19.1 Time for Completion. Time is of the essence of this Agreement. The Architect shall timely

complete its Basic and Additional Services as expeditiously as possible.

19.2 Delays. The City recognizes that circumstances may occur beyond the control of either the City or the Architect and extensions for such delays may be made to the schedule if approved by the City. Any time during which the Architect is delayed in the Architect's work by acts of City or its employees or those in a direct contractual relationship with City or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any Wrongful Acts or Omissions, shall be added to the time for completion of any obligations of the Architect. City shall not be liable for damages to the Architect on account of any such delay.

ARTICLE 20 MISCELLANEOUS PROVISIONS

20.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County in which the City maintains its City office, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the City.

20.2 The Architect shall not assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the City.

20.3 All notices, certificates, or other communications hereunder shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, to the parties at the addresses set forth below:

City: CITY OF FIREBAUGH
1133 "P" Street
Firebaugh, CA 93622
Attention: Ben Gallegos, City Manager

Architect: Integrated Designs by Somam, Inc.
6011 N. Fresno Street, #130
Fresno, CA 93710
Attention: Peter Mogensen, Corporation Secretary

20.4 This Agreement shall inure to the benefit of and shall be binding upon the Architect and the City and their respective successors and assigns.

20.5 If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

20.6 The terms of this Agreement shall not be waived, altered, modified, supplemented or


amended in any manner whatsoever except by written agreement signed by the parties. No action or failure to act by the City shall constitute a waiver of any right or duty afforded the City under this Agreement, nor shall such action or failure to act constitute approval of, or acquiescence in, a breach under this Agreement, except as may be specifically agreed to in a written amendment to this Agreement.

20.7 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the City or the Architect.

20.8 This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. The Architect, by the execution of this Agreement, acknowledges that the Architect has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

20.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's professional materials. The Architect's materials shall not include the City's confidential or proprietary information if the City has previously advised the Architect in writing of the specific information considered by the City to be confidential or proprietary.

ARCHITECT:
INTEGRATED DESIGNS By SOMAM, INC.

By: 
Peter Mogensen
Corporation Secretary

CITY:
CITY OF FIREBAUGH

By: _____
Ben Gallegos
City Manager

By: 
Sharon Ashida
President



Federal Terms and Conditions

FEDERAL TERMS AND CONDITIONS:

During the performance of the contract, the Contractor must agree to comply with all applicable Federal laws and regulations including but not limited to the following:

AFFIRMATIVE ACTION:

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the United States Department of Housing and Urban Development (HUD) and subject to 24 CFR 85.36(e). CITY hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged, minority and women's business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award. Minority and women-owned and operated businesses encouraged to apply.

SECTION 3:

The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the HUD, Community Development Block Grant Program, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing within the project area and that the contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the area of the project. Regulations for implementing the Section 3 clause are contained in 24 CFR 135, as amended, and as specified in the project specifications.

NON-DISCRIMINATION CLAUSE:

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

EQUAL OPPORTUNITY:

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will comply with Executive Order 11246 of September 24, 1965 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 1967 as supplemented in Department of Labor regulations (41 CFR chapter 60).
2. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City Setting forth the provisions of this nondiscrimination clause.
3. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The Contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment

statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

9. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
10. Whenever the Contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
11. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.
12. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

CONFLICT OF INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF CONTRACTORS, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS:

Pursuant to 24 CFR 570.611, no member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. The Grantee shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this Section.

INSURANCE: Maintenance, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.

DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISE FEDERAL REGULATORY REQUIREMENTS UNDER 24 CFR 85.36(e): The Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

1. Affirmative steps shall include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- v. Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

COPELAND "ANTI-KICKBACK" ACT (18 U.S.C. 874):

Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

COMPLIANCE WITH ALL FEDERAL LABOR STANDARD PROVISIONS:

Contractor shall comply with all provisions contained in the form HUD-4010, Federal Labor Standards Provisions.

COMPLIANCE WITH SECTIONS 103 AND 107 OF THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327-330):

Contractor will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Requires the contracting officer to insert the clauses set forth in 29 CFR part 5, Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

REQUIREMENTS AND REGULATIONS PERTAINING TO DATA AND DESIGN:

All data and design and engineering work created under this Agreement shall be owned by the City and shall not be subject to copyright protection. The rights to any invention which is developed in the course of this Agreement shall be the property of the City.

