

RESOLUTION NO 2311**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AMENDING AN AGREEMENT WITH KENNEDY/JENKS
CONSULTANTS FOR ENGINEERING SERVICES**

WHEREAS, on December 13, 1993, the City Council of the City of Soledad, by Resolution No. 2296, authorized the execution of an agreement (hereafter "The Agreement") for wastewater engineering services for both the Soledad Correctional Training Facility Wastewater Pipeline and the Dole Wastewater Pipeline with Kennedy/Jenks Consultants in the form of a document hereunto attached, marked Exhibit "A", and by reference made a part hereof; and

WHEREAS, construction of the Dole Wastewater Pipeline is to be financed wholly or in part by Community Development Block Grant ("CDBG") funds, and the City has been informed that pursuant to CDBG "Sole Source" rules, the City may only contract directly with a single entity for purposes of contract management and engineering services for the Dole Wastewater Pipeline; and

WHEREAS, it has been agreed upon by both the Dennis Group, Inc., and Kennedy/Jenks Consultants that for the purposes of the Dole Wastewater Pipeline, the sole source contractor shall be the Dennis Group, Inc., with subcontract(s) between the Dennis Group, Inc., and Kennedy/Jenks to be subsequently executed; and

WHEREAS, it is now necessary to amend the previously executed Agreement with Kennedy/Jenks Consultants so as to delete those provisions that call for Kennedy/Jenks to undertake work on the Dole Wastewater Pipeline.

BE IT RESOLVED BY the City Council of the City of Soledad that the Agreement between the City of Soledad and Kennedy/Jenks Consultants, entered into pursuant to Resolution No. 2296, entitled "A Resolution of the City Council of the City of Soledad Authorizing the Execution of an Agreement for Wastewater Engineering Services with Kennedy/Jenks Consultants", and attached hereto as Exhibit "A" is hereby amended through the

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concerning compensation for the performance of said task pursuant to the Agreement's terms.

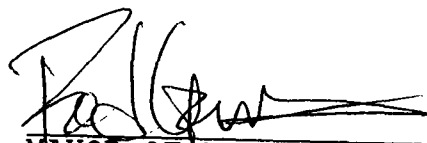
BE IT FURTHER RESOLVED that all other terms of the Agreement shall remain in full force and effect, and that the Council's action herein shall have no effect on Kennedy/Jenks' ability to perform identical work pursuant to a sub-contract with the Dennis Group, Inc.

PASSED AND ADOPTED by the City Council of the City of Soledad at a special meeting duly held on the 31st day of January, 1994, by the following vote:

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

NAYES, Councilmembers. None

ABSENT, Councilmembers: None



MAYOR OF THE CITY OF SOLEDAD

ATTEST.


CITY CLERK OF THE CITY OF SOLEDAD

RESOLUTION NO 2296**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR
WASTEWATER ENGINEERING SERVICES WITH
KENNEDY/JENKS CONSULTANTS**


BE IT RESOLVED by the City Council of the City of Soledad that the City Manager is hereby authorized and directed for and on behalf of the Council of the City of Soledad to execute with Kennedy/Jenks Consultants, an agreement for wastewater engineering services in the form of a document hereunto attached, marked "Exhibit A", and by reference made a part hereof.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 13th day of December, 1993, by the following vote:

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

NAYES, Councilmembers: None

ABSENT, Councilmembers: None


MAYOR OF THE CITY OF SOLEDAD

Kennedy/Jenks Consultants

Engineers and Scientists

3336 Bradshaw Road, Suite 140
Sacramento, California 95827
916-362 3251
FAX 916-362-9915

7 December 1993

Blair King
City of Soledad
P O Box 156
Soledad, CA 93960

Subject: Professional Services Agreement
Water and Wastewater Services

Dear Mr King

We are pleased to submit this contract for providing professional services for Water and Wastewater Services.

SCOPE

The scope of our services is described as follows.

- Task 1 Work involved in obtaining legal descriptions for the required easements for the Wastewater Pipeline from the Soledad Prison to the City of Soledad's wastewater treatment plant.
- Task 2 Bidding assistance for the Soledad Wastewater Pipeline, including advertising, distributing plans and specifications, answering contractor calls, and preparing addendum
- Task 3 Preparation of preliminary design and an addendum to Soledad Wastewater Pipeline project for the inclusion of a 4" force main parallel to the proposed 18 and 36" wastewater pipeline. The preliminary design will consist of a worded description and required details to give enough detail for

Kennedy/Jenks Consultants

Mr Blair King
 CITY OF SOLEDAD
 3 December 1993
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tax that may be imposed shall be added to the compensation as determined above. Payments shall be made monthly based on invoices which describe services and list actual costs and expenses. Such payments shall be for the invoice amount, without retention.

