

RESOLUTION NO. 4101

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING EXECUTION OF CONTRACT FOR PROFESSIONAL SERVICES
WITH EMC PLANNING GROUP, INC. IN AN AMOUNT NOT TO EXCEED
\$61,728 TO PROVIDE CONTRACT PLANNING SERVICES
FOR THE MIRAVALLE III PROJECT**

WHEREAS, the City has received a request from Mr. Nader Agha ("Applicant") to process a Specific Plan, Vesting Tentative Map, related General Plan amendments and pre-zoning ("Project") to facilitate development of the Miravale III property, approximately 920 acres of land currently outside the City's boundaries and Sphere of Influence; and

WHEREAS, the City of Soledad is in need of outside professional assistance in the processing of this Project; and

WHEREAS, after undertaking the RFP process, the City selected EMC Planning Group, Inc. to provide planning services for the Project, in the base contract amount of \$61,728; and

WHEREAS, funding for the Contract will be paid entirely by the Applicant through a Reimbursement Agreement.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad hereby authorizes and directs the City Manager for and on behalf of the City, to execute a Consulting Services Agreement, hereunto attached as "Exhibit A: and by reference made a part hereof, between the City of Soledad and EMC Planning Group, Inc., in an amount not to exceed \$61,728.

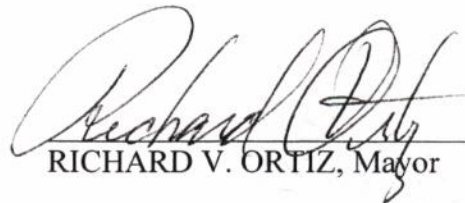
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Soledad duly held on the 17th day of October, 2007, by the following vote:

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

NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmembers: Juan Saavedra


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 **October 18, 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, 2008, 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 **sixty-one thousand seven hundred and twenty-eight dollars (\$61,728.00)**, 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; describing the work item in each task by staff person performing the work, and itemizing the hours spent by each person and each reimbursable expense;
- A Payment Summary containing the original contract amount, the amount of prior billings, the total due during the current invoice period, and the balance available under the Agreement; and
- 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

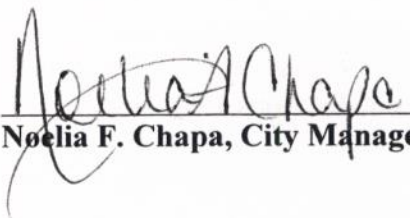
Any written notice to City shall be sent to:

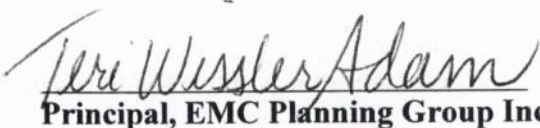
Noelia F. Chapa, City Manager
248 Main St.
P. O. Box 156
Soledad, CA 93960

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.

MIRAVALE SUBDIVISION PHASE III STAFF ASSISTANCE TASