

RESOLUTION NO. 3637

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH
MARK THOMAS & COMPANY, INC. FOR ENGINEERING SERVICES FOR THREE
YEARS**

WHEREAS, Mark Thomas & Company, Inc. ("Mark Thomas") a general civil engineering services contractor, has provided the City of Soledad with quality engineering services since April, 2000 and the City's existing service agreement with Mark Thomas was extended on July 21, 2004 for one more year; and

WHEREAS, on February 3, 2005 staff issued an RFP for engineering services on February 3, 2005 and sent them to twelve engineering firms. The closing date for the RFP's was late March, and

WHEREAS, three proposals were received from the following three companies. Mark Thomas & Company, Terra Engineering, Inc. and RM & Associates, Inc., and

WHEREAS, all three firms were interviewed by the Public Works Director and the City Manager Based on the attached scoring matrix, Mark Thomas & Company, Inc. was better suited to meet the City's needs. and

WHEREAS, in Fiscal Year 2005-2006, the City is proposing to allocate \$75,000 for consulting city engineering and surveying services; and

BE IT RESOLVED, the Soledad City Council authorizes the City Manager to enter into a contract with Mark Thomas & Company for engineering services for three years.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 15th of June 2005 by the following vote:

AYES, and in favor thereof, Councilmembers. Christopher Bourke, Stefanie De La Rosa, Patricia Stephens

NOES, Councilmembers.
Richard Ortiz

Mayor Pro Tem Juan Saavedra, Mayor

ABSTAIN, Councilmembers

None

ABSENT, Councilmembers.

None


RICHARD V. ORTIZ, Mayor

ATTEST


NOELIA F. CHAPA, City Clerk

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SOLEDAD AND
Mark Thomas & Company, Inc.**

THIS AGREEMENT for consulting services is made by and between the City of Soledad ("City") and Mark Thomas & Company, Inc. ("Consultant") as of June 15, 2005

Section 1. SERVICES Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Services attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 16, 2007, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant 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 Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant in accordance with the scope of services set forth on Exhibit A and the rates as set forth in Exhibit B, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit C, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services

Exhibit "A"

rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than twice a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information.

- Serial identifications of progress bills, i.e., Progress Bill No 1 for the first invoice, etc.,
- The beginning and ending dates of the billing period,
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage earned of the original contract amount;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hrs., which shall include an estimate of the time necessary to complete the work described in Exhibit A,
- The Consultant's signature.

2.2 Payment. City shall make payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall notify Consultant in writing of any disputed charges or defects in an invoice within 5 business days of receipt of the invoice by City. City shall pay all undisputed charges within 15 days from the receipt of an invoice.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any

expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown in Exhibit B
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Consultant shall notify City within 14 days of notification from Consultant's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall

include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 or GL 0002 (most recent editions) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 8 and 9 No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, elected and appointed officials, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following. liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, elected and appointed officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, elected and appointed officials, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Consultant shall notify City within 14 days of notification from Consultant's

insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.3 Professional Liability Insurance. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City

4.3.3 The policy must contain a cross liability or severability of interest clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements

for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Variation. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

4.4.5 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, elected and appointed officials, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.4.6 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach.

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, elected and appointed officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

City shall indemnify, defend with counsel selected by Consultant, and hold harmless Consultant and Consultant's employees, agents, and subcontractors and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of the City or its officials, elected and appointed officers, employees, agents, or volunteers, by acts for which they could be held strictly liable, or by the quality or character of their work. It is understood that the duty of the City to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. By execution of this Agreement, the City acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3, however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or

federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment,

contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon fourteen (14) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination, City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall included, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

Section 9. **KEEPING AND STATUS OF RECORDS.**

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546 7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000 00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Monterey
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this

Agreement is made in violation of Government Code §1090 *et.seq*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by Noelia Chapa, City Manager ("Contract Administrator") All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to

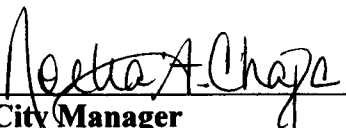
Mark Thomas & Company, Inc.
1960 Zanker Rd.
San Jose, CA 95112

Any written notice to City shall be sent to
Noelia Chapa, City Manager
248 Main St.
Soledad, CA 93960

10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

CITY OF SOLEDAD

CONSULTANT



City Manager



Mark Thomas & Company, Inc.

