

NEAL E. COSTANZO
MICHAEL G. SLATER

LAW OFFICES
COSTANZO & ASSOCIATES
A PROFESSIONAL CORPORATION
575 E. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720-2928
(559) 261-0163

FAX (559) 261-0706

January 14, 2024

Via Email Only
Fernando Santillan, City Manager
City of Selma
1710 Tucker Street
Selma, California 93662
Email: fernandos@cityofselma.com

Re: Items for January 21, 2025, City Council Meeting

Dear Mr. Santillan:

Enclosed herewith is a Staff Report, Resolution and a copy of the proposed Agreement for Legal Services with my firm for placement on the agenda of the City Council on January 21, 2025. The matter should be placed on the agenda in the manner in which it appears in the subject line of the enclosed Staff Report.

A second item for the open session meeting is forthcoming, which relates to the amendment to your employment agreement with the City approved on a 3-2 vote at the November 18, 2024, City Council meeting.

Lastly, we require the following matters on the City Council's closed session agenda to be heard prior to the commencement of the open session. Scheduling the commencement of a closed session an hour in advance of the start time for the open session is more than sufficient. The items for closed session are as follows:

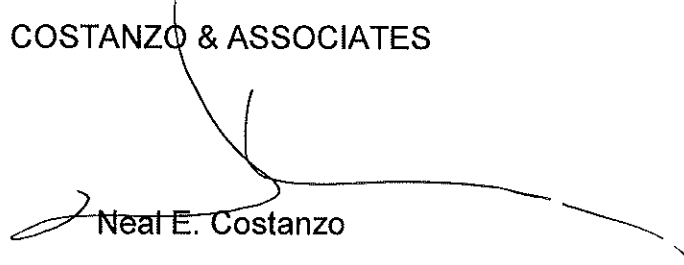
1. Public Employment Pursuant to Government Code §54957.
(All Positions and Departments)
2. Pending Litigation Pursuant to Government Code §54956.9.
(City of Selma v. Second Chance Animal Shelter
FCSC No. 24CECG04247)
3. Potential Litigation Pursuant to Government Code §54956.9

(One case – significant exposure to litigation, Gov. C. §54956.9(a)(2), (3))

Thank you for your attention to these matters. Please let me know if you see any issues with respect to the placement of the foregoing items on the January 21, 2025, agenda, and whether you require any additional information or backup for the agenda items mentioned.

Very truly yours,

COSTANZO & ASSOCIATES



Neal E. Costanzo

NEC/js

CC: Council Members Avalos, Ocegüera,
Trujillo, Mayor Pro Temp Guerra,
Mayor Robertson

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

January 21, 2025

ITEM NO:

SUBJECT: Consideration and Necessary Action on Resolution Approving and Authorizing Execution of Agreement for Legal Services Between the City of Selma and Costanzo & Associates, a Professional Corporation.

RECOMMENDATION: Council to adopt resolution approving and authorizing execution of agreement for legal services with Costanzo & Associates, a Professional Corporation.

DISCUSSION:

Costanzo & Associates, a Professional Corporation was appointed City Attorney for the City of Selma on December 12, 2024, at a special meeting by a 4-0 vote of the City Council.

The City Attorney is proposing to provide services as City Attorney for the City of Selma pursuant to an agreement for legal services. The agreement reflects the appointment and provides for compensation payable to the City Attorney for two different broadly categorized services typically required of a City Attorney.

First, the agreement provides for the rendition of legal services consisting of attendance at all City Council regular meetings, Planning Commission regular meetings and all necessary proprietary work for attendance and effective participation, including at such meetings including assistance in preparation or review of ordinances, resolutions, agreements and other documents, other routine legal services related thereto and exchanged for a monthly retainer set at \$7,5000, referred to as the agreement as the "Retainer" services.

Second, the agreement provides for the rendition of additional legal services including litigation, attendance at non-regular meetings of the Council and Planning Commission, and the generation of most documents and transactional work at standard hourly rates of attorneys employed by the City Attorney's office ranging from \$325.00 per hour for litigation, \$300.00 an hour for other additional services of the City Attorney and \$250.00 per hour for the services of other attorney employees of the City Attorney's office.

As required by statute, the City Attorney serves at the pleasure of the City Council and the agreement is subject to termination, without cause or reason by a majority vote of the City Council.

FISCAL IMPACT: Undetermined. It is anticipated the cost for legal services under this agreement will be less than what is currently budgeted for those services.

RECOMMENDATION:

Council to adopt resolution approving and authorizing execution of agreement for legal services with Costanzo & Associates, a Professional Corporation.

