

**RESOLUTION NO. 3939**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD  
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR  
PROFESSIONAL SERVICES WITH EMC PLANNING GROUP INC. IN AN AMOUNT  
NOT TO EXCEED \$40,346 FOR THE PREPARATION OF AN INITIAL  
STUDY/MITIGATED NEGATIVE DECLARATION FOR A PROPOSED MIXED USE  
COMMERCIAL-RESIDENTIAL DEVELOPMENT AT 263 FRONT STREET**

**WHEREAS,** the City has received a request from Applicant Nader Agha to process a General Plan amendment, Zoning Ordinance map and text amendment, and Conditional Use Permit (the "Project") for a 2.75 acre site located at 263 Front Street (APN's 022-016-001; -002); and

**WHEREAS,** the Project would be subject to the requirements of the California Environmental Quality Act (CEQA), Sections 21065 and 21080 (discretionary projects proposed to be carried out or approved by public agencies, including general plan and zoning amendments), and all other relevant regulations of the Public Resources Code; and

**WHEREAS,** proposals were solicited and received from two qualified consulting firms—: EMC Planning Group Inc. and Pacific Municipal Consultants—and were reviewed and evaluated by the Community Development Director based on the firms' experience and the quality, content and estimated cost of the proposed scope of work; and

**WHEREAS,** based on the quality, content and estimated cost of its proposal, EMC Planning Group Inc. has been selected to perform the requisite environmental review, documentation and reporting pursuant to CEQA; and

**WHEREAS,** funding for the scope of services proposed by EMC Planning Group Inc. will be paid entirely by the Applicant, Nader Agha, through a separate Reimbursement Agreement with the City.

**NOW THEREFORE, BE IT HEREBY RESOLVED,** by the City Council of the City of Soledad that a Contract for professional environmental services between the City and EMC Planning Group Inc. ("Consulting Services Agreement Between the City of Soledad and EMC Planning Group Inc."), a copy of which is attached hereto and by this reference incorporated herein, in an amount not to exceed \$40,346.00, is hereby approved. The City Manager is hereby authorized to execute this Agreement on behalf of the City of Soledad.

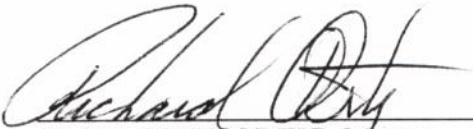
**PASSED AND ADOPTED** by the City Council of the City of Soledad at a regular meeting duly held on the 7<sup>th</sup> of February, 2007, by the following vote:

AYES, and in favor thereof, Councilmembers: Martha Camacho, Juan Saavedra, Patricia Stephens, Mayor Pro Tem Christopher Bourke

NOES, Councilmembers: None

ABSENT, Councilmembers: Mayor Richard Ortiz

ABSTAIN, Councilmembers: None



---

RICHARD V. ORTIZ, Mayor

ATTEST:



---

NOELIA F. CHAPA, City Clerk

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF SOLEDAD AND EMC PLANNING GROUP INC.**

THIS AGREEMENT for consulting services is made by and between the City of Soledad ("City") and EMC Planning Group Inc. ("Consultant") as of February 7, 2007.

**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 December 31, 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 a sum not to exceed \$40,346.00, 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 for scope of work, attached as Exhibit A, 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.

**Exhibit A**

The payments specified below shall be the only payments from City to Consultant for services 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 indicating the tasks or percentage thereof completed during the billing period;
- A Budget 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 and request, 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 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 five (5) business days of receipt of the invoice by City. City shall pay all undisputed charges within fifteen (15) business 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.** Hourly fees are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.6 **Reimbursable Expenses.** 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, or has provided evidence to the City that subcontractor(s) have obtained insurance in compliance with Section 4.4.3. 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 there from, 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 insured 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 coverage is 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 insured's under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage 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 coverage, 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 under this agreement.

