



## Staff Report

### October 10, 2017

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**TO:** Honorable Mayor and Members of the Town Council  
**FROM:** Town Manager, Chamber of Commerce  
**DATE:** October 3, 2017  
**RE:** Town Branding Program - Sidewalk Tiles with Historical Mural Pictures

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#### **Recommendation**

Approve funding to the Loomis Chamber in an amount not to exceed \$5,000 for a kiosk, maps, postcards and a Guide by Cell subscription.

#### **Issue Statement and Discussion**

Strategic Direction #3 of the Town Council Strategic Plan calls for the branding of Loomis. At the August 11, 2015 Town Council meeting, the Council approved the "Historic Fruit Label" branding concept presented by staff and the Chamber. With the impending completion of the current phase of the downtown, the sidewalk tiles are about to be set and a grand opening "Historical Walking Tour" is being planned by the Chamber.

The Loomis Chamber is requesting funding not to exceed \$5,000 for an information kiosk, maps, postcards, a banner and a Guide by Cell subscription. The Guide by Cell program allows people to call a number on their cell phone, then enter the specific mural number. The service then plays a recorded message of the history behind the mural (see the link in the attached email from Jenny Knisely).

#### **CEQA Requirements**

This item is exempt from CEQA.

#### **Financial and/or Policy Implications**

Funds will come from Fund 319.200 – CDBG Revolving funds. The fund currently has \$186,000 available.

#### **Attachments**

- A. Resolution
- B. Email from Jenny Knisley
- C. Engage by Cell contract

# TOWN OF LOOMIS

## RESOLUTION NO. 17-

### A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS AMENDING THE 2017-18 OPERATING BUDGET

WHEREAS, the Council of the Town of Loomis has adopted the 2017-2018 Annual Budget, and;

WHEREAS, Strategic Direction #3 of the Town Council Strategic Plan calls for the branding of Loomis, and;

WHEREAS, the Loomis Basin Chamber of Commerce has created a branding program including murals, decorative tiles and a walking tour, which could bring additional tourism, shopping and revitalization to the downtown area, and;

WHEREAS, \$5,000 is needed to complete the project.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Town Council that the 2017-2018 Operating Budget be amended to allocate \$5,000 from the economic development funds of the CDBG Revolving Funds account number 319.200 for use by the Loomis Basin Chamber of Commerce to complete the project.

PASSED AND ADOPTED this 10<sup>th</sup> day of October 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Mayor

ATTEST:

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Town Clerk

**From:** Loomis Basin Chamber of Commerce <[manager@loomischamber.com](mailto:manager@loomischamber.com)>

**Sent:** Monday, September 18, 2017 4:20:53 PM

**To:** Sean Rabe; Roger Carroll; Britton Snipes

**Subject:** Loomis Legacy Loop - Mural Project

Hi Sean, Roger, and Brit,

*I wanted to send you a great example of what the Historic Mural walk by cell could be like - <http://www.historicmuralsofsanangelo.org/guidebycell.html>.*

I was looking through old newspaper clippings and came across this article - Isn't interesting that 20 years later we are still working towards the same goal.

Our goal has been:

To create a unified brand to promote the Town of Loomis as a distinctive destination providing a unique small-town shopping and dining experience while honoring and capitalizing upon our historical agricultural heritage. *I really believe this can make the Loomis Legacy Loop something special for our Town.*

Our mission

To build our branding around the historical fruit packing labels originating from the Loomis area through the creation of a walking historical loop. Capitalizing and building upon the existing 5 fruit packing label murals and the Blue Anchor Park and history plaque while adding additional murals and expanding the use of the packing labels in the streetscape, signage, marketing materials, events and shop local campaign. *This is very close to being complete.*

*I'm attaching the contract for review - This is a joint contract that also has the texting services that can be used by the Town.*

*I've also been working with Historical Society and other community leaders on this joint project. Russ Kelly is helping me work with FFA at Del Oro to possibly make the kiosk (keeping cost down). He will be meeting with Britt to show plans and dimensions. The information Kiosks could be an ongoing project that continues with more historical kiosk around Town.*

Jenny

Additional Budget items I would like to discuss:

*Guide by Cell - Mobile Cell \$2,500*

*kiosk- \$500 estimate*

*Postcards -\$300*

*Paper Maps 1000 - \$220*

*Banner \$800 (Can I use the remaining approved 2017-2018 Community Grant funds?)*