Neal E. Costanzo, Special Counsel

Date

Fernando Santillan, City Manager

Date

RESOLUTION NO. 2025-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SELMA APPROVING
AND AUTHORIZING EXECUTION OF AGREEMENT FOR LEGAL SERVICES
WITH COSTANZO & ASSOCIATES, A PROFESSIONAL CORPORATION**

WHEREAS, the City of Selma has appointed Neal E. Costanzo and Costanzo & Associates, a Professional Corporation as City Attorney for the City of Selma effective December 12, 2024; and

WHEREAS, the appointed City Attorney is proposing to provide legal services as City Attorney in accordance with an agreement for legal services, a copy of which is attached and incorporated by reference as Exhibit A.

NOW, THEREFORE, IT IS RESOLVED AS FOLLOWS:

1. The forgoing recitals are true and correct.
2. The City Council has reviewed and approves the agreement for legal services with Costanzo & Associates, a Professional Corporation attached as Exhibit A and incorporated by reference.
3. The City Manager is hereby authorized to execute the agreement for legal services with Costanzo & Associates, a Professional Corporation, Exhibit A to this Resolution.

This Resolution was duly adopted by the City Council of the City of Selma at a regular meeting on the _____ by the following vote:

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

Scott Robertson, Mayor

ATTEST:

Reyna Rivera, City Clerk

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is entered into by and between the CITY OF SELMA, a general law city (referred to hereinafter as "City"), and the law firm of Costanzo & Associates, a Professional Corporation (referred to hereinafter as "Corporation")

1. Term: The operative date of this Agreement shall be September 16, 2019, at 5:00 p.m., even though it may be executed by the parties either before or after that date. This Agreement shall continue in effect unless and until terminated as provided herein or until mutually rescinded.

2. General Counsel Services Under Monthly Retainer: The Corporation shall furnish the City with legal services as counsel to the City's City Council (the "Council"), and as interim City Attorney for the City in exchange for a monthly retainer of seven thousand, five hundred dollars (\$7,500) (the "Retainer Services"). The Retainer Services under this Agreement shall consist of the following:

a. Attendance at all City Council regular meetings (regular meetings are held on the first and third Monday of each month).

b. Attendance at all Planning Commission regular meetings; and

c. All preparatory legal work necessary for attendance and effective participation in any of the foregoing meetings including the review of staff reports, resolutions and ordinances or agenda materials associated with those meetings and routine legal advice, telephone and personal consultations with the City Council, and/or City staff relating to any regular meeting of the City Council.

d. Routine legal advice, telephone and personal consultations with City Staff.

e. Assistance in the preparation or preparation of and review of ordinances, resolutions, agreements, contracts, forms, notices, certificates, deeds and other documents required by the City.

f. The monitoring of pending and current state and federal legislation and court decisions as appropriate.

g. The coordination of outside legal counsel as needed and as directed by the City Council and City Manager; and

h. Any other service generally understood within the field of municipal law to fall within the category of "general counsel" work.

3. Additional Services. To the extent they do not involve preparatory legal work as described in item 2 c. of this Agreement, the following are excluded from Retention Services and are herein defined as Additional Services.

a. All litigation, including criminal prosecutions and code enforcement actions, as well as adversarial proceedings, defined as a proceeding in any state or federal court. (However, it is agreed that, the Corporation has an ethical obligation to refuse to pursue a given litigation matter should the Corporation conclude that it is not in a position to provide adequate legal services to the City in that particular matter, in which case, the Corporation, with the approval of the City Manager, is authorized to refer the handling of such litigation to a different attorney or firm). All matters involving any form of litigation as to which a defense or indemnification is available through the City's Risk Management Authority shall be handled by the attorney or firm selected by the Risk Management Authority and shall not be handled by the Corporation, unless specifically agreed to by the Risk Management Authority, the City Manager and the Corporation. It is further agreed that, in the fields of law set forth below, "litigation" shall not, for these purposes, be considered to have begun until:

- (1) in an eminent domain proceeding, until the adoption by the City of a resolution of necessity; and
- (2) in a personnel matter, until actual dismissal has taken effect; and
- (3) in a Code enforcement proceeding, until final determination of any administrative proceeding before the City or any City commission or committee.

b. Revenue raising services involving matters such as municipal bonds, including but not limited to assessment district bonds, certificates of participation or other debt instruments.

c. Attendance at meetings of the Council, Planning Commission and other boards or commissions, in addition to those mentioned in paragraph 2a and b. of this Agreement.

d. Legal services where the costs of such are reimbursed to the City by other parties, personnel and disciplinary matters Code Enforcement or Ordinance Enforcement matters, and the preparation of any document that is not a review, editing or evaluation of a document prepared by City or staff as described in paragraph 2e of this Agreement.

e. Additional Services will be undertaken by the Corporation only upon the direction of the City Council or City Manager or Department Head, or his or her designee, of City; and

f. The time spent on Additional Services will be separately noted on monthly billings to City.

g. All references in this Agreement to Services, whether Additional or Retainer Services, to be performed for or on behalf of the City by the Corporation, shall also mean and refer to services to be performed for the Successor Agency of the City.

