

RESOLUTION NO. 2648

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE EXECUTION OF A SUBORDINATION
AGREEMENT BETWEEN THE CITY AND WELLS
FARGO BANK, NATIONAL ASSOCIATION**

WHEREAS, the City of Soledad, by Resolution No. 2617, executed a First Amendment to "95-STBG-922 CDBG Loan Agreement and Program Implementation Agreement for Services with the SLDC" whereby the City agreed to loan the Soledad Local Development Corporation ("SLDC") \$100,000, secured by a promissory note and deed of trust, for development of 7 units of low income single family housing; and

WHEREAS, SLDC has received a loan of \$698,360 from Wells Fargo, National Association for the development of the same 7 units of low income single family housing; and

WHEREAS, Wells Fargo has requested that the City subordinate its note and deed of trust to the loan documents associated with Wells Fargo's loan to SLDC.

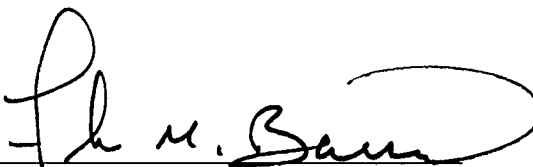
NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Soledad hereby authorizes the City Manager to execute a "Subordination Agreement" in a form similar to that attached as "Exhibit A," conditioned on final approval as to form and content by Agency Counsel.

PASSED AND ADOPTED, by the City Council of the City of Soledad at a regular meeting duly held on the 17th day of December, 1997, by the following vote:

AYES, and in favor thereof, Councilmembers: Ben Jimenez, Jr., Richard Ortiz, Mayor Pro Tem Gary Gerbrandt, Mayor Fabian Barrera.

NOES, Councilmembers: None

ABSENT, Councilmembers: Fred Ledesma


MAYOR OF THE CITY OF SOLEDAD

ATTEST:


CITY CLERK OF THE CITY OF SOLEDAD

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

WELLS FARGO BANK,
NATIONAL ASSOCIATION
Real Estate Group (AU #7652)
111 Sutter Street, 7th Floor
San Francisco, CA 94104
Attn: John S. Kauh
Loan No. 1517OK

DRAFT

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF LENDER'S DEED OF TRUST (DEFINED BELOW).

THIS SUBORDINATION AGREEMENT ("Agreement") is made November ____, 1997 by SOLEDAD LOCAL DEVELOPMENT CORPORATION, a California non-profit public benefit corporation, owner of the real property hereinafter described ("Owner"), the CITY OF SOLEDAD, a political subdivision of the State of California ("City"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender").

RECITALS

1. Owner is the fee simple owner of that certain real property described in Exhibit A attached hereto ("Property"). Owner proposes to construct seven (7) for sale single family residential homes on the Property ("Improvements").
2. Owner and City have entered into that certain CDBG No. 95-STBG-922 Loan Agreement and Program Implementation Agreement for Services with Owner dated December 12, 1996, as amended by that certain Amendment dated September 3, 1997, among Owner and City ("City CDBG Agreement") for, among other things, the financing of the acquisition and development of the Property in the aggregate amount of \$100,000.00 ("City Loan"). The City Loan is evidenced by that certain promissory note executed by Owner dated September 3, 1997 in the principal amount of the City Loan ("City Note") and secured by, among other things, that certain second priority deed of trust dated September 3, 1997 on fee simple title to the Property and Improvements ("City Deed of Trust") and recorded on November 17, 1997 as Instrument No. _____ in the Official Records of Monterey County, California ("Official Records"). The City Loan is being provided under the authority of the Department of Housing and Community Development from Community Development Block Grant funds administered pursuant to the state and federal regulations ("Regulations"). The City Note, City CDBG Agreement, City Deed of Trust and any and all other documents evidencing or securing the City Loan are collectively referred to herein as the "City Loan Documents."
3. Pursuant to a Building Loan Agreement ("Loan Agreement") dated of even date herewith, Lender has made a loan ("Loan") in the original principal amount of SIX HUNDRED NINETY-EIGHT THOUSAND THREE HUNDRED SIXTY AND NO/100THS DOLLARS (\$698,360.00). Owner has executed a Promissory Note Secured by Deed of Trust in favor of Lender dated even date herewith in the sum of the Loan ("Note"), which Note is secured by, among other security, a certain Construction and Permanent Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated of even date herewith encumbering the Property and the Improvements and the "Collateral" as defined therein and to be recorded in the Official Records concurrently herewith (the "Deed of Trust").