EXHIBIT A

SCOPE OF SERVICES

- Task 1 Fixed Monthly Retainer of \$3,750 for “basic” engineering services that includes, but is not limited to the following
- a) Monthly status reports that will list all work being performed by Mark Thomas & Co with all data represented in tabular form that clearly identifies all projects or tasks, the estimated time to completion, the percentage of work completed, the total cost budgeted for the task, the cost encumbered to date, the balance of cost remaining and the specific status of the project or task components.
 - b) Preparation of the annual and mid year budget for Consulting City Engineer
 - c) Attendance at City Council meetings and presentations as required.
 - d) Routine engineering advice and opinions concerning engineering matters that affect the City, telephone and personal consultations with City Council and City Staff
- Task 2 Annual updates of the City Standard Plans and Specifications for a cost no to exceed \$10,000
- Task 3 Surveying services. The City is budgeting \$20,000 for annual surveying services. Each request for surveying services by the City will require Mark Thomas & Co to submit an engineer’s estimate for the cost of the services to be provided prior to commencement of the work. The engineer’s estimate will then be considered the project specific budget for the scope of work described in the engineer’s estimate.
- Task 4 Project Construction Management and Inspections on City projects will be limited in cost to the ASCE (American Society of Civil Engineers) standard curves for this type of work represented as a fixed percentage of the construction cost of the project.
- Task 5 Development Engineering and inspection services will be billed on a time and material basis. MTCO will also keep a separate record of the total of charges incurred per project relative to repeat inspections as a result of developer’s contractor failure to properly coordinate inspections or correct deficiencies noted on previous inspections. The cost for services will be billed at the same rates MTCO is charging the City

EXHIBIT B

Hourly Fees and Reimbursable Expenses

The rate schedule as represented in Exhibit B would increase annually consistent with the CPI (consumer price index) up to an increase not to exceed 3% per year

Mark Thomas & Company, Inc. has agreed to reducing the \$5,000 fixed monthly retainer in the attached Exhibit C to \$3,750 for the scope of services as described in Exhibit A for Task 1

Time will be charged on an hourly basis plus incidentals. A separate proposed task order and fee will be provided for specific projects. MTCO will define tasks, such as reviewing a development project, with an estimated fee. This way the City can bill development separately from City design tasks.

Definition of the type of work MTCO considers extra or specialized work, which would be billed in addition to basic services.

Specific tasks, i.e., grant applications, development reviews, design projects, and construction observation will be considered extra or specialized work. These tasks will be charged on a time and materials basis per the hourly rates stated below. In this manner, the budget for each project and true costs can be determined.

The MTCO Charge Rate Schedule, along with the Billing Rates for staff who will provide services to the City, is as follows

EXHIBIT "A-1"

MARK THOMAS & CO. INC.

CHARGE RATE SCHEDULE

EFFECTIVE FEBRUARY 1, 2005

HOURLY CHARGE RATES

PROFESSIONAL AND OFFICE

Principal/Project Manager	\$ 215.00 per hour
Engineering Manager	188.00 per hour
Senior Project Manager	158.00 per hour
Project Manager	138.00 per hour
Senior Project Engineer	128.00 per hour
Project Engineer	118.00 per hour
Senior Design Engineer	98.00 per hour
Design Engineer	85.00 per hour
Survey Manager	150.00 per hour
Land Surveyor	125.00 per hour
Project Surveyor	105.00 per hour
Engineering/Survey/CADD Technician	80.00 per hour
Inspector	80.00 per hour
Technical Writer	75.00 per hour
Administrative	65.00 per hour

ENVIRONMENTAL/PUBLIC RELATIONS SERVICES

Environmental Manager	\$ 150.00 per hour
PR/Communications Manager	130.00 per hour
Environmental Planner	105.00 per hour

FIELD

2 Person Field Party and Vehicle	\$ 235.00 per hour
3 Person Field Party and Vehicle	315.00 per hour

SPECIAL SERVICES

Expert Witness	\$ 300.00 per hour
Strategic Consulting (Principal)	300.00 per hour

OTHER DIRECT COSTS

Reimbursables (Printing and Materials, Mail and Delivery Expenses, Film Expenses, Filing Fees, Parking and Field Expenses)	-Cost plus 5%
Mileage	-Per IRS Rate
Outside Consultant Fees	-Cost plus 5%

As a concession to the City of Soledad, we will be billing at the actual hourly pay rate of the employee times a multiplier of 2.84 to cover overhead and profit. The charge rates for the Soledad and Salinas office employees will be as follows.