4. Independent Contractor: The Corporation, and its employees, is an independent contractor and not an employee of the City.

5. Compensation:

a. The Corporation shall be compensated for all services rendered hereunder as follows:

(1) For Retainer Services at the rate of Seven Thousand Five Hundred Dollars (\$7,500) per month.

(2) For the Additional Services at the rate of Three Hundred Dollars (\$300) per hour for the services of Neal E. Costanzo and Two Hundred Fifty Dollars (\$250) per hour for any other attorney-employee of the Corporation.; and

(3) For Additional Services that are defined in paragraph 3(a) (litigation) of this Agreement at the rate of Three Hundred Twenty-Five Dollars (\$325) per hour for the services of Neal E. Costanzo and for any other attorney-employee of the Corporation.

b. The Corporation shall be reimbursed for out-of-pocket expenses incident to services performed in addition to other payments provided for herein. Such out-of-pocket expenses shall include, but not be limited to:

(1) Document reproduction costs.

(2) Computer-assisted research expenses.

(3) Long distance telephone costs; and

(4) Travel and lodging expenses in the event an employee of the Corporation is required to travel on behalf of the City. Chargeable automobile mileage shall be charged at the rate of \$0.50 per mile

for automobile travel. The Corporation shall not bill for travel time to and from City but may bill for mileage for such travel.

c. City and Corporation agree that the rates and amounts specified in paragraph 5 may be modified by supplemental mutual agreement by the parties hereto from time to time.

6. Statement and Payments:

a. The Corporation shall present a statement for services rendered and expenses incurred monthly.

b. City shall pay the amounts on said statements within thirty (30) days after presentment, or as soon as reasonably possible.

7. Scope of Corporation Retention: City agrees in consideration of the Corporation providing the Services at the rates and amounts set forth in paragraph 4 to engage the services of the Corporation to represent City to supervise, as necessary, all other legal counsel representing City in all litigation and administrative proceedings in which the City is a party, as Bond or Special Counsel involving revenue raising mechanisms utilized by the City, and for all Services which are authorized; except:

a. The City Council shall retain the right to direct any particular legal service to an attorney or law firm other than Corporation.

b. Legal services are provided by a joint powers agency (including the Risk Management Authority) in which City is a member; and

c. Any legal representation in which the Corporation has a conflict of interest, including but not limited to advice concerning the content of this Agreement or any proposed amendments or substitutions for this Agreement.

8. Indemnity: The Corporation shall indemnify, save harmless and defend City, its elected officials, officers, agents and employees, including the payment by the Corporation for any and all legal costs and attorney's fees, from all liability from loss, damage or injury to persons or property in any manner arising out of or incidental to the negligent performance by Corporation of this Agreement. Pursuant to Section 6147 and Section 6148 of the Business and Professions Code, the Corporation hereby discloses that it maintains errors and omissions insurance coverage applicable to the services to be rendered under this Agreement and the policy limits of that coverage are One Million Dollars (\$1,000,000.00) per occurrence up to a maximum of One Million Dollars (\$1,000,000.00) per policy term.

9. Termination: This Agreement, and services hereunder, may be terminated by City at any time and for any reason and may be terminated by the Corporation upon thirty (30) days' written notice provided to City or as mutually agreed in writing. Upon any such

termination, the Corporation shall supply orderly transitional services at the hourly rate herein specified.

10. Notices: Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same into the custody of the United States Postal Services, or its lawful successor, postage prepaid and addressed as follows:

City: City of Selma
1710 Tucker Street
Selma, California 93662

Corporation: Costanzo & Associates
A Professional Corporation
575 E. Locust Avenue, Suite 115
Fresno, California 93720

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notices given by deposit with the United States Postal Service shall be deemed to have been given two (2) consecutive business days following the deposit of the same in the custody of said Postal Service. Either party hereto may, from time to time, by written notice to the other designate a different address or person, which shall be substituted for that above specified.

11. Entire Agreement: This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. Except as expressly set forth herein, this Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

12. Interpretation: Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared this Agreement or caused it to be prepared. City acknowledges that it has been advised that neither the Corporation nor any other attorney in the employ of the Corporation have represented the City in the negotiation of the terms of this Agreement and that City may retain its own independent counsel to review the terms of this Agreement and advise City with regard thereto, and that City has chosen not to do so.

WHEREFORE, the parties have executed this Agreement as of the dates set forth below opposite the name of each party.

CITY OF SELMA,
A California General Law City

Dated: _____, 2019

By: _____
Scott Robertson, Mayor

COSTANZO & ASSOCIATES,
A Professional Corporation

Dated: _____, 2019

By: _____
Neal E. Costanzo, President

ATTEST:

By: _____
City Clerk