

**RESOLUTION NO. 3946**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD  
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH  
OMNI-MEANS INC. FOR UPDATING THE CITY LOCAL TRAFFIC IMPACT FEE IN  
AN AMOUNT NOT TO EXCEED \$58,342 AND TO APPROPRIATE \$58,342 FROM  
THE TRAFFIC IMPACT FEE FUND**

**WHEREAS**, the City has determined that it is necessary to update the City's traffic impact fees, and possibly to include a regional traffic impact fee component in such fees, in order to defray local transportation improvement costs impacted by new developments; and

**WHEREAS**, proposals were solicited and received from the following two companies: Kimley-Horn and Associates and Omni-Means Inc.; and

**WHEREAS**, Omni-Means Inc., a traffic and transportation consulting firm, is currently performing the US 101/146 Bypass for the City of Soledad; and

**WHEREAS**, the two submittals were reviewed by the Public Works Director and the firms were evaluated on the experience, quality and content of the submittal, and based on the experience, quality and content of the submittals, it has been determined that Omni-Means Inc. is best suited to meet the City's needs; and

**WHEREAS**, Staff is recommending that the project be funded from the Fiscal Year 2006-2007 Impact Fee Budget line 01-98-4025 Traffic Impact Fees in an amount not to exceed \$58,342.

**NOW THEREFORE, BE IT HEREBY RESOLVED**, by the City Council of the City of Soledad that the Council authorizes the City Manager to enter into a contract with Omni-Means Inc. for updating the City Traffic Impact Fees in an amount not to exceed \$58,342, and to appropriate \$58,342 from the Traffic Impact Fee Fund.

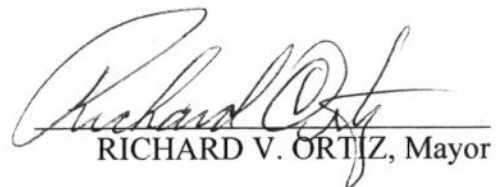
**PASSED AND ADOPTED** by the City Council of the City of Soledad at a regular meeting duly held on the 21<sup>st</sup> of February 2007 by the following vote:

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

NOES, Councilmembers: None

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 OMNI-MEANS INC.**

THIS AGREEMENT for consulting services is made by and between the City of Soledad ("City") and Omni-Means Inc. ("Consultant") as of February 22, 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 July 31 2007. The draft study documents will be prepared for presentation to City Council at a June 2007 meeting. The contract may be 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 \$58,342, 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.

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. 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.

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:

H. Ross Ainsworth  
President  
Omni-Means Inc.  
943 Reserve Drive, Suite 100  
Roseville, CA 935678

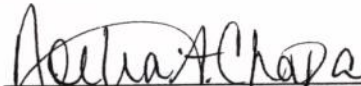
Any written notice to City shall be sent to:

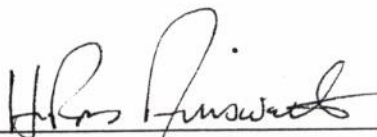
Noelia F. Chapa, City Manager  
248 Main St.  
P. O. Box 156  
Soledad, CA 93960

**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

  
\_\_\_\_\_  
President, Omni-Means Inc.

## **A SCOPE OF WORK**

---

### **CITY CAPITAL IMPROVEMENTS PROGRAM AND IMPACT FEE UPDATE City of Soledad**

---

#### **TASK 1 - PROJECT COORDINATION, MANAGEMENT AND MEETINGS.**

##### **1.1 Project Management Services.**

OMNI-MEANS will perform the following project management services:

- OMNI-MEANS will attend two (2) Staff/Technical Advisory Committee meetings, including the Project Initiation Meeting, one public workshop, and two (2) public hearings before the City Council, as required.
- Supervise, coordinate and monitor progress of the study and design elements for conformance with City and State standards.
- Prepare and present study progress and findings at public workshop and/or hearings throughout the project, including final adoption public hearings before the City Council.
- Prepare progress reports and invoices. At the end of each month, OMNI-MEANS will report the progress of the work, update the schedule, and invoice for the previous month's work.

##### **1.2 Project Initiation Meeting.**

To initiate the study process, OMNI-MEANS will meet with City staff to review the entire scope of work, schedule, budget, and work products to assure full understanding of the project, its deliverables and timing. Lines of communication for proper coordination will also be discussed.

