



## STAFF REPORT

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**MEETING DATE:** December 14, 2022

**PRESENTER:** Josefina Alvarez, Interim Finance Director

**SUBJECT:** Resolution Approving Consultant Services Agreement to Prepare and File Claims for State Mandated Cost Reimbursement with David Wellhouse & Associates, Inc. and authorize the City Manager to Execute the Agreement (JA)

**RECOMMENDATION:** Council by motion adopt resolution approving consultant services agreement to prepare and file claims for State Mandated Cost Reimbursement with David Wellhouse & Associates, Inc. and authorize the City Manager to execute the agreement.

**EXECUTIVE SUMMARY:** David Wellhouse & Associates Inc. has served the City of Kerman for over 20 years in preparing and filing claims for State Mandated Cost Reimbursements. David Wellhouse & Associates, Inc. files all claims in accordance to State Controller's claim filing deadline every year and designated City staff works directly with the consultant in providing requested information such as warrants, financial documents and other information as requested.

The deadline to prepare, file and submit annual claims for Fiscal Year 2021-2022 is on or before February 15, 2023. With the extensive City knowledge and expertise of David Wellhouse & Associates, Inc. the February deadline can be accomplished.

**FISCAL IMPACT:** Funds in the amount of \$3,000 for professional fees were included in the FY 22/23 budget under Administrative Services.

**ATTACHMENTS:**

A. Resolution w/Exhibit

**RESOLUTION 22-\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KERMAN APPROVING CONSULTANT SERVICES AGREEMENT WITH DAVID WELLHOUSE & ASSOCIATES TO PREPARE AND FILE CLAIMS FOR STATE MANDATED COST REIMBURSEMENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

WHEREAS, the City of Kerman requires a consultant to prepare and file claims for State Mandated Cost Reimbursement, and

WHEREAS, David Wellhouse & Associates, Inc. has prepared, filed and submitted annual claims for the City of Kerman for over 20 years, and

WHEREAS, David Wellhouse & Associates, Inc. agrees to prepare, file and submit annual claims by February 15, 2023, and

WHEREAS, City staff will provide David Wellhouse & Associates, Inc. with the proper warrants, financial documents and other information as requested from David Wellhouse & Associates, Inc. in order to prepare, file and submit the annual claims.

NOW, THEREFORE, the City Council of the City of Kerman does resolve as follows:

1. The foregoing recitals are true and correct.
2. The City Council hereby approves the Consultant Services Agreement (Exhibit 'A') with David Wellhouse and Associates, Inc. in the amount of \$3,000 to prepare, file and submit the annual claims for State Mandated Cost Reimbursements and authorizes the City Manager to execute same.
3. This resolution shall be effective immediately.

The foregoing resolution was approved by the City Council to the City of Kerman at a regular meeting held on the 14<sup>th</sup>, day of December 2022 and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Marci Reyes  
City Clerk

Exhibit 'A'

**AGREEMENT BETWEEN THE CITY OF KERMAN AND  
DAVID WELLHOUSE & ASSOCIATES, INC. FOR PREPARATION AND FILING OF  
CLAIMS FOR STATE MANDATED COST REIMBURSEMENT**

This Agreement is made and entered into effective on \_\_\_\_\_ by and between the City of Kerman, a California municipal corporation, (hereinafter referred to as "CITY") and David Wellhouse & Associates, Inc. (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY desires to obtain consultant services from a qualified consultant to prepare and file claims for State Mandated Cost Reimbursement, and CONSULTANT has been selected to perform said services.

WHEREAS, CONSULTANT warrants that it is specially trained, experienced, expert, and competent to perform such services and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals which are part of this Agreement and the terms and conditions hereinafter contained, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY, services as requested by CITY as specifically set forth in Exhibit "A", which is attached hereto and hereafter referred as "Scope of Services for Preparation and Filing of Claims for State Mandated Cost Reimbursement"
2. Term of Agreement. This Agreement shall be effective from date of execution by both parties subject to termination in accordance with this Agreement. Thereafter, this agreement may be extended annually by mutual agreement of CITY and CONSULTANT pursuant to annual program budget as approved by City Council.
3. Compensation. CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be as follows: shall be at the rate and schedules attached hereto as Exhibit "B", and as further defined in their "Table 1 Budget Estimate Summary" for a not to exceed total of \$3,000 (Three Thousand Dollars and Zero Cents).
4. Termination.
  - (a) This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the CITY upon written notice to the CONSULTANT upon thirty (15) day's written notice. CONSULTANT may terminate this Agreement upon 60 days' written notice.
  - (b) If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, CITY may terminate this Agreement immediately upon written notice.