Based on our estimate of service required, we propose the following budgets, which will not be exceeded without authorization:

Task 1	\$6,500
Task 2	\$10,000
Task 3	\$3,500
Task 4	\$20,000

These budgets may be increased if necessary to complete the scope of work. We will notify you prior to expenditure of 80 percent of the budget if the need for a budget increase is anticipated. We will not be obligated to continue providing services upon expenditure of authorized funding if the increased budget needed to complete the scope of work is not authorized.

To assure a clear understanding of all matters related to our mutual responsibilities, the attached Standard Conditions dated January 1, 1993, are made a part of our agreement. We have found these terms to be appropriate for use with agreements for the provision of engineering services, and accordingly, should any conflict exist between the attached terms and the form of any purchase order or confirmation issued, the terms of this proposal and the attached Standard Conditions shall prevail in the absence of our express written agreement.

If this contract meets with your approval, please sign where noted below and return a copy to our office to serve as our authorization.

Thank you for considering us for this work. We look forward to working with you.

Very truly yours,

AUTHORIZATION

Client: City of Soledad

Kennedy/Jenks Consultants

Contract/Proposal Date 7 December 1993

Standard Conditions

January 1, 1993

CLIENT and CONSULTANT agree that the following provisions shall be a part of their agreement.

ARTICLE 1. DEFINITIONS

1.1 DIRECT SALARY AND SALARY COSTS

The phrase "direct salary" means the actual direct pay of the personnel assigned to the project (except for routine secretarial and accounting services). The phrase "salary costs" means "direct salary" plus payroll taxes, insurance, sick leave, holidays, vacation, and other direct fringe benefits.

1.2 DIRECT EXPENSES

The phrase "direct expenses" means expenditures made by CONSULTANT, its employees or its subconsultants in the interest of the Project. Applicable reimbursable Direct Expenses are defined in this agreement or the Schedule of Charges.

ARTICLE 2. COMPENSATION

2.1 INVOICING PROCEDURE

CLIENT will be invoiced at the end of the first billing period following commencement of work and at the end of each billing period thereafter. Payment in full of an invoice must be received by CONSULTANT within thirty (30) days of the date of such invoice.

2.2 EFFECT OF INVOICE

The work performed shall be deemed approved and accepted by CLIENT as and when invoiced unless CLIENT objects within fifteen (15) days of invoice date by written notice specifically stating the details in which CLIENT believes such work is incomplete or defective, and the invoice amount(s) in dispute. CLIENT shall pay undisputed amounts per this article.

2.3 INTEREST; SUSPENSION OF WORK

Failure of CLIENT to make full payment of an invoice so that it is received by CONSULTANT within said thirty (30) days of the date thereof subjects the amount overdue to a delinquent account charge of one (1%) of the invoice amount per month, compounded monthly. Failure of CLIENT to submit full payment of an invoice within thirty (30) days of the date thereof subjects this agreement and the work herein contemplated to suspension or termination at CONSULTANT'S discretion.

2.4 ADVANCE PAYMENT; WITHHOLDING OF WORK PRODUCT

CONSULTANT reserves the right to require payment in advance for work it estimates will be done during a given billing period. CONSULTANT, without any liability to CLIENT, reserves the right to withhold any services and work products herein contemplated pending payment of CLIENT'S outstanding indebtedness or advance payment as required by CONSULTANT. Where work is performed on a reimbursable basis, budget may be increased by amendment to complete the scope of work. CONSULTANT is not obligated to provide services in excess of the authorized budget.

ARTICLE 3. SERVICES, ADDITIONAL SERVICES, AND AMENDMENTS

3.1 DEFINITIONS

Services and work products not expressly or by implication specified in this agreement, as determined by CONSULTANT, will be provided only upon compliance with the procedures set forth in paragraphs 3.4 and 3.5 below.