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 is 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:

Principal  
EMC Planning Group Inc.  
301 Lighthouse Ave., Suite C  
Monterey, CA 93940

Any written notice to City shall be sent to:

Noelia F. Chapa, City Manager  
248 Main St.  
P. O. Box 156  
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**

  
Noelia F. Chapa, City Manager

  
Principal, EMC Planning Group Inc.



# 263 FRONT STREET MIXED USE CEQA REVIEW

## *Scope of Work*

### **Task 1      Project Initiation/ Site Investigation/Consultation/Management**

- Contract execution, prepare project files, monitor budget
- Authorize subconsultant Higgins Associates to prepare traffic report
- Authorize subconsultant Archaeological Resources Management to prepare historic evaluation
- Consultation with the lead agency, and coordination of personnel
- Conduct a site investigation to document the existing conditions on the project site and in the project area
- Document land uses and take photographs

### **Task 2      Research and Development**

- Collect and review existing information regarding the project site and project area
- Review the traffic report and historic evaluation, and the solar access study prepared by the applicant, and incorporate the information from those reports into the initial study
- The initial study will make maximum use of existing information relevant to the project area, including the general plan and other city planning documents

### **Task 3      Prepare Administrative Draft Initial Study/ Mitigated Negative Declaration and Noticing**

- Prepare the administrative draft initial study, mitigated negative declaration, notice of intent, and notice of completion, and provide three (3) copies to the city for review and comment

**Task 4 Prepare Public Review Initial Study/ Mitigated Negative Declaration and Noticing**

- Revise the initial study, mitigated negative declaration, notice of intent, and notice of completion, based upon city staff's comments, and print 35 copies
- Distribute to the State Clearinghouse (15 copies overnight), and to appropriate local or regional agencies or individuals as determined by the city, with the remainder to the city for its use
- Provide a copy of the notice of intent to city staff for city staff to place in a local newspaper or mail to nearby addresses
- Post the notice of intent with the county clerk

**Task 5 Prepare Response to Comments and Mitigation Monitoring Program**

- Prepare responses for review and comment by the city staff  

This scope assumes that no more than five comment letters would be received and that responses to the comment letters would not require additional analysis
- Prepare mitigation monitoring program

**Task 6 Attend Planning Commission and City Council Hearings**

- Attend one Planning Commission public hearing and one City Council public hearing. The scope and budget include attendance at one additional public hearing, before either the Planning Commission or the City Council, as determined by staff

**Task 7 Prepare Notice of Determination**

- Prepare notice of determination and file with the county clerk





HIGGINS ASSOCIATES

PLANNING AND TRAFFIC ANALYSIS

July 10, 2006

Mr. Richard James  
EMC Planning Group  
301 Lighthouse Avenue, Ste. C  
Monterey, CA 93940

**RE: Proposal for 263 Front Street Mixed Use Project, Soledad, California**

Dear Mr. James,

Higgins Associates is pleased to submit this proposal to prepare a Traffic Impact Analysis (TIA) for the proposed Mixed Use Project at 263 Front Street in Soledad, California. The proposed project will include 102 apartments or condominiums in a five story structure on Monterey Street and 12,200 square feet of commercial floor area on Front Street. This will replace an existing 21-room motel and 31 mobile homes. The project site lies easterly of Front Street and is bound to the west by Monterey Street and to the north by West Street.

The following scope of work is based on information in the Request for Proposal and our knowledge of the overall transportation system within Soledad. Specifically, this scope is based on three planning and design studies that Higgins Associates prepared. The *Gabilan Drive and Front Street / Highway 101 Interchange Planning Study* (August 2000), the *Draft Traffic Impact Analysis for the Orchard Villas* (March 31, 2004), the *Administrative Draft Miravale Subdivision Traffic Impact Analysis Update* (April 5, 2004) and the *Soledad Plaza Shopping Center Traffic Impact Analysis* currently in progress.