**engage by cell**

Engage by Cell ("Provider") is pleased to provide the following services to:

Loomis Basin Chamber of Commerce and Town

Name of Organization

Your contract will begin on 10/01/2017 and end on 09/30/2018

Description of Services and Payments

12 months of our text messaging service to be paid upfront. This includes 10,000 text messages. Full use of Cell Phone Tour Audio platform and full use of the Mobile Authoring platform for Smart Phone Tours. At the end of the agreement you may cancel the service if desired, or continue by paying the annual fee of \$2500 for use of the platform and buy bundles of texts (\$250 per 5,000 texts)

Service Includes:

SMS Platform - 12 months of use - \$2500 paid upfront

Cell Phone Tour Audio Guide Platform- Free

Training/Setup - Free

10,000 text messages - Free

If you have any questions, feel free to call Kara at anytime 415.997.0221



# engage by cell

## CONTACT INFORMATION

Organization Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Billing Contact \_\_\_\_\_ Phone \_\_\_\_\_

Billing Email Address \_\_\_\_\_

## PAYMENT METHOD

Check

Credit Card

## CREDIT CARD INFORMATION

Visa

MasterCard

AMEX

Credit Card Number \_\_\_\_\_

Expiration Date \_\_\_\_\_ Security Code \_\_\_\_\_

Name on Card \_\_\_\_\_

Billing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

*If the agreement renews the above credit card will be used for payment. The following person agrees to the terms and conditions of this agreement, as seen on page one and in the Terms and Conditions found on the following pages.*

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

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

*Please sign and return to [info@engagebycell.com](mailto:info@engagebycell.com) or fax to (415) 373-4494. All upfront fees are due at signup.*



## TERMS AND CONDITIONS

In consideration of the promises and of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

### DEFINITIONS

The following terms used in this Agreement have the following defined meanings:

- (a) "Provider": Engage by Cell Inc., a division of Guide by Cell Inc., California Corporation. Details can be found at [www.engagebycell.com](http://www.engagebycell.com).
- (b) "Organization": The organization signing this Agreement.
- (c) "Administrative Platform": The cloud-based software platform provided by Provider that the Organization can use to manage its account and content.
- (d) "User" or "End User": The person or persons who interact with Provider's services (i.e. people who call into a cell phone tour, visit a mobile website or send and receive text messaging to and from Provider's Text Messaging Service).
- (e) "Short Code": The Organization may use Provider's short code for its textmessaging campaign.
- (f) "Primary Keyword": The first word the User texts in to be directed to the Organization's Text Messaging account.
- (g) "Secondary Keyword": This is the second word in a text string that determines what text reply the End User will receive. These responses are programmed by the Organization on Provider's Administrative Platform. Secondary Keywords can also be used to register Users for additional text message notifications.

### TERM

The term of this Agreement shall commence when the Organization returns this signed Agreement to the Provider and shall continue until the stated termination date or when terminated by the Organization or by Provider.

### SERVICES

- (a) This Agreement establishes the standard terms and conditions pursuant to which the Organization will obtain from Provider, and Provider will provide to the Organization, such technology services as may be agreed upon from time to time in writing.
- (b) Provider agrees to provide its Services in a professional and timely fashion, and in accordance with the terms and conditions of this Agreement and the requirements, order of performance and delivery dates.

### PAYMENT & INVOICES

- (a) The Organization must pay all upfront fees before set up begins.
- (b) Accepted payment methods include checks, credit cards or electronic/wire transfer. Should client at any time fail to pay scheduled invoices Provider may discontinue services at any time and turn off the platform. All monthly premiums are billed in advance. Each such invoice shall be due and payable within 30 days after delivery to the Organization.

### ORGANIZATION RESPONSIBILITIES

- (a) The Organization agrees to provide any information or materials requested by Provider which are necessary to perform

the Services under this Agreement or any other Statement of Work.

- (b) By signing this Agreement, the Organization agrees to abide by Provider Marketing guidelines outlined below, including its Audio and Text Messaging Best Practices. Failure of the Organization to adhere to these guidelines may result in Provider terminating this Agreement and the Organization's account.
- (c) It is the sole responsibility of the Organization to download any relevant data or statistics from Provider's administrative platform if the Organization decides to discontinue service.
- (d) It is the responsibility of the Organization to ensure the accuracy and quality of content created or uploaded to Provider's administrative platform. This is detailed below in the section labeled "Content Ownership/Quality."
- (e) The Organization will be responsible for updating and managing user access to the administrative platform. Provider will provide a platform where the Organization can add, edit and remove users.