3.2 SERVICES DURING CONSTRUCTION

Any construction inspection or testing provided by CONSULTANT is for the purpose of determining compliance by contractors with the functional provisions of project specifications only. CONSULTANT in no way guarantees or insures any contractor's work nor assumes responsibility for methods or appliances used by any contractor, or for jobsite safety or for a contractor's compliance with laws and regulations. CLIENT agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for jobsite conditions during the course of construction of the project, including safety of all persons and property and that this responsibility shall be continuous and not be limited to normal working hours. CLIENT further agrees that in its agreements with contractors for construction services it will require that both CLIENT and CONSULTANT be named as additional insureds on all general liability insurance policies required to be maintained by such contractors. Any statements of estimated construction costs furnished by CONSULTANT are based on professional opinions and judgment, and CONSULTANT will not be responsible for fluctuations in construction costs.

3.6 AMENDMENTS

This agreement may be amended only by a written instrument, signed by both CLIENT and CONSULTANT, which expressly refers to this agreement.

ARTICLE 4. TERMINATION OF AGREEMENT

4.1 DUE TO DEFAULT

This agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with this agreement through no fault of the party initiating the termination.

4.2 WITHOUT CAUSE

This agreement may be terminated by CLIENT upon at least fourteen (14) days written notice to CONSULTANT in the event that the Project is abandoned.

4.3 TERMINATION ADJUSTMENT: PAYMENT

If this agreement is terminated by CLIENT through no fault of the CONSULTANT, CONSULTANT shall be paid for services performed and costs incurred by it prior to its receipt of notice of termination from CLIENT, including reimbursement for Direct Expenses due, plus an additional amount, not to exceed ten per cent (10%) of charges incurred to the termination notice date to cover services to orderly close the work and prepare project files and documentation, plus any additional Direct Expenses incurred by CONSULTANT including but limited to cancellation fees or charges. CONSULTANT will use reasonable efforts to minimize such additional charges.

ARTICLE 5. ALLOCATION OF RISK. WAIVER: WARRANTY

5.1 ALLOCATION OF RISK

CONSULTANT'S liability to CLIENT, CLIENT'S contractors, subcontractors and their agents, employees and consultants, and to all other third parties, which may arise from or be due directly or indirectly to the negligent acts, errors and/or omissions of CONSULTANT, its agents, employees or consultants shall not exceed \$ 50,000 and shall be limited to direct damages. All other damages such as loss of use, profits, anticipated profits, and like losses are consequential damages for which CONSULTANT is not liable. CLIENT shall give written notice to CONSULTANT of any claim of negligent act, error or omission within one (1) year after the completion of the work performed by CONSULTANT. Failure to give notice herein required shall constitute a waiver of said claim by CLIENT.

5.2 WARRANTY

The only warranty or guarantee made by CONSULTANT in connection with the services performed under this agreement is that such services are performed with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and in the same or a similar locality. When the findings and recommendations of CONSULTANT are based on information supplied by CLIENT and others, such findings and recommendations are correct to the best of CONSULTANT'S knowledge and belief. No other warranty, express or implied, is made or intended by providing consulting services or by furnishing oral or written reports of the findings made.

ARTICLE 6. GENERAL PROVISIONS

6.1 APPLICABLE LAW

This agreement shall be interpreted and enforced according to the laws of the State of California, unless agreed otherwise.

6.2 PRECEDENCE OF CONDITIONS

Should any conflict exist between the terms herein and the terms of any purchase order or confirmation issued by CLIENT, the terms of these Standard Conditions shall prevail in the absence of CONSULTANT'S express written agreement.

6.3 ASSIGNMENT; SUBCONTRACTING

Neither CLIENT nor CONSULTANT shall assign its interest in this agreement without the written consent of the other. CLIENT hereby consents to CONSULTANT'S subcontracting any portion of the work to be performed hereunder.

6.4 OWNERSHIP OF DOCUMENTS

All tracings, survey notes, computer programs, and other original documents are instruments of service and shall remain the property of CONSULTANT. Use of CONSULTANT'S work product(s) on other projects without CONSULTANT'S

Client/Address: City of Soledad
 P O. Box 156
 Soledad, CA 93960

Kennedy/Jenks Consultants

Contract/Proposal Date 7 December 1993

Schedule of Charges

January 1 1993

Personnel Compensation

Classification	Hourly Rate
Drafter/Technician	\$ 54
Designer/Senior Technician	67
Engineer Scientist, Grade 3	67
Engineer Scientist, Grade 2	85
Engineer-Scientist, Grade 1	98
Senior Engineer Scientist	113
Supervising Engineer-Scientist	122
Principal/Consultant	129
Laboratory Analyst	55
Word Processor	46
Non-Technical*	36

*Non-technical time will be charged only for preparation of technical reports and similar material and does not apply to routine administrative-type activities.