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4. The loan evidenced by the Note is hereinafter sometimes referred to as the "Loan." The Loan Agreement, the Note, the Deed of Trust, and all other documents executed by Owner in connection with the Loan are hereinafter referred to collectively as the "Lender Loan Documents."
5. As a condition to Lender making the Loan secured by the Deed of Trust, Lender requires that the Deed of Trust, the repayment of the Loan, and the other Lender Loan Documents unconditionally and at all times remain a lien or charge upon the Property, the Improvements and the Collateral, prior and superior to all the rights of City under the City Deed of Trust, the City CDBG Agreement, the repayment of the City Loan and City's rights under the other City Loan Documents, and that City specifically and unconditionally subordinates the City Deed of Trust, the repayment of the City Loan and City's rights under the other City Loan Documents, to the lien or charge of Lender's Deed of Trust, the repayment of the Loan and the other Lender Loan Documents.
6. City, SLDC and Owner agree to the subordination in favor of Lender.
7. NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Owner and City hereby agree for the benefit of Lender as follows:
- A. Lender's Deed of Trust securing the Note, and any modifications, renewals or extensions thereof, together with Lender's right to the repayment of the Loan and Lender's rights under any other Lender Loan Documents shall unconditionally be and at all times remain a lien or charge on the Property, the Improvements and the Collateral prior and superior to the City Deed of Trust, and all obligations secured thereby, the repayment of the City Loan and City's rights under any of the other City Loan Documents; and
- B. This Agreement shall be the whole agreement with regard to the subordination of the City Deed of Trust, the City CDBG Agreement, the repayment of the City Loan and City's rights under any of the other City Loan Documents to the lien or charge of Lender's Deed of Trust together with Lender's right to the repayment of the Loan and Lender's rights under any other Lender Loan Documents and shall supersede and cancel, but only insofar as would affect the priority of Lender's Deed of Trust, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the City Deed of Trust or the other City Loan Documents which provide for the subordination of the City Deed of Trust and the other City Loan Documents to a deed or deeds of trust or to a mortgage or mortgages.
8. City further declares, agrees and acknowledges for the benefit of Lender, that:
- A. Lender, in making disbursements pursuant to any such agreement, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;
- B. City intentionally and unconditionally waives, relinquishes and subordinates all of City's right, title and interest in and to the Property, the Improvements and the Collateral and to the lien or charge of Lender's Deed of Trust upon the Property, the Improvements and the Collateral, the repayment of the Loan and the other Lender Loan Documents and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination; and

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- C. City has consented to all provisions of the Lender Loan Documents and all other documents and agreements evidencing, securing or otherwise relating to the Loan.
- D. If City receives any proceeds of collateral securing the City Loan, then, in such event, City shall remit such proceeds to Lender until the Loan is paid in full. Notwithstanding anything to the contrary in the foregoing, prior to a Default (as defined in the Loan Agreement) under the Loan, City may receive payments from Owner in accordance with the City Note;
- E. Each of the documents executed and delivered in connection with the City Loan Documents is in full force and effect, and a true and correct copy of each City Loan Document has been delivered to Lender;
- F. City has not given to Owner a notice of default, breach or termination which has not been cured, and no such notice is outstanding;
- G. To City's knowledge, as of the date hereof, all funds from the City Loan have been fully and properly disbursed, and no defaults or events of default exist under the City Loan Documents and no events have occurred which would allow the City to terminate the City Loan Documents;
- H. As of the date of this Agreement, all conditions required to be satisfied under the City Loan Documents have been waived or satisfied;
- I. City has not assigned, transferred or otherwise alienated any of its interests under the City Loan Documents and agrees not to amend or modify the City Loan Documents without the prior written consent of Lender;
- J. City has approved (i) the Loan, (ii) the size, scope and plans and specifications for the improvements, including the play area plans and landscaping for the Property, (iii) the amount of the development fee (if any), (iv) the budget for the Improvements, (v) the form of tenant lease, (vi) any other loans made to Borrower in respect of the Property, (vii) the recycling plan and the site management plan for the Property, (viii) the site management agreement; and (ix) the Covenants, Conditions and Restrictions for the Property; and
- K. City represents and warrants that the City Loan Documents and the subordination of the City Loan Documents do not violate and are in conformance with the Regulations.
9. The parties recognize that in the event of failure of Owner to complete construction of the improvements, or in the event of damage or destruction thereto, City's interest in bond or insurance proceeds, respectively, shall be subordinate to the interest of Lender. Lender acknowledges that to the extent they are not required to fulfill the obligations of Owner to Lender under the Lender Loan Documents, insurance proceeds may be used to satisfy the obligations of Owner to City pursuant to the City Loan Documents. The parties further recognize that Lender has the prior right to collect rents and income from the Property, including from the improvements. If a receiver is appointed, the rents and income from the Property, including from the improvements, shall first be applied to repayment of amounts owing under the Loan or otherwise applied as provided under the Lender Loan Documents.
10. All notices of any kind which any party hereto may be required or may desire to serve on the other shall be deemed served upon personal delivery, or, if mailed, upon the first to occur of receipt or the expiration of 72 hours after deposit in United States Postal Service, certified mail, return receipt requested, postage prepaid, and addressed as follows:

Loan No. 1517OK

If to City: CITY OF SOLEDAD
P.O. Box 156
248 Main Street
Soledad, CA 93960
Attn: City Manager

If to Lender: WELLS FARGO BANK, N.A.
111 Sutter Street, 7th Floor
San Francisco, CA 94163
Attn: Loan Administration Manager
Reference Loan No. 1289OK
(AU# 7652)

If to Owner: SOLEDAD LOCAL DEVELOPMENT CORPORATION
157 Kidder Street, Suite C
P.O. Box 368
Soledad, CA 93960
Attn: Juan Saavedra, President

11. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.
12. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
13. The individual or individuals executing this Agreement on behalf of each party represents and warrants that each has received all requisite consents to execute this Agreement, each has full power and authority to execute this Agreement on behalf of such party and such individual executing this Agreement has full power and authority to bind the party on behalf of whom such individual is executing as to all matters set forth herein.
14. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had never been part of this Agreement.
15. In the event any legal action is commenced by any party hereto concerning this Agreement or the rights and duties hereunder of any party hereto, whether such action be an action for damages, equitable or declaratory relief, the prevailing party in such litigation shall be entitled to, in addition to all other relief as may be granted by the court, reasonable sums as and for attorneys' fees in an amount set by the court.
16. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

Exhibit A is attached hereto and incorporated herein by this reference.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH MAY ALLOW THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.

Loan No. 1517OK

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

CITY:

CITY OF SOLEDAD, a political subdivision of the State of California

By: _____

Its: _____

OWNER:

SOLEDAD LOCAL DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation

By: _____
JUAN SAAVEDRA, President

DRAFT

DRAFT

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

LENDER:

WELLS FARGO BANK NATIONAL ASSOCIATION

By: _____

Its: _____

DRAFT

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

DRAFT
September 30, 1997
EXHIBIT A
Loan No. 1289OK (WFB)
69793172 (WMB)

Description of Property

Exhibit A to Subordination Agreement executed by SOLEDAD LOCAL DEVELOPMENT CORPORATION, a California non-profit public benefit corporation ("Owner") and THE CITY OF SOLEDAD, a political subdivision of the State of California ("City"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Lender," dated as of November __, 1997.

All that certain real property located in the City of Soledad, County of Monterey, State of California, described as follows:

APN: _____

RESOLUTION NO. 2648-A

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE CITY MANAGER TO ENTER INTO A
CONTRACT WITH MICHAEL N. CARTER TO SERVE
AS THE FIRE CHIEF ON AN INTERIM BASIS FOR
SIX MONTHS, APPROPRIATE \$36,000 FROM
THE UNAPPROPRIATED FUND BALANCE
OF THE GENERAL FUND FOR SUCH
PURPOSE AND AUTHORIZE THE
CITY MANAGER TO ADMINISTRATIVELY
EXTEND THE CONTRACT FOR
ADDITIONAL TIME IF DIRECTED
BY THE CITY COUNCIL**

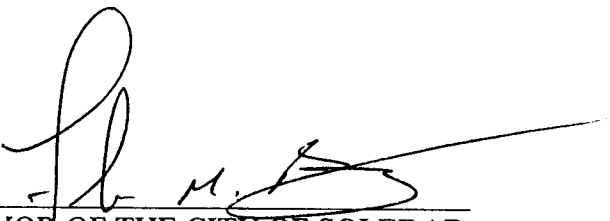
BE IT RESOLVED that the City Council of the City of Soledad hereby authorizes and directs the City Manager/City Clerk, for and in behalf of the City of Soledad, to enter into a contract hereunto attached, marked "Exhibit A" and by reference made a part hereof, with Michael N. Carter to serve as the Fire Chief on an interim basis for six months and appropriate \$36,000 from the unappropriated fund balance of the General Fund for such purpose and authorize the City Manager/City Clerk to administratively extend the contract for additional time, if directed by the City Council.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 7th day of January, 1998, by the following vote:

AYES, and in favor thereof, Councilmembers: Ben Jimenez, Jr., Fred Ledesma, Richard Ortiz, Mayor Pro Tem Gary Gerbrandt, Mayor Fabian Barrera.

NOES, Councilmembers: None

ABSENT, Councilmembers: None


MAYOR OF THE CITY OF SOLEDAD

ATTEST:


CITY CLERK OF THE CITY OF SOLEDAD

**STANDARD
CONTRACTUAL SERVICES AGREEMENT
FIRE CHIEF**

THIS AGREEMENT is made in the City of Soledad, California, as of January 7, 1998, by and between CITY OF SOLEDAD, a municipal corporation ("City"), and Michael N. Carter, ("Contractor"), who agree as follows:

1. **SERVICES.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services of Fire Chief as described in Exhibit A. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A.