## 1 SCOPE OF WORK

The TIA will analyze intersection and roadway segment traffic operations during the AM and PM peak hour. The study will include the following intersections:

### *Intersections*

- 1) Moranda Road / Highway 101 Ramps
- 2) Front Street / Moranda Road
- 3) Front Street / San Vicente Road
- 4) Front Street / West Street
- 5) Front Street / Benito Street
- 6) Monterey Street / West Street
- 7) Monterey Street / Benito Street

Richard James

July 10, 2006

Page 2

Quantitative Levels of Service (LOS) analysis will be performed for the study intersections based the *2000 Highway Capacity Manual* methodologies. Intersection operations will be evaluated using the city-wide Traffix model that Higgins Associates established. This model was originally developed in 2001 and was updated as recent as this year. The study will analyze traffic conditions under these development scenarios:

- Existing Conditions
- Background Conditions
- Background Conditions Plus Project Conditions
- General Plan 2020 Conditions with Project
- General Plan 2020 Conditions without Project (optional)

The following tasks are recommended:

### 1.1 Kick-Off Meeting and Project Meeting

Higgins Associates staff will attend a kick-off meeting with the City of Soledad staff, project applicant, Caltrans staff, and other representatives. The Highway 101 / Front Street – Moranda Road interchange improvement alternatives currently being studied by the City of Soledad will be discussed, in order to determine how the interchange will be analyzed for future conditions.

A project meeting will also be necessary when the preliminary analysis is completed. Traffic operation analysis results from the different alternatives will be reviewed and discussed.

### 1.2 Data Collection

Higgins Associates collected traffic AM and PM peak hour data at intersections No. 1, 2, 3 and 4 in June 2006 and February 2006. That data can be used for this study. In addition, manual vehicular traffic counts will be undertaken during the morning and evening peak periods (i.e., from 7:00 to 9:00 a.m. and from 4:00 to 6:00 p.m.) at intersections No. 5, 6 and 7. From the peak period traffic counts, the AM and PM peak hour turning movement volumes will be identified. Highway 101 volumes will be obtained from traffic volume data published by Caltrans.

### 1.3 Existing Conditions Analysis

The traffic count data will be used to establish existing traffic conditions. The study intersections will be analyzed under the existing weekday AM and PM peak hour conditions.

#### 1.4 Background (Existing Plus Approved Projects) Conditions

This section will analyze the anticipated traffic impacts from existing traffic conditions plus the traffic due to the addition of trips that would be generated by approved, but not yet implemented, or occupied projects. Projects that are expected to be completed in a short-term (e.g. 5 to 7 years) will be included. The list of approved projects will be used from the *Soledad Plaza commercial Development Traffic impact Analysis*. The list will be updated, based on consultation with City of Soledad staff and will be used for this study. Trips generated by the approved projects will be added to the existing traffic volumes to obtain background traffic volumes. Caltrans is planning a SHOPP project in the vicinity of the Highway 101 / Front Street – Moranda Road interchange. The improvements will be incorporated in the existing roadway network for analysis. If appropriate, mitigation measures to correct operational deficiencies will be recommended.

#### 1.5 Background Plus Project Traffic Conditions Analysis

This section will include project trip generation, distribution and assignment analysis. Project trip generation analysis will be based on the Institute of Traffic Engineers (ITE) *Trip Generation* handbook. Project trip distribution will be projected based on the travel patterns within Soledad as well as in the Salinas Valley. Project trips will be added to the Background Conditions traffic volumes to obtain the Background Plus Project traffic volumes.

Level of Service (LOS) analyses will be prepared for the study intersections. The LOS analysis will be prepared assuming the network with interim improvements at the study intersections. As necessary, improvements will be recommended for deficient operations.

#### 1.6 Evaluation of Project Site Plan and Proposed Streets

Project site plan will be evaluated for internal vehicle circulation, access to the local streets, channelization, and layout of the proposed intersections and streets. Recommendations for modifications will be made. Pedestrian circulation in the project vicinity will also be evaluated.