The above Hourly Rates include normal and incidental costs such as routine copying, communications, postage and office supplies.

Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus ten percent for items such as:

- Maps, photographs, reproductions, printing, equipment rental, and special supplies related to the work.
- Consultants, soils engineers, surveyors, contractors, and other outside services.
- Rented vehicles, local public transportation and taxis, travel and subsistence.
- Specific telecommunications and delivery charges.
- Special fees, insurance, permits, and licenses applicable to the work.
- Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for owned automobiles, except trucks and four-wheel drive vehicles, used in connection with the work will be at the rate of 35¢ per mile. The rate for trucks and four-wheel drive vehicles will be \$25 per day and 40¢ per mile.

Reimbursement for use of microcomputers will be at the rate of \$10 per hour. Reimbursement for use of

CITY OF SOLEDAD

TERMS AND CONDITIONS

FOR PROFESSIONAL CONSULTING SERVICES AGREEMENTS

1. DEFINITIONS - "Consultant" shall mean the professional consultant which has entered into the Agreement which by reference is subject to the terms and conditions hereinafter set forth. "City" shall mean the City of Soledad, a municipal corporation. "Agreement" shall mean the purchase order, contract or other written instrument constituting the Agreement between the Consultant and the City.

2. AMENDMENT OF SCOPE OF WORK - City shall have the right to amend the Scope of Work within the Agreement by written notifications to the Consultant. In such event, the compensation and time of performance shall be subject to renunciation upon written demand of either party to the Agreement.

3. CITY'S RIGHT TO TERMINATE/SUSPEND CONTRACT - At any time and for any reason, City shall have the right to terminate or cancel the agreement, take possession of the Consultant's studies, preliminary drawings, computations and specifications, insofar as they are complete and acceptable to the City, and pay the Consultant such equitable proportion of the total remuneration as the work actually done by the Consultant at the time of such discontinuance bears to the whole of the work required to be done by the Consultant under the terms of this Agreement.

The City, at its sole discretion, may suspend indefinitely or abandon the completion of the project, or any part thereof, and may require the Consultant to suspend the performance of its services. Said right to suspend or abandon shall be without limit or restriction.

If the City thereafter should determine to complete the project, the City shall have the privilege of requiring completion of the drawings, specifications and other documents upon compensation of the Consultant.

the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim in question would be barred by the applicable statute of limitations.

5. EMPLOYMENT PRACTICES - Consultant shall not discriminate in his/her performance under the Agreement either directly or indirectly on the grounds of race, color, religion, sex age, or national origin in his employment practices, and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin. The Consultant will comply with the regulations of the Department of transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21).

6. TITLE TO DOCUMENTS - Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in the City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to the City without restriction or limitation on their use.

7. RECORD OR PERFORMANCE - Consultant shall maintain adequate records of contract performance and make these records available for inspection, audit, and copying by the City during the Contract period and for three (3) years from the date of final payment.

8. ASSIGNMENT - The Agreement shall not be assigned by the Consultant in whole or in part, without written consent of the City.

9. PAYMENT - Consultant shall submit itemized monthly statement for work performed. City shall make any payment due

the Request for Proposal to Provide Professional Consulting Services cites any Federal or State financial assistance involved in the project for which professional services are provided, the Consultant shall have the duty of performing under the Agreement in accordance with applicable Federal and State Laws, rules, and regulations.

11. CORRECTION OF WORK - The performance of services or acceptance of information furnished by Consultant shall not

relieve the Consultant from obligation to correct any defective work subsequently discovered and all incomplete, inaccurate, or defective work shall be remedied by the Consultant on demand without cost to the City.

12. CONSULTANT'S LIABILITY - The Consultant shall be responsible for all injuries to persons and for all damage to property of the City or to others caused by or resulting from the negligence of the Consultant, his employees, agents, or subcontractors during the progress of or connected with rendition of services here rendered, and shall defend and hold harmless and indemnify the City and all officers and employees of the City from all cost and payments for damages or injuries arising out of the negligence performance of the work of the Consultant or his subcontractor under this Agreement.

13. PUBLIC LIABILITY INSURANCE - Consultant shall, at his own expense, take out and keep in force during the continuance of this contract:

A. A public liability insurance policy, in a company or companies to be approved by the City, to protect the Consultant, his officers, agent, and employees against any liability to the public incident to the work to be performed under this Agreement. Said insurance shall be in the amount of not less than \$500,000 to indemnify against the claim of one (1) person, and the amount of not less than \$1,000,000 against their claim of two (2) or more persons resulting from any on accident.

B. A property damage or other insurance policy in a company or companies to be approved by City, to protect the

and prior to the first progress payment, Consultant shall file with City an actual insurance policy.

14. WORKER'S COMPENSATION INSURANCE - The Consultant at his own cost and expense is to procure and maintain during the continuance of this contract a policy of worker's compensation or employer's liability insurance for the protection of his employees, including executive, managerial, and supervisory employees, engaged in the work required by this Agreement.

15. SUBCONTRACTING - None of the services covered by this contract shall be subcontracted without the prior written consent of the City.

16. COVENANT AGAINST CONTINENT FEES - The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, continent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or continent fee.

17. DELAYS AND EXTENSIONS - The Consultant will be granted time extensions for delays beyond the Consultant's control. Time extensions will be equal to the length of the delay or as otherwise agreed upon between the Consultant and the City and shall be approved in writing by the Director of Public Works. In such event, compensation as set forth in a Scope of Work shall be subject to renunciation upon written of either party to the Agreement.

18. CONSULTANT'S ENDORSEMENT - The Consultant will endorse plans, specifications, reports and documents in accordance with applicable portions of the Business and Professions Code of the State of California.

CERTIFICATION OF CONSULTANT

I HEREBY CERTIFY that I am the Vice-President and the duly authorized representative of the firm of Kennedy/Jenks Consultants whose address is Sacramento, CA, and that neither the above firm I here represent nor have I:

(a) employed or retained for a commission, percentage, brokerage, continent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement:

(b) agreed, as an express or implied condition for obtaining this contract to employ or retain the services of any firm or person in connection with carrying out the Agreement; or

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement;

except as here expressly stated (if any):

I acknowledge that this certificate is subject to applicable

Water and EL

ADDENDUM TO AGREEMENT FOR WASTEWATER ENGINEERING SERVICES WITH KENNEDY/JENKS CONSULTANTS

The following deletions, additions and modifications are made to the Agreement for Wastewater Engineering Services between the City of Soledad and Kennedy/Jenks Consultants.

1. Letter re "Professional Services Agreement Water and Wastewater Service" dated December 7, 1993.

(a) Pg. 1, "Compensation", second sentence is modified as follows:

"The Schedule of Charges will be updated near the beginning of each year, but in no event will the City be subject to an increase of more than 5 (five) percent in any given year for the services set forth in the Schedule."

(b) Pg. 2, second full paragraph, first sentence is modified as follows:

"These budgets may be increased if necessary to complete the scope of work upon the mutual consent of both the City and Kennedy/Jenks."

(c) Pg. 2, third full paragraph, second sentence is modified as follows.

"We have found these terms to be appropriate for use with agreements for the provision of engineering services."

2. Kennedy/Jenks Consultants Standard Conditions.

(a) Article 2. Compensation is deleted in its entirety.

(b) Article 3, Section 3.3, is modified by the addition of the following language at the end of the section:

"Notwithstanding the aforesaid, CLIENT is not required to provide legal services for any matter concerning the alleged..."

claims, damages, losses, or liabilities arising out of the negligent acts, errors, or omissions of ENGINEER in the performance of services under this Agreement."

- (d) Section 6.2 is deleted in its entirety.
- (e) Section 6.3 is deleted in its entirety.
- (f) Section 6.4 is deleted in its entirety.
- (g) Language of Section 6.5 is deleted in its entirety. Replace with the following language:

"Any delay or default in the performance of any obligation of ENGINEER or CLIENT under this agreement resulting from a cause beyond ENGINEER's or CLIENT's reasonable control shall not be deemed a breach of this agreement. The occurrence of any such event shall suspend the obligations of ENGINEER and CITY as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted."

3. Schedule of Charges

- (a) Direct Expenses, fourth full paragraph, is modified to read:

"Rates for professional staff for legal proceedings or as expert witnesses will be at the Hourly Rates specified above."

4. City of Soledad Terms and Conditions for Professional Consulting Services Agreement.

- (a) Add the following language as provision 19:

"19. To the extent that any other provision of the "Terms and Conditions For Professional Consulting Services" conflict with the terms and conditions set forth in the written agreement prepared by