### CONTENT OWNERSHIP/QUALITY

- (a) Provider does not claim any rights towards content created or uploaded into the administrative platform for any of its services and has no responsibility for the accuracy of the content.
- (b) Provider is not responsible for the quality of any content produced by the Organization and uploaded to its administrative platform.
- (c) Provider will provide the Organization with Best Practices for creating Audio and Text Message content. This information can be found below as well as on Provider's administrative platform.

### TEXT MESSAGING BEST PRACTICES

By signing this Agreement, the Organization is also agreeing to comply with all carrier regulations. Provider will provide a copy of the current U.S. Consumer Best Practices. It is the responsibility of the Organization to ensure that they are in compliance with all carrier regulations.

Organization agrees to adhere to Provider's Marketing Requirements for Text Messaging. This includes putting the phrase "Message & data rates may apply" on all print materials promoting text messaging. Online materials must include the following language:

*"Message & data rates may apply. You can unsubscribe at any time by texting STOP to short code 56512. Text HELP to 56512 for help. [Link to Organization's Privacy Policy]"*

Current U.S. carrier policy mandates that consumers must 'opt-in' to short codes and alerts from their mobile device before they can be sent anything. Even an initial message that asks for permission is considered SPAM. By signing this Agreement, the Organization agrees not to use phone numbers collected on short code 56512 to contact those same subscribers through another short code. If the Organization decides to use another service, subscribers must opt-in to the new short code via text message. Violation of this policy will result in legal action from U.S. carriers.

- (a) If either party fails to comply with the requirements of this



Agreement or the terms and conditions therein, and such failure is not cured within 30 days after written notice is given to the breaching party, then the other party may, by giving written notice to the breaching party, terminate this Agreement and/or the applicable Statement of Work as of the end of such 30-day period or such later date as is specified in such notice of termination.

(b) If the Organization decides to cancel its service with Provider, a minimum of 30 days' notice is required. If the Organization opts to discontinue its service with Provider, or if the service is discontinued due to non-payment, Provider may reuse phone numbers and keywords to be assigned to clients other than the Organization. If the Organization decides to discontinue service, or if the service is discontinued due to nonpayment, the Organization will have 30 days in which to download any data or content they wish to retain from Provider. After this period, all data and statistics will be deleted. Provider is not responsible for retrieving deleted data or content.

(c) In the event that the Organization defaults in the payment when due of any amount due to Provider and does not cure such default within 60 days after being given written notice, then Provider may, by giving written notice to the Organization, terminate this Agreement.

(d) If (i) Provider becomes insolvent, fails to pay the Agreement may be terminated immediately.

(e) Either party may upon giving 30 days written notice terminate this Agreement or any Statement of Work for any reason whatsoever.

(f) Immediately upon termination, Provider shall return, or shall cause to be returned, to the Organization any and all materials received from the Organization or its affiliates by Provider and/or its employee, including any and all lists, compilations or extracts thereof in whatever form or format.

## REPRESENTATIONS & WARRANTIES

In addition to the other representations and warranties of Provider set forth herein, Provider further represents and warrants to the Organization: (i) that it has the requisite power and authority to enter into and perform its obligations under this Agreement and each Statement of Work; (ii) that execution and delivery of this Agreement and performance of the Services set forth herein do not and shall not conflict with any other agreements or understandings to which Provider is a party or by which it may be bound; (iii) that the Services provided by Provider shall be provided to the Organization free and clear of any right, title or interest of any third-party; and (iv) that the Services will be performed in a professional manner by qualified personnel. The foregoing representations and warranties shall be deemed given by Provider for itself and for any, agents and employees employed by Provider.

## CONFIDENTIALITY & SAFEGUARDS

(a) Both parties agree to keep the contents of this and future agreements confidential. The Organization also agrees not to create a competing mobile service during the term of the Agreement.

(b) All information disclosed under this Agreement by the Organization shall be used by Provider only for the purpose for which it is disclosed to Provider in the performance of its obligations to the Organization and shall be disclosed by Provider to the directors, officers, employees, contractors, subcontractors, agents, Affiliates or advisors of Provider only on a "need to know" basis.