EMPLOYEE	TITLE	EX. A-1 CHARGE RATE	PROPOSED CITY OF SOLEDAD CHARGE RATE	SAVINGS PER HOUR (%)
<i>WALTER GRANT</i>	<i>ENGINEERING MANAGER</i>	<i>\$188.00 PER HOUR</i>	<i>\$169 00 PER HOUR</i>	<i>\$9 00(-4 8%)</i>
<i>GREG WALTERS</i>	<i>SR. PROJECT ENGINEER</i>	<i>\$128.00 PER HOUR</i>	<i>\$91 00 PER HOUR</i>	<i>\$37 00(-29%)</i>
<i>LINELLE BUDDE</i>	<i>INSPECTOR</i>	<i>\$80.00 PER HOUR</i>	<i>\$89 00 PER HOUR</i>	<i>-\$9 00(+11%)</i>
<i>DAMTEW AYELE</i>	<i>DESIGN ENGINEER</i>	<i>\$85 00 PER HOUR</i>	<i>\$65 00 PER HOUR</i>	<i>\$20 00(-24%)</i>
<i>AURELIO BARAJAS</i>	<i>INTERN</i>	<i>\$65 00 PER HOUR</i>	<i>\$29 00 PER HOUR</i>	<i>\$36.00(-55%)</i>

All other employees will be charged based on their hourly pay rate times a 2.84 multiplier. All other charge rates are as noted in Exhibit "A-1" above.

EXHIBIT C

PROPOSAL

Compensation/Specifications/Reimbursement

Mark Thomas & Company, Inc. suggests budgeting a fixed monthly retainer of \$5,000 for "basic" engineering services such as routine engineering advice, telephone and personal consultations with the City Council and City Staff, attendance at City Council meetings as required, and the rendering of engineering advice and opinions concerning engineering matters that affect the City. Time will be charged on an hourly basis plus incidentals. A separate proposed task order and fee will be provided for specific projects. MTCO will define tasks, such as reviewing a development project, with an estimated fee. This way the City can bill development separately from City design tasks.

Definition of the type of work MTCO considers extra or specialized work, which would be billed in addition to basic services.

Specific tasks, i.e., grant applications, development reviews, design projects, and construction observation will be considered extra or specialized work. These tasks will be charged on a time and materials basis per the hourly rates stated below. In this manner, the budget for each project and true costs can be determined.

Our Charge Rate Schedule, along with the Billing Rates for staff who will provide services to the City, is as follows

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MARK THOMAS & CO INC.

CHARGE RATE SCHEDULE

EFFECTIVE FEBRUARY 1, 2005

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<i>WALTER GRANT</i>	<i>ENGINEERING MANAGER</i>	<i>\$188.00 PER HOUR</i>	<i>\$179 00 PER HOUR</i>	<i>\$9 00(-4.8%)</i>
<i>GREG WALTERS</i>	<i>SR. PROJECT ENGINEER</i>	<i>\$128.00 PER HOUR</i>	<i>\$91 00 PER HOUR</i>	<i>\$37 00(-29%)</i>
<i>LINELLE BUDDE</i>	<i>INSPECTOR</i>	<i>\$80.00 PER HOUR</i>	<i>\$89 00 PER HOUR</i>	<i>-\$9 00(+11%)</i>
<i>DAMTEW AYELE</i>	<i>DESIGN ENGINEER</i>	<i>\$85 00 PER HOUR</i>	<i>\$65 00 PER HOUR</i>	<i>\$20 00(-24%)</i>
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All other employees will be charged based on their hourly pay rate times a 2.84 multiplier. All other charge rates are as noted in Exhibit "A-1" above.