REQUIREMENTS AND REGULATIONS PERTAINING TO REPORTING:

The City, State CDBG, HUD and the Comptroller General of the United States or any of their duly authorized representatives shall be granted access to any books, documents, papers and records of Contractor which are directly pertinent the contract.

COMPLIANCE WITH CLEAN AIR ACT AND CLEAN WATER ACT:

Contractor shall comply with all applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)).

1. Contractor shall comply with all applicable standards, orders and requirements issued under Section 508 of the Clean Air Act (33 U.S.C. 1368).
2. Contractor shall comply with Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15).

COMPLIANCE WITH ENERGY POLICY AND CONSERVATION ACT (Pub. L. 94-163, 89 Stat. 871):

The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

D/MBE/WBE IMPLEMENTATION GUIDELINES:

The following information, as applicable, shall be retained by Contractor and produced upon request by General Services if determined by General Services to be necessary to establish the bidder's "good faith efforts" to meet the Disadvantaged/Minority/Women Business Enterprise (D/M/WBE) requirements.

1. The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper in which a request for D/M/WBE participation for this project was placed by the bidder.
2. The names and dates of notices of all certified D/M/WBEs solicited by direct mail for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the D/M/WBEs were interested.
3. The items of work for which the bidder requested subbids or materials to be supplied by D/M/WBEs, the information furnished interested D/M/WBEs in the way of plans, specifications and requirements for the work, and any breakdown of items of work into economically feasible units to facilitate D/M/WBE participation. Where there are D/M/WBEs available for doing portions of the work normally performed by the bidder with his own forces, the bidder will be expected to make portions of such work available for D/M/WBEs to bid on.
4. The names of D/M/WBEs who submitted bids for any of the work indicated in (3) above, which were not accepted, a summary of the bidder's discussions and/or negotiations with them, the name of the subcontractor or supplier that was selected for that portion of work, and the reasons for the bidder's choice. If the reason for rejecting the D/M/WBE bid was price, give the price bid by the rejected D/M/WBE and the price bid by the selected subcontractor or supplier.
5. Assistance that the bidder has extended to D/M/WBEs identified in (4) above to remedy the deficiency in their sub-bids.
6. To find a D/M/WBE certified firm, you may call (916) 445-3520, go on-line to: <http://www.dot.ca.eov/hq/bep>, or via mail at: D/M/WBE Listing for County, CalTrans - Publications Distribution Unit, 1900 Royal Oaks, Sacramento, CA 95815-3800.

AUDIT, RETENTION AND INSPECTION OF RECORDS:

The Contractor agrees that the (City/County), the Department of Housing and Community Development, the Federal Department of Housing and Urban Development (HUD), or its designee will have the right to review, obtain, and copy all records pertaining to performance of

this Agreement. The Contractor agrees to provide any relevant information requested and shall permit the (City/County), the Department of Housing and Community Development, the Federal Department of Housing and Urban Development (HUD), or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq.

The Contractor further agrees to maintain such records for a period of five (5) years after final payment under this Agreement, and that on or before the end of the five (5) year audit/retention period, the Consultant shall release and deliver to the (City/County) all original records and related documentation.

FIREBAUGH CITY COUNCIL

STAFF REPORT

Date: January 6, 2020
To: Firebaugh City Council
Subject: Communications Agreement – City of Firebaugh Facebook

Summary

January 6, 2020 – Contract

Claudia Solis-Alcala provided a new proposal at the meeting, similar services in previous & current contracts, the listed \$30 per post, compensation for special events (Firebaugh Christmas Celebration & Parade) of \$200 per day, doesn't list minimum of hours per day or limit of days she'll be attending. **Council will need to approve a not to exceed limit for the current contract.**

February 19, 2019 – Contract

Claudia Solis-Alcala provided a new proposal at the meeting, the listed services add up to \$900 for the first six months, which is the same rate as the previous contract with the request of additional compensation for special events of \$100 per day for a minimum of four hours per day. Special Events include two days at Cantaloupe Round up & one day at Firebaugh Christmas Celebration & Parade.

Motion to accept Claudia Solis-Alcala's proposal but not to exceed \$2100.00 & review contract in one year motion pass by unanimous 5-0 vote.

December 4, 2017 – Contract

Claudia Solis-Alcala provided a new proposal at the meeting, \$30 Consultation Fee, \$30 per post, with similar services in previous & current contracts. The above services add up to \$900 for first six months. That's an increase of \$200 over the previous six month trial period, not to exceed \$1,800.