(c) Provider is prohibited from disclosing or using any information, including marketing materials and content, from the Organization for any purposes unless Provider has permission in writing from the Organization. In such instances, all usage of this information and/or content will be approved by the Organization in advance.

(d) Provider will not give access to any unauthorized user to the Organization's administrative platform nor to any data provided by the Organization or collected by Provider in the course of offering its Services. This includes content, usage statistics and billing information. Provider will provide an online administrative platform where the Organization can give such access to members of its staff or other parties as deemed fit by the Organization.

(e) Safeguards Provisions: In performing services for the Organization under its agreement(s), Provider, its directors, officers, employees, contractors, subcontractors, agents, Affiliates or advisors of Provider shall use administrative, technical and physical safeguards and procedures in connection with accessing, collecting, processing, storing, using, transmitting, disposing of or otherwise handling confidential information.

(f) Except as may be required by law enforcement, pursuant to court order, subpoena or other legal process, Provider, its directors, officers, employees, agents, Affiliates or advisors of Provider shall not permit access to the Organization's information except on a "need to know" basis, that is, this information shall not be disclosed except to those individuals who need to know the information to provide the services or products contracted for under the agreement(s), and shall keep the Organization Information confidential.

(g) Provider, its directors, officers, employees, contractors, subcontractors, agents, Affiliates or advisors of Provider shall maintain information systems (network, hardware and software), which are capable of detecting, preventing and responding to reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information in their possession, including attacks, intrusions and other systems failures. In the event any of the Organization's online account through Provider is subject to such an attack, intrusion or other system failures that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information. In the event of any such attack, intrusion or system failure, Provider shall immediately notify the Organization, providing complete and accurate details of the event.

(h) The obligations of Provider under this Section are continuing obligations and shall survive the termination of this Agreement. Provider agrees to periodically test the efficacy of its security policies and procedures. Provider agrees to inform its directors, officers, and employees, agents, Affiliates or advisors of Provider of the provisions of this Section.

(i) The Organization or its designated representatives, during normal business hours, have the right to conduct audits and review Provider's operations, systems and records at Provider's business premises in order to evaluate and confirm Provider's compliance with its obligations pursuant to the Safeguards Rule.

## STATEMENT OF CONFIDENTIALITY & NON-DISCLOSURE

This document contains proprietary and confidential information. All data submitted to Organization is provided in reliance upon its consent not to use or disclose any information contained herein except in the context of its business dealings with Provider. The recipient of this document agrees to inform present and future employees of Organization who view or have access to its content of its confidential nature.



# engage by cell

The recipient agrees to instruct each employee contractor, subcontractor, and agent that performs any services under or related to this Agreement that they must not disclose any information concerning this document to others except to the extent that such matters are generally known to, and are available for use by, the public. The recipient also agrees not to duplicate or distribute or permit others to duplicate or distribute any material contained herein without Provider's express written consent.

Provider retains all title, ownership and intellectual property rights to the material and trademarks contained herein, including all supporting documentation, files, marketing material and multimedia.

## PROPRIETARY & OTHER CONFIDENTIAL INFORMATION

This section applies to certain proprietary and confidential information other than NPI.

(a) The Organization and Provider each possess certain proprietary and confidential information, (hereinafter referred to collectively as "Information"). Such proprietary and confidential information relates to, but is not limited to, the following:

- (1) Content uploaded to Provider's administrative platform by the Organization
- (2) Data and statistics collected through Provider's administrative platform and Services
- (3) Financial information of the Organization and Provider and information related thereto or arising therefrom; and
- (4) Certain technology, data and/or other information relating to current and/or proposed products, marketing, training, development, and customer (whether past, current or prospective) of the Organization and Provider.

(b) The Organization and Provider each desire to share in confidence some of such information in their possession with one another. The party providing information in each case is called the "Provider"; the party receiving the information is called the "Recipient".

(c) All information disclosed under this Agreement by Provider, whether provided orally, electronically, or in writing, shall be used by Recipient only for the purposes of the engagement as set out in a separate contract between the parties, and shall be disclosed to the directors, officers, employees, contractors, subcontractors, agents, Affiliates or advisors of Recipient on a "need to know" basis only.

(d) Recipient shall not disclose information received from Provider. Recipient shall use the same care to prevent disclosure of the information of Provider which Recipient uses to protect its own most valuable proprietary information, but in no event less than a reasonable degree of care for such information.