#### **TASK 2 – TRAVEL FORECASTING**

##### **2.1 Background Data Collection**

OMNI-MEANS will collect and review traffic studies performed for projects within the City. An existing conditions scenario will be derived from those studies and additional traffic counts taken at other roadway facilities, per City staff's discretion. We have budgeted for up to ten (10) additional daily roadway segment counts. Existing development data, including number of households, population, and employment, will be provided by the City.

##### **2.2 Review AMBAG Travel Demand Model**

OMNI-MEANS will use the AMBAG Travel Demand Model to forecast future travel demand. Omni-Means is performing the US 101/SR 146 Corridor Study and has reviewed the base and future land use assumptions built into the AMBAG model. Based on the model revisions already performed by Omni-Means, the model will be used to project future travel demand along interregional facilities (e.g. US 101). The AMBAG Travel Demand Model was created for the purposes of regional-level modeling, and is not considered reliable for City-level forecasts.

#### **TASK 3 - CAPITAL IMPROVEMENT PROGRAM**

##### **3.1 Preliminary Cost Estimates.**

Opinions of cost for the improvements identified within the City's current Capital Improvements Program (CIP) will be updated. Available aerial photography will be used to identify major features that could drastically influence the cost estimates. Right-of-way cost estimates will be developed based on the City's experience with right-of-way acquisition and rough estimates of needed right-of-way. Right-of-way costs will be estimated from assessor information on per square foot basis and not on the basis of property appraisals.



---

Section

**A SCOPE OF WORK**

---

**CITY CAPITAL IMPROVEMENTS PROGRAM AND IMPACT FEE UPDATE  
City of Soledad**

---

These unit cost estimates are intended to provide only a “ballpark” cost that can be reasonably used for capital improvement programming, but should not be considered detailed cost estimates based on engineering design.

**3.2 Reprioritize List of Transportation Improvement Needs**

Omni-Means will review the City’s current CIP program and City-identified set of project priorities. Priorities will be redefined based on this review and discussion with the City.

**3.3 Staff Meeting.**

Following the Circulation Study process, a staff meeting will be held to discuss the phasing, costing and funding of needed capital improvements to be formulated into a formal Capital Improvement Program.

**3.4 Public Workshop.**

With consensus and direction from staff, a public workshop will be held before the public. Because this presentation is more informational and to receive public input, a formal hearing before City Council was considered unnecessary. However, the City Council is certainly welcome to share their input to the process at this time.

**TASK 4 - TRAFFIC IMPACT FEE.**

**4.1 Data Collection.**

The following data collection effort relative to the update of the Traffic Impact Fee will be conducted to obtain a firm understanding of the current traffic fees that are collected within the City.

- Review assumptions utilized in the AMBAG traffic model for zones within the City (Task 2.2), such as trip generation rates for various types of land uses and Levels of Service for City roadway facilities. Review the land use categories in the City’s current Traffic Impact Fee and determine if additional categories are needed.
- Determine what portion of the total estimated improvement costs were anticipated to be funded from fee revenues and evaluate the feasibility of other sources of revenue that were relied upon for transportation improvements.
- Contact the City Finance Director and obtain the current Audit Report.
- Coordinate with the City Planning Department to update the projection of land uses in future years for each impact fee category

**4.2 Existing Deficiencies Evaluation.**

Deficiencies caused by existing development will be recognized using the City’s most up-to-date traffic impact studies for recent development and supplemented using additional traffic counts collected by Omni-Means.

**4.3 Determine Capital Improvements to be Funded by the Traffic Impact Fee.**

The updated list of transportation improvements to be funded by the City impact fee will be determined based on the Capital Improvement Program identified in Task 3.2. The set of Capital Improvements will also be updated to remove funded/constructed improvements and add new improvements. The updated inventory of improvements and opinions of cost will be used in the calculation of the updated transportation fee(s).



---

Section

**A SCOPE OF WORK**

---

**CITY CAPITAL IMPROVEMENTS PROGRAM AND IMPACT FEE UPDATE  
City of Soledad**

---

**4.4 Calculate Updated Transportation Fee(s).**

A cost allocation methodology for the updated list of improvements will be determined and calculated based on the analyses conducted in Tasks 4.1 through 4.3. The cost allocation will consider assumptions used in the AMBAG traffic model for zones within the City, assigned trip generation rates, prior cost allocations used in City's existing fee program, and projected growth within the City. A cost per trip will be calculated based on these factors. A traffic impact fee for each land use category will be derived from the cost per trip and the assigned trip generation rate for each land use.

**4.5 Staff Review.**

Following the identification of a Capital Improvement Program, staff will review the development of an update to the City's Traffic Impact Fee. City staff will review improvements and costs to be included in the fee update and the cost spread methodologies and their resulting traffic impact fees. Initial fee amounts will be presented to City staff to discuss whether the calculated fees are feasible from both a political and competitive market perspective. In addition, fees on certain land uses will also be discussed to assess viability, recognizing economic development goals. The initial fees will be revised based on the input provided.

**Select-Link Nexus Analysis (Not Included)**

The AMBAG Travel Demand Model will not be used to determine the percent contribution of planning areas, e.g. a Community Facilities District (CFD), toward specific improvements. The AMBAG model is not considered reliable for City-level travel forecasts.

**TASK 5 - TECHNICAL REPORT COMPILATION, INCLUDING CAPITAL IMPROVEMENT PROGRAM AND TRAFFIC IMPACT FEE, AND APPROVAL HEARINGS.**

**5.1 Technical Report Compilation.**

This Technical Report will present a prioritized list of transportation improvement needs, the associated costs of the improvements, and the traffic impact fee methodology. All revisions obtained during staff meetings will be incorporated into the final version of the comprehensive technical report. The report will be submitted to City staff for their review and comment prior to presentation to the City Council.

**5.2 Staff Meeting.**

A meeting with City staff will be held to ensure City understanding and support while preparing and finalizing the Technical Report.

**5.3 Public Approval Hearings.**

The City Council must vote for the adoption of the updates to the Capital Improvement Program and Traffic Impact Fee. Two (2) public hearings have been budgeted. Presentations to City Council will be as directed by staff. If needed, OMNI-MEANS will be available to participate in additional public hearings and/or meetings, as directed and authorized in writing.







December 22, 2006

Peter Le, P.E.  
Associate Engineer  
City of Soledad  
248 Main Street  
Soledad, CA 93960

**RE: PROPOSAL –Capital Improvement Program and Impact Fee Updates**

Dear Peter:

In response to your request, OMNI-MEANS is pleased to submit this proposal to update the City of Soledad Traffic Impact Fee program. OMNI-MEANS has assisted communities like the City of Soledad with their Impact Fee Updates, most recently the City of Galt. OMNI-MEANS concentrates on providing accurate and defensible data when estimating the cost of improvements by performing detailed planning-level study. The fee updates consider increases to the construction cost index, construction feasibility, and the cost of right-of-way, among other factors. For example, the traffic/circulation fee in the City of Galt was most recently updated from \$8,160 per single family dwelling unit to \$13,433 (see attached City of Galt resolution).

The services proposed by OMNI-MEANS include using the AMBAG Travel Demand Model to provide planning-level traffic demand forecasts to year 2030, based on the build-out of the General Plan and regional through traffic growth. The traffic forecasts will be used to study needed roadway network improvements for updating the Capital Improvement Program. Cost estimates for the identified improvements and future development quantities will be used to calculate the City Impact Fee. We have completed the attached Scope of Work, cost estimate, and schedule, associated with completing the study.

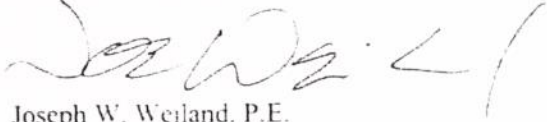
As presented in the attached material, the draft study will be completed within twelve (12) weeks from receiving authorization to proceed and sent to the City for review. The twelve weeks includes time to obtain necessary data and information from the City, conduct new traffic counts, and prepare the draft report. Following City review, OMNI-MEANS will finalize the draft report for submission to the City within two (2) weeks from receipt of City comments.

Our fee to perform this work will be \$58,342, as summarized in the attached Section B. We have included a total of five (5) meetings (two staff meetings, two public hearings, and one public workshop). Additional meetings that are required will be left to your discretion. We will be available to attend these meetings only with your prior authorization, and these meetings would be billed on a Time and Materials basis.

We look forward to working with you on this project. Please feel free to give me a call if you have any questions.

Sincerely,

OMNI-MEANS, Ltd.  
Engineers & Planners



Joseph W. Weiland, P.E.  
Principal

JW:al (P3884SCP001 doc)  
Attachments

Cc: Cliff Price