Motion to accept Res. No. 17-53 (12-month agreement, \$1800.00 payment for the whole term) by Council Member Valdez, second by Council Member Sablan; motion pass by unanimous 5-0 vote.

March 20, 2017 – Contract

Claudia Solis-Alcala provided a new proposal at the meeting, \$20 Consultation Fee, \$20 per post, with similar services in previous & current contracts. First six months is \$700 just for Facebook, which includes the launch of the site. Then, \$900 for the second six months per social media site, with only one post per week will be included in the proposal.

Motion to accept all input, direct Attorney to create agreement and give Ben the authorization to sign with Pio as the staff contact person. A review of the services will be 30 days prior to the six month term expiration date by Council Member Valdez, second by Council Member Sablan; motion pass by 5-0 vote.

RESOLUTION NO. 20-02

A RESOLUTION OF THE CITY OF FIREBAUGH APPROVING A CONSULTING AGREEMENT WITH CLAUDIA SOLIS FOR SOCIAL MEDIA MANAGEMENT AND AUTHORIZING CITY MANAGER TO SIGN SAID AGREEMENT

WHEREAS, the City of Firebaugh ("City") has the need for social media management services; and

WHEREAS, Claudia Solis is trained and experienced to provide such services; and

WHEREAS, on December 4, 2017, the Council approved an Agreement with Ms. Solis for social media services and authorized the City Manager to sign the Agreement; and

WHEREAS, the City desires to once again enter into an Agreement for social media services with Ms. Solis

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the governing body of the City of Firebaugh hereby approves the attached Agreement for Social Media Management with Claudia Solis, which is incorporated herein by this reference, and authorizes the City Manager, Benjamin Gallegos, to sign the Agreement in behalf of the City.

The foregoing Resolution was approved and adopted at a regular meeting of the City Council of the City of Firebaugh held on the 6th day of January, 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Elsa Lopez, Mayor

Rita Lozano, Deputy City Clerk

**CONSULTING AGREEMENT
BETWEEN
CITY OF FIREBAUGH
AND
CLAUDIA SOLIS**

This Agreement is made and entered into this ____ day of January, 2020, by and between the CITY OF FIREBAUGH, a municipal corporation, hereinafter "City", and CLAUDIA SOLIS, hereinafter "Consultant".

WITNESSETH

WHEREAS, City has a requirement for consulting services in connection with the City's efforts to secure and, establish its presence on social media; and

WHEREAS, Consultant is trained and experienced in this field and is willing to perform the services required by the City.

NOW, THEREFORE, City and Consultant, for the consideration hereinafter set forth, agree as follows:

1. SERVICES BY CONSULTANT

City shall employ Consultant who is properly skilled in the various aspects of the services to be furnished under this Agreement. Services to be performed by Consultant are described in Exhibit "A", which is attached and incorporated herein by this reference.

2. COMPENSATION FOR CONSULTING SERVICES

Compensation for consulting services is set forth in Exhibit "A", which shall not exceed _____ dollars (\$ _____.00) for the term of this Agreement.

Consultant shall submit to City monthly itemized invoices for the services rendered. If the work is satisfactorily completed, City shall pay such invoice within thirty (30) days of its receipt. Should City dispute any portion of any invoice, City shall pay the undisputed portion within the time stated above, and at the same time advise Consultant in writing of the disputed portion.

3. TERM

This Agreement shall be in full force and effect for twelve (12) months from its effective date. The parties may review and negotiate a new agreement thirty (30) days prior to the expiration of the original term.

4. INSURANCE

Consultant shall maintain the following insurance and shall submit certificates of insurance evidencing the same:

- a. Errors and Omissions Insurance. Consultant shall have such errors and omissions insurance as shall protect City, its officers, directors, employees and agents from claims based on errors or negligent acts or omissions which may arise from Consultant's operations or performance under this Agreement, whether claims be made during or subsequent to the term of this Agreement, and whether such operations or performance be by Consultant or its employees, Consultants, agents or anyone else directly or indirectly employed by any of the foregoing. The amount of this insurance shall not be less than \$1,000,000.

Said policy shall be continued in full force and effect during the term of this Agreement. In the event of termination of said policy, new coverage shall be obtained for the required period to insure for the prior acts of Consultant during the course of performing services under the terms of this Agreement.