#### 1.7 General Plan Conditions with Project

The study intersections will be analyzed based on the General Plan traffic conditions, with proposed project traffic volumes added. The General Plan traffic volumes will be forecasted based on the anticipated development within the 2020 time frame. The list of General Plan projects used in the *Soledad Plaza Commercial Development Traffic Impact Analysis* will be used, with updates obtained from City of Soledad staff. The roadway network with anticipated improvements as identified in the *City of Soledad Traffic Fees – Cost Estimates and Fee Schedule* (amended December 2002) will be used in the analysis.

This roadway network will include Gabilan Drive extension from San Vicente Road to Highway 101, Front Street extension from the Front Street / Moranda Road intersection to Gabilan Drive, and the Highway 101 / Front Street – Moranda Road interchange improvements.

## 1.8 Report Preparation and Response to Comments

### 1.8.1 Administrative Draft

The findings and conclusions of the analysis will be documented in a formal report, including appropriate tables and graphics. The report will initially be prepared as an administrative draft for review by City of Soledad staff.

### 1.8.2 Final Draft Report

Upon the receipt of comments on the administrative draft, we will revise the report and submit the final draft report. The final draft report will be included in the Draft EIR.

### 1.8.3 Response to Comments

Comments on the Transportation / Circulation section of Draft EIR from agencies and the public are expected. A letter of response to comments on the final draft TIA will be prepared.

This proposal makes provisions for time to respond to public comments. However, it does not include time for any additional analysis due to public comments.

## 1.9 General Plan without Project Conditions (Optional)

Should the City find it necessary to compare traffic operations with and without the project under General Plan Conditions, a General Plan without Project Conditions analysis will be prepared.

Not included in the above basic scope of work are additional analyses beyond what are specifically outlined above, attendance at more than two project meetings, attendance at public hearings, detail design of any roadway feature or traffic control device, parking analyses, cost allocation formulas for recommended mitigation measures, evaluation of more than one project site plan, and more than five copies of any draft of the study.

## 2 PROJECT TEAM QUALIFICATIONS

Higgins Associates has prepared many traffic studies and design projects in the city of Soledad. In addition to the recent studies prepared for Orchard Villas Subdivision and the Miravale project, we completed the *Mission Soledad Shopping Center Traffic Study*, the *Andalucia Subdivision Traffic Analysis*, the *Arnapola Town homes Traffic Study*, the *Vista Soledad Traffic Analysis*, the *Front / East Traffic Signal Warrant Study*, the

Northerly and Southerly Interchanges of Front Street / Highway 101 Planning Study, and the Gabilan Drive Extension Analysis. Higgins Associates also completed the Regional Surface Transportation Program (RSTP) grant application for the circulation improvements at the Highway 101 northbound off-ramp and Front Street in April 2003, which was awarded full funding. Currently we are assisting the Housing Authority of Monterey County for a traffic impact study in Soledad. Higgins Associates developed a city-wide traffic model using the Traffix software. The network includes major intersections and streets within the city, as well as Highway 101. The Traffix model can be used to analyze intersection operations under existing and future conditions.

Our team has experience in virtually every geographical area in every type of professional relationship that affords a comprehensive perspective on transportation issues in Soledad and throughout Monterey County and, therefore, will be able to complete this traffic impact study in a timely and cost efficient manner.