2. **PAYMENT.** City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to Contractor for services rendered pursuant to this Agreement.

3. **EXHIBITS.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

4. **CONTRACT ADMINISTRATION.** This Agreement shall be administered by the City Manager ("Administrator"). All correspondence shall be directed to and through the Administrator or his or her designee.

a. **NOTICES.**

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a. NOTICES...cont'd

Any written notice to Contractor shall be sent to:

248 Main Street
P.O. Box 156
Soledad, CA 93960

Any written notice to City shall be sent to:

Belinda Espinosa
248 Main Street
P.O. Box 156
Soledad, CA 93960

Executed as of the day first above stated:

CITY OF SOLEDAD, a municipal corporation

Attest: Bbe
City Clerk

Belinda B. Espinosa
City Manager

Approved as to form:

CONSULTANT:

[Signature]
Michael F. Rodriguez
City Attorney

[Signature]
Michael N. Carter

EXHIBIT A**CONTRACTUAL SERVICES AGREEMENT
FIRE CHIEF****A. SCOPE OF SERVICES***** Basic Functions and Responsibilities of Fire Chief:**

This is a contractual position and a member of the executive management team acting under the direction of the City Manager. This position provides technical policy advice to the City Manager and assists in planning, organizing, and directing both emergency and non-emergency activities of the Volunteer Fire Department. The Fire Chief performs the primary command role function in the administration, services, activities, and operations of the Soledad Volunteer Fire Department.

Responsibilities include the coordination and supervision of recruitment, screening, selection and training of volunteers, deployment of all tactical fire suppression and/or hazardous material related activities and efforts, safety inspection, equipment maintenance, and public education programs of the department.

The Volunteer Fire Chief reports directly to the Fire Chief and maintains the supervisory responsibility of coordinating all tactical fire suppression or hazardous material related activities in the absence of the Fire Chief.

***Major Essential Duties:**

- Assist the City Manager in planning, budgeting, and supervising the City's fire suppression resources.
- Monitor and coordinate emergency response to calls for service involving the Volunteer Fire Department resources.
- Respond to alarms, deploy equipment and staff (volunteer firefighters including City employees who serve as volunteers) as required.
- Hazardous Materials response.
- Coordinate fire safety inspection operations for the commercial, industrial, and retail occupancies.
- Coordinate public information programs regarding fire safety.
- Serve as Incident Commander as assigned in emergency situations.
- Serve as Staff Liaison to the Soledad-Mission Rural Fire Protection District.

B. MANNER OF PERFORMANCE SERVICES

Contractor shall perform said services on a full-time basis, based on a minimum forty (40) hour work week. By the terms of this agreement, no regular work schedule is established or imposed on Contractor.

C. EXEMPT POSITION

As part of the executive management team, Contractor and City agree and acknowledge that the position of "Fire Chief" is exempt from the wage, salary, and overtime provisions of the Fair Labor Standards Act. As such, Contractor shall not accrue overtime or compensatory time for hours spent in excess of forty hours per week.

D. INDEMNIFICATION AND HOLD HARMLESS

City shall defend, save harmless, and indemnify Contractor against any claim or demand or other legal action arising out of Contractor's performance as Fire Chief in the same manner as other employees who are indemnified and/or held harmless. Notwithstanding, such indemnification and hold harmless shall not extend to willful misconduct on the part of Contractor, or conduct falling outside the scope of duties and responsibilities set forth in Section A above.

E. ASSIGNMENT PROHIBITED

No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

F. STANDARD OF PERFORMANCE

Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices his profession. All instruments of service of whatsoever nature which Contractor delivers to City pursuant to this Agreement shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of quality normally observed by a person practicing in Contractor's profession.

EXHIBIT B**TERMS OF PAYMENT AND TERM OF CONTRACT****A. TERM OF CONTRACT**

The term of this contract shall be for six months. After a performance review, the term of this contract may be extended for a term mutually agreeable to the parties. Either party may terminate this consultant services contract without cause upon giving the other party thirty (30) days written notice of said termination.

B. COMPENSATION

City shall pay contractor, as provided below, the sum of \$6,000 per month during the term of this contract. Said salary shall be paid in two monthly installments, on the 15th and 30th of each month. It is the responsibility of the consultant to provide for all other expenses including but not limited to housing, mileage, food, health and life insurance, federal, state, and local taxes as may be required. City shall provide a radio, pager, uniform (if desired) and response gear, office space, administrative clerical support and appropriate office equipment and supplies during the term of this contract.