(c) Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the CITY, become its sole property and shall, at CONSULTANT'S expense, be delivered to the CITY or to any party it may so designate.

(d) In the event termination is without cause, CONSULTANT shall be entitled to any compensation owing it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that CONSULTANT shall be entitled to compensation for work in progress at the time of termination. Notice of termination shall be mailed as follows:

To the CITY:

City of Kerman  
Attn: City Manager  
850 S. Madera Avenue  
Kerman, CA 93630

To the CONSULTANT:

David Wellhouse & Associates, Inc.  
Attn: Renee M Wellhouse  
3609 Bradshaw Rd, Suite H-382  
Sacramento, CA 95827

5. Indemnification. To the furthest extent allowed by law, CONSULTANT agrees to indemnify, including the cost to defend, City and each of its officers, officials, employees, agents, and volunteers from and against all claims, demands, costs, or liability, and expenses including attorney's fees arising out of the performance of the work described in this Agreement, caused in whole or in part by the sole negligence, recklessness, or willful misconduct of CONSULTANT, its principals, officers, employees, agents, or volunteers in the performance of this Agreement or anyone for whose acts any of them may be liable excluding, however, such claims, demands, loss, damages, or arising from CITY'S sole negligence or willful acts.

6. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in Exhibit "C" or as may be authorized, and any additional insurance as may be required, in writing by City Manager or his or her designee at any time and in her sole discretion.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. This phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

7. Nondiscrimination. To the extent required by controlling federal, state, and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era.

8. Independent Contractor. In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venture, partner, or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

9. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of mailing thereof.

10. Assignment. This agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or her designee.

11. Compliance with Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California, and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

12. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

13. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

14. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

15. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

16. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

17. Attorneys' Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

18. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

19. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

20. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

21. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

[Signatures on Separate Page]

CITY OF KERMAN  
A municipal corporation

David Wellhouse & Associates, Inc.

\_\_\_\_\_  
John Jansons, City Manager  
Date: \_\_\_\_\_, 2022

\_\_\_\_\_  
Signature:  
\_\_\_\_\_  
Print: Name and Title  
Date: \_\_\_\_\_, 2022

ATTEST:

\_\_\_\_\_  
Marci Reyes, City Clerk  
Date: \_\_\_\_\_, 2022

APPROVED AS TO FORM:

\_\_\_\_\_  
Hilda Cantú Montoy, City Attorney  
Date: \_\_\_\_\_, 2022

Exhibit 'A' to Agreement

SCOPE OF SERVICES

**Proposal for Consultant Services to Prepare and File Claims for State Mandated Cost Reimbursements**

1. **Claims To Be Filed.** CONSULTANT shall prepare and file with the State Controller's Office on behalf of CITY, the following State Mandated Cost (SB 90) claims during the 2021-2022 fiscal year.

A. **February 2023 Annual Claims for Fiscal Year 2021-2022 claims to be prepared and filed on or before February 15, 2023 as required by the State Controller's Claiming Instructions.**

Racial and Identity Profiling – Chapter 466, Statutes of 2017

Vote by Mail Ballots: Prepaid Postage Chapter 120 (AB216), Statues of 2018

Peace Officer Training: Mental/Health/Crisis Intervention – Chapter 459, Statues of 2015

U Visa 918 Form, Victims of Crime: Nonimmigrant Status – Chapter 721, Statues of 2015

Local Agency Employee Organizations: Impasse Procedures II – Chapter 314, Statues of 2012

Domestic Violence Arrests & Victim Assistance – Chapter 698 & 702, Statues of 1998

Rape Victims Counseling Center Notices – Chapter 999, Statues of 1991

Domestic Violence Arrest Policies and Standards – Chapter 246, Statues of 1995

Threats Against Police Officers – Chapter 1249, Statues of 1992

Health Benefits of Survivors of Peace Officers and Firefighters – Chapter 1120/96