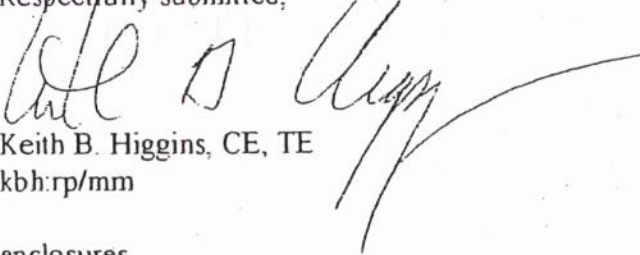
### 3 BUDGET

The basic fixed fee for this study would be \$19,702, without the optional task. The total fee for this study, including the optional tasks would be \$22,410. Terms of payment shall correspond with your contract with City of Soledad. Work beyond the above scope will be billed on a time and expenses basis in accordance with the attached Fee Schedule. All collection costs, including attorney's fees, will be the responsibility of the client. This proposal is valid for 60 days. The Fee Schedule and corresponding project fee may also be adjusted if extensive delays outside of the Consultant's control are incurred in the commencement or during the execution of the project. Invoices will be deemed accurate and accepted by the client unless questions are submitted in writing to Higgins Associates within 14 days of the date of the invoice.

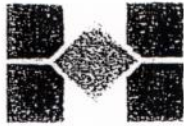
If the scope of work, fee and schedule, and terms of payment are acceptable, please sign and return a copy of the attached Authorization-to-Proceed.

If you have any questions regarding this proposal, please do not hesitate to contact me. Thank you for the opportunity to be included in your project team.

Respectfully submitted,

  
Keith B. Higgins, CE, TE  
kbh:rp/mm

enclosures



HIGGINS ASSOCIATES

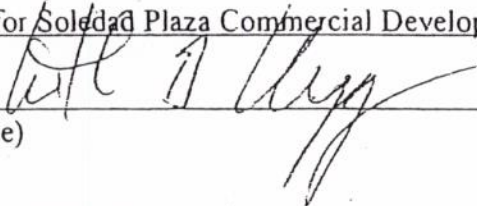
CIVIL & TRAFFIC ENGINEERS

1300-B First Street, Gilroy, CA 95020 · 408-848-3122 · fax 408-848-2202 · e-mail info@kbhiggins.com

*Note : If the scope of work, fee, terms of payment, and conditions described in the Higgins Associates proposal are acceptable, please sign and return a copy of this form for our files. Thank you.*

**LETTER OF AGREEMENT ACCEPTANCE/  
AUTHORIZATION TO PROCEED**

Project Name: Proposal for Soledad Plaza Commercial Development

Submitted By:  Date: July 10, 2006  
(Signature)

Accepted By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print)

on behalf of \_\_\_\_\_  
(Client)

\_\_\_\_\_  
Street or Mailing Address

\_\_\_\_\_  
City, State, Zip

Contracted Fee Confirmation \$19,702 (without optional tasks); \$22,410 (with optional tasks)

Initial Payment Amount \$ \_\_\_\_\_

Purchase Order No. \_\_\_\_\_

If billing should be sent to a different person or location, please complete below:

Attention: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Front Street Mixed used Development  
Fee Estimate for Traffic Impact Analysis**

Submitted by  
Higgins Associates, Inc.  
July 10, 2006

	Personnel and Hourly Billing Rates							Total Hours	Total Fee
	President	Senior Associate	Assistant Engineer	CAD Tech.	Clerical	Count Sup.			
<b>Basic Tasks</b>	\$216	\$167	\$118	\$85	\$69	\$55			
1. Kick-Off Meeting and Project Meeting	0.5	5	6				11.5	\$1,651	
2. Data Collection			2			30	32	\$1,886	
3. Analyze Existing Conditions	0.5	2	10	4			16.5	\$1,962	
4. Background Conditions Analysis	0.5	2	10				12.5	\$1,622	
5. Background Plus Project Conditions Analysis	0.5	2	10				12.5	\$1,622	
6. Evaluation of Project Site Plan	1	2	6	6			15	\$1,768	
7. General Plan Conditions with Project Analysis	0.5	4	20				24.5	\$3,136	
8. Report and Response to Comments									
Administrative Draft	0.5	2	12	6	6		26.5	\$2,782	
Final Draft	0.5	2	10	2	4		18.5	\$2,068	
Response to Comments	0.5	1	4		2		7.5	\$885	
<b>Subtotal</b>	<b>5</b>	<b>22</b>	<b>90</b>	<b>18</b>	<b>12</b>	<b>30</b>	<b>177</b>	<b>\$19,382</b>	
Printing								\$60	
Travel Expenses								\$260	
	<b>Basic Total (excluding optional task)</b>								<b>\$19,702</b>
<b>Optional Task</b>									
9. General Plan Conditions without Project Analysis	0.5		20				20.5	\$2,468	
Travel and Printing Expenses								\$240	
	<b>Total (including optional task)</b>								<b>\$22,410</b>

Note: This fee estimate is based on hourly rates effective until December 2006.