(e) The obligations of the Recipient hereunder shall not apply to any information of Provider which: (i) was in the public domain at the time it was disclosed; (ii) enters the public domain other than by breach of this Agreement by Recipient; (iii) is known to Recipient at the time of its disclosure to Recipient by Provider; (iv) is disclosed to Recipient by a third party who has the right to do so; (v) is developed by Recipient independently of any disclosure by Provider hereunder; (vi) is disclosed by Provider to a third party without the restrictions and obligations imposed upon Recipient by this Agreement; or (vii) is not identified as material considered proprietary at the time it is provided.

(f) Upon termination of this Agreement, within ten (10) business

days of receiving a written request, Recipient shall return all information in tangible form to Provider or, with the consent of Provider, destroy all information.

(g) The Organization and Provider agree that the other will be irreparably harmed in the event of a breach of the Agreement. In the event of a breach, the injured party shall be entitled to equitable relief, including injunctive relief and specific performance.

(h) Provider agrees that all employees, contractors, subcontractors, and agents of Provider that perform any services under this Agreement will be given a copy of Proprietary and Ownership sections of this Agreement and will acknowledge receipt thereof in writing. Provider will retain records of these acknowledgements. The Organization reserves the right to audit these records upon reasonable advance notice to Provider.

## MODIFICATIONS

At any time during the term of this Agreement, if the Organization or Provider should desire to recommend an addition, modification or change to Provider's required performance hereunder, such change must be in writing and executed by both parties.

## AUDIT

The Organization or its designated representatives, during normal business hours, has the right to conduct audits and review Provider's operations, systems and records at Provider's business premises relating to the provision of any and all services pursuant to this Agreement and in order to evaluate and confirm Provider's compliance with its obligations pursuant to this Agreement, including but not limited to the Safeguards Section.

(a) This Agreement shall be deemed to include all Statement of Works issued hereunder. This Agreement constitutes the entire agreement between the parties and there are no prior or contemporaneous, oral or written, representations, understandings or agreements relating to the subject matter hereof which are not fully expressed herein.

(b) This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the state of California without giving effect to the conflicts of law's provisions thereof. Company agrees to jurisdiction of claims arising under this Agreement in the state and federal courts located in San Francisco County, CA.

(c) No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or a breach of any other covenant. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

(d) This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted successors and assigns, and nothing in this Agreement shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Provider may not assign or transfer this Agreement or any rights or obligations hereunder, without the prior written consent of the Organization. Any attempt to assign or transfer this Agreement in violation of this subsection shall be void and of no force and effect.

(e) Neither party shall publicize their relationship or the terms of this Agreement or any Statement of Work or use the other party's





name or other trademarks or service marks in any advertisement or publication without the other party's prior written approval. Except as aforesaid in this Agreement, the terms and conditions of this Agreement shall be considered Confidential Information and neither party may disclose the terms and conditions of this Agreement without the other party's prior written consent.

(f) The representations, warranties and obligations set forth in this Agreement shall survive termination or expiration of this Agreement and shall remain in full force and effect.

(g) Whenever under this Agreement one party is required or permitted to give notice to the other, such notice shall be deemed given when delivered in hand or three days after being sent by United States mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

<b>In the case of Provider:</b>	<b>In the case of the Organization</b>
300 Beale St. Ste.#608	_____
San Francisco, CA 94105	_____
ATTN: Dave Asheim	ATTN:_____

Either party hereto may change its address for notification purposes from time to time by giving the other party prior written notice in accordance with this Section of the new address and the date upon which it will become effective.

(h) This Agreement may not be assigned by Provider unless the Organization is given at least 30 days advance written notice at which time the Organization may decide, in its sole discretion, to either accept the assignment or cancel the Agreement.

(i) If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but if the remainder of this Agreement shall not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected shall be enforced to the extent permitted by law.

(j) All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, inequity or otherwise.

(k) Where agreement, approval, acceptance, consent or similar action by the Organization or Provider is required, such action shall not be unreasonably delayed or withheld.

In witness whereof, each of the parties have caused this Agreement to be executed on its behalf by its duly authorized representative as of the date first above written.

By signing earlier, the Organization and Provider agree to abide by the terms and conditions listed in this Agreement and any associated Statement of Work. By signing this Agreement, the Organization also agrees to pay all relevant fees due at the time this Agreement is signed.