- b. Automobile Liability. Consultant shall maintain automobile liability insurance with coverage for any vehicle including those owned, leased, rented or borrowed. This insurance shall have a standard cross liability clause or endorsement. The limit amount for this insurance shall be no less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
- c. Within thirty (30) days of the date of this Agreement, the Consultant shall provide the City with Certificates of Insurance demonstrating compliance with paragraphs 4 a. and b. above. Said certificates shall specify or be endorsed to provide that ten (10) days notice shall be given in writing to the City of any cancellations.

5. INDEMNIFICATION AND HOLD HARMLESS

Consultant shall protect, indemnify, hold harmless and defend City, its directors, officers, employees and agents, from any and all claims, fines, demands, costs, expenses (including but not limited to attorney fees and costs of litigation or arbitration), liability, losses, penalties, causes of action, awards, suits or judgments for damages of any nature whatsoever (hereinafter collectively referred to as Claims) to the extent arising out of the breach of this Agreement in whole or in part by willful or fraudulent misconduct or negligent acts, by Consultant, its employees, agents or Consultants, or the agent, employee or Consultant of any one of them in the performance of their duties or under this Agreement.

6. RECORDS OF CONSULTANT

Records of Consultant pertaining to the services hereunder shall be kept on a generally recognized accounting basis, and shall be available for inspection by City or its designees at reasonable times.

7. **TERMINATION**

Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other. Upon termination, Consultant shall be paid for services performed to date of termination.

8. **ASSIGNMENT**

Consultant shall not assign this Agreement, or any part thereof, or any monies due hereunder, without the prior written consent of City.

9. **OWNERSHIP OF DOCUMENTS, APPLICATIONS AND DATA**

Originals of all documents and data in any form prepared by Consultant pursuant to this Agreement shall be and remain the property of City.

10. **NOTICES**

All notices, statements, reports, approvals, or requests or other communications that are required to be given by either party to the other under this Agreement shall be in writing. Unless, and until formally notified otherwise, all notices shall be addressed to the parties at their address shown below:

CITY

CITY OF FIREBAUGH
1133 "P" Street
Firebaugh, California 93622
(559) 659-2043

CONSULTANT

CLAUDIA SOLIS

11. **ATTORNEY FEES**

In the event of any action or proceeding of any nature, between City and Consultant becomes necessary to enforce or interpret all or any portion of this Agreement, or because of an alleged breach by either party of any of the terms hereof, it is mutually agreed that the losing or defaulting party shall pay the prevailing party reasonable attorney fees, costs and expenses incurred in connection with the prosecution or defense of such action or proceeding.

12. **ENTIRE AGREEMENT**

This writing constitutes the entire Agreement between the parties relative to the services specified herein, and no modifications hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement except those contained or referenced to in this writing.

13. INDEPENDENT CONTRACTOR/AGENT OF CITY

In performing the services required under this Agreement, Consultant is acting as an independent contractor and agent of City, subject to the general supervision and control of its governing body. As such, Consultant shall be entitled to the same immunities and protections as any other governmental employee exercising discretion under all applicable statutes, regulations, and judicial and administrative precedent, subject to City's rights of action against Consultant for any professional errors or omissions of Consultant. Notwithstanding the foregoing, Consultant shall not be entitled to receive any employee rights or benefits, other than payment for services provided in Exhibit "A".

14. SEVERABILITY

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

15. WAIVER OF RIGHTS

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF FIREBAUGH

ATTEST:

By: _____
Ben Gallegos
City Manager

By: _____
Rita Lozano
Deputy City Clerk

CONSULTANT

By: _____
Claudia Solis

EXHIBIT A

Social Media Management Proposal for City of Firebaugh 2020

Scope of Work

Objective - Continue to build and maintain the City of Firebaugh's presence on social media. The goal is to highlight news and special events that are important to city residents.

City of Firebaugh Facebook page - Launched in June, 2017

Current # of Facebook Followers – 1,423

Monthly Costs

- Content Creation

Publish one post per week on Facebook (can post more often, if needed)

I will usually come up with the topics for each week, unless the Council requests something specific

Posts may include: still photos, video and/or graphics

\$30 per post

- Consultation

Discussion of posts for upcoming month

Phone call or email w Olga

- Special Events

\$200 flat fee (per day) for events where I am on-site, such as:

Cantaloupe Roundup

Christmas Parade (Breakfast w Santa.. through Electric Parade)

- New! Requesting a monthly email from the city with upcoming events that will be put on digital sign (Freddie)