## Archaeological Resource Management

Robert R. Cartier, Ph.D.

496 North 5th Street

San Jose, CA 95112

Telephone (408) 295-1373

Fax (408) 286-2040

email: armcartier@netscape.net

Mr. Richard James  
EMC Planning Group  
301 Lighthouse Avenue, Suite C  
Monterey, CA 93940  
FAX: (831) 649-8399

July 11, 2006

RE: PROPOSAL FOR AN HISTORIC EVALUATION OF THE SOLEDAD MOTOR  
LAUNCH AT 263 FRONT STREET IN SOLEDAD

Dear Mr. James:

As per your request, we are submitting this proposal for completion of an historic evaluation of the Soledad Motor Launch at 263 Front Street in Soledad. This evaluation report is designed to meet the requirements of the California Environmental Quality Act (CEQA).

The evaluation will include the following items:

- photography of the interior and exterior of the structure for incorporation into the DPR forms
- historic background research to determine past ownership and associations of the structure
- completion of State Historic Resources Evaluation forms (DPR) 523 for the structure
- evaluation of the structure based on the criteria of the National Register of Historic Places and the California Register of Historic Resources

The total proposed cost for this evaluation will be \$4,200.00.

If you agree to this proposal, notice-to-proceed will consist of either this proposal signed by you or your standard sub-contractor's agreement. Upon receiving notice-to-proceed, our office will complete the tasks outlined above and submit the report to you within 20 (twenty) working days. If you have any questions, or if we can be of further service, please contact our office.

Sincerely,



Robert Cartier, Ph.D.  
Principal Investigator  
RC/dj

Agreement:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



February 13, 2007

Teri Wissler Adam, Principal  
EMC Planning Group Inc.  
301 Lighthouse Avenue, Suite C  
Monterey, California 93940

RE: CONSULTING SERVICES AGREEMENT

Dear Ms. Adam:

Enclosed are two original copies of the Consulting Services Agreement approved by the City Council on February 7, 2007. Please review and if acceptable, please sign both documents and return to my attention. Also enclosed is a copy of the approved resolution. I will secure the other signature and return a signed copy to you. I will also send you a certified resolution.

For your information, Associate Planner Susan Hilinski changed the contract a little and this is why we are sending you this version for signature. If you have questions on the changes, you can dial Susan direct at 831/223-5045.

If you have any questions, please feel free to call me at 831/223-5012.

Sincerely,

A handwritten signature in cursive script that reads "Lupe A. Martinez".

LUPE A. MARTINEZ  
Deputy City Clerk

Enclosures





*The Best for Success*

**RECEIVED**

**APR 16 2007**

**PLANNING DEPARTMENT**

April 12, 2007

Mr. Don Fleming, Community Development Director  
City of Soledad Community Development Department  
Post Office Box 156  
Soledad, CA 93960

**Re: 263 Front Street Mixed Use Initial Study  
Signed Copy of Contract**

Dear Don:

Enclosed is a signed copy of the contract, fully executed. Thank you again for choosing EMC Planning Group Inc. to assist you with this project.

Sincerely,

Teri Wissler Adam  
Principal

Enc.

**EMC PLANNING GROUP INC.**  
A LAND USE PLANNING & DESIGN FIRM

301 Lighthouse Avenue Suite C Monterey California 93940 Tel 831-649-1799 Fax 831-649-8399  
[www.emcplanning.com](http://www.emcplanning.com)