Peace Officers Procedural Bill of Rights – Chapter 465m Statues of 1976

Administrative License Supervision – Chapter 1460, Statues of 1989

Peace Officer Personnel Records – Chapter 741, Statues of 1994

Peace Officer Procedural Bill of Rights II – Chapter 170, Statues of 2002

Local Government Employee Relations – Chapter 901, Statues of 2000

Crime Victim's Domestic Violence Incident Reports – Chapter 1022, Statues of 1999

Pesticide Use Reports – Chapter 1200, Statues of 1989



State Authorized Risk Assessment Tool for Sex Offenders – Chapter 336, Statutes of 2006

Tuberculosis Control – Chapter 1763, Status of 2002

CITY acknowledges that CONSULTANT does not warrant that claims will be filed for all of the mandates listed in Section 1. CONSULTANT shall only prepare and file claims for those mandates listed in Section 1 in which the CITY has reimbursable costs.

The claims and services described in Section 1 shall be hereinafter be referred to as “PROJECT”.

CONSULTANT hereby designated Renee Wellhouse, or other delegated representative, to be sole contact and agent in all consultations with CITY during the performance of services as stated in PROJECT.

2. **Time for Performance.** CONSULTANT shall file all claims in accordance with the State Controller’s claim filing deadline contained in the applicable State Controller Claiming Instructions.
3. **Compensation.** CITY agrees to pay CONSULTANT a fixed fee in the amount of \$3,000.00 for services provided under Section 1A of PROJECT, upon receipt of CONSULTANT’S invoice, after submission of claims as required by the State Controller’s Claiming Instructions.
4. **Method of Payment.** CITY agrees to pay said fixed fees for services provided under Section 1A of PROJECT upon receipt of CONSULTANT’S invoice, after submission of claims as required by the State Controller’s Claiming Instructions. City further agrees to pay CONSULTANT’S invoice within 15 days of receipt.
5. **City Assistance.** CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this agreement. CITY shall provide CONSULTANT with requested information in a timely manner, pursuant to PROJECT. CITY represents and warrants that all financial documents and other information provided are accurate and correct. CONSULTANT shall not be liable for claims that are not filed or incorrectly filed due to inaccurate or untimely data.
6. **Disposition of Documents.** CONSULTANT shall furnish to CITY copies of all claims filed with the State within 30 days after filing. CONSULTANT shall upon written request, make copies of work papers available to CITY. CITY acknowledges that all such work papers are the property of CONSULTANT, and may not be disclosed to any third party, provided however that such work papers may be disclosed to appropriate governmental authorities for audit purposes. CONSULTANT shall be entitled to retain copies of all data prepared.
7. **Consultant Assistance if Audited.** Upon notice of audit, CONSULTANT shall make available to CITY and State auditors claim file information, and provide assistance to CITY in defending claims submitted.
8. **Consultant Liability if audited.** All work required hereunder shall be performed in a good and workmanlike manner. Any disallowance of claims by the State Controller’s Office or other State agencies is the responsibility of CITY.

9. **Indirect Costs.** CONSULTANT shall make every effort to prepare departmental Indirect Cost Rate Proposals for claims submitted, provide CITY financial information and departmental costs support such rates. CONSULTANT may utility the ten percent (10%) indirect cost rate allowed by the State Controller if financial information and departmental costs do not support a higher rate.

Exhibit 'B'  
FEE SCHEDULE

Activity	Estimated Expense	Estimated Budget
Prepare and File Claims for State Mandated Cost Reimbursement	\$ 3,000.00	\$ 3,000.00

## Exhibit 'C'

### **INSURANCE REQUIREMENTS**

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

#### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.  
(Not required if CONSULTANT provides written verification it has no employees)

If the CONSULTANT maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

#### Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

**Additional Insured Status** The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

**Primary Coverage** For any claims related to this contract, the CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

*Notice of Cancellation* Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Entity.

*Waiver of Subrogation* CONSULTANT hereby grants to CITY a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

*Deductibles and Self-Insured Retentions* Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require the CONSULTANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

*Acceptability of Insurers* Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

*Claims Made Policies* If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

*Verification of Coverage* CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

*Subcontractors* CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONSULTANT shall ensure that CITY is an additional insured on insurance required from subcontractors.

*Special Risks or Circumstances* CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.