

RESOLUTION NO. 2314

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
THE DENNIS GROUP, INC., FOR CONSTRUCTION
OBSERVATION -- CDC INTERCEPTOR**

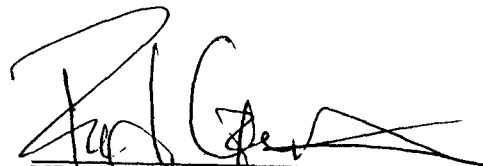
BE IT RESOLVED by the City Council of the City of Soledad that the City Manager is hereby authorized and directed for and on behalf of the City Council, to execute with the Dennis Group, Inc., an agreement for construction observation of the CDC interceptor sewer line, in the amount of Twenty-Three Thousand Dollars (\$23,000), in the form of the 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 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

AGREEMENT FOR PROFESSIONAL SERVICES
"Construction Observation and Management
-- CDC Interceptor Sewer"

This Agreement is made and entered into on this 1st day of February, 1994, by and between the City of Soledad, Monterey County, hereinafter referred to as the "City" and the Dennis Group, Inc., hereinafter referred to as "Consultant."

RECITALS:

A. City has authorized the construction of an interceptor sewer line from the site of the California Department of Corrections Prison to the City's Wastewater Treatment Facility. The interceptor will generally run parallel to U.S. Highway 101 to an easement which runs southerly to the Wastewater Treatment Facility. The interceptor consists of approximately 18,112 lineal feet of 18" force main and 538 lineal feet of gravity sewer line. The proposed project also includes various piping tasks and components at the Wastewater Treatment Facility.

B. The above-referenced construction project is to be financed wholly by funds received from the California Department of Corrections.

C. City requires assistance with construction observation and management of the interceptor construction from the Correctional Training Facility to the Wastewater Treatment Facility.

D. Consultant is fully qualified and experienced to provide the afore-referenced services.

NOW, THEREFORE, City and Consultant, for the considerations hereinafter set forth, mutually agree as follows;

Page 2, Section 9, language of section is deleted in its entirety Replace with language as follows!

"Consultant shall submit itemized monthly statement of work performed. City shall make any payment due within sixty (60) days after receipt of such bill therefore.

Notwithstanding this payment schedule, both Consultant and City hereby expressly agree that City shall not be required to make any payment on any bill received until reimbursement for said fees has been obtained from the California Department of Corrections In the event that bills are received prior to receipt of funds from the Department, City will pay all such outstanding bills within thirty (30) days of receipt of State funding."

To the extent that any provision of the City's "Terms and Conditions For Professional Consulting Services" conflicts with the terms and conditions set forth in the written proposal prepared by the Dennis Group, Inc., attached hereto as Exhibit "1", the terms of Soledad's "Terms and Conditions" shall prevail in the absence of the City's written agreement.

3. Consultant shall perform the services described in Exhibit "1" and City shall pay Consultant compensation in a sum not to exceed \$23,000.

4. Notwithstanding the language in Section 3, Consultant and City expressly recognize and agree that funding for all services performed pursuant to this agreement is to come from the California Department of Corrections. To the extent that said funding is inadequate to compensate Consultant for said services, Consultant, and all subcontractors to this agreement, expressly waive the right to pursue any action or claim against the City in any form whatsoever, for said fees.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date and year first above written

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 JAN. -25' 94 (TUE) 12 56 CITY OF SOLEDAD

FAX NO. 5103514481
 TEL 408-678-3965

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 P 005

PROPOSAL

Construction Observation and Management
 CDC Interceptor Sewer

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1.0 GENERAL

The City has authorized the construction an interceptor sewer from the site of the CDC prison to the treatment works of the City of Soledad. The interceptor generally runs parallel to US 101 to an easement which runs southerly to the treatment works. The interceptor consists of approximately 18,112 lineal feet of 18" force main and 538 lineal feet of gravity sewer. The work also includes various piping and components at the treatment works site. the project is designed and bid by Kennedy/Jenks consultants and shown on drawings dated November 15, 1993.

This PROPOSAL is for the construction observation and mangagement of the interceptor construction from the prison to the treatment works. This work would be contracted directly with the City and would include those services detailed herein.

The work does not include the 4" force main that is for the exclusive use of Dole Fresh Vegetables.

As previously discussed, The Dennis Engineering Group, Inc has performed these services on past projects and is well qualified in this field. Mr Mark Krcmarik, who will be the project engineer, has been involved in over two hundred miles of such construction as a designer, contractor and municipal engineer.

2.0 SCOPE OF WORK

PreAward Activities

This would involve attending meeting with the various agencies involved and providing inputs regarding construction issues. We would review the design plans and specifications and comment as to construction details affecting the ability to complete the work in a timely economic manner.

The work does not include. bidding, review of construction bids, and award of the construction contract. We also assume that the contract documents with the contractor will be prepared by the City or Kennedy - Jenks. No allowance is made for costs to copy contract plans and specifications for the contractors use.

Construction Activities

This work would involve a full time, construction technician/observer with periodic site visits by the Project Engineer. The field technician would report directly to the Project Engineer and he will be responsible for directions to the contractor. The Project Engineer would also be responsible to resolve any design conflicts that arise during construction with Kennedy-Jenks and any related issues with the City

The field work would include: start up meetings with the contractor, shop drawings review, daily progress

JAN-27-94 THU 16:50 MNRS&W
JAN. -25' 94 (TUE) 12 57 CITY OF SOLEDAD

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PROPOSAL

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Close Out Activities

This work would involve a full time technician to observe the testing and the restoration of the disturbed areas, preparation of a punch list and final execution of the punch list items by the contractor, final pay requests, preparation of final "As Built" plans, and certifications of testing. The technician would again report to the Project Engineer who would be responsible for communications and directions to contractor. Note that final acceptance and certification of the work must also be cosigned by the design engineer

3.0 WORK SCHEDULE

The work is anticipated to begin immediately with meetings with the City and Kennedy-Jenks. The construction is anticipated to be complete by April 1. Start up and testing of the Dole connection to be given a priority. Work beyond the April 1, the completion date, that is not attributable to the Dennis Group would be in addition to the proposed fee. We would, of course, credit any unused fees caused by a delay in the start to work at the end of the project. We are able to begin this work immediately and will proceed upon receipt of your written authorization.

4.0 PROPOSED FEES

We would perform the above activities for a lump sum fee of Twenty three thousand Dollars (\$23,000.00). This fee includes our labor, expenses and a 7% adder for reimbursibles. The fee will be billed on a monthly basis as follows: January 5, 1994 for December work at \$2000 then February 5, March 5, and April 5 for one third of the balance.

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 or the Soledad Redevelopment Agency, a public entity. "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.

filed in writing with the other party to the Agreement and with 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 appropriate

10. FEDERAL AND STATE RULES AND REGULATIONS - In the event 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

Within thirty (30) days after execution of the contract 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 PRESIDENT and
 the duly authorized representative of the firm of The Davis Engineering Group Inc
 whose address is SPRINGFIELD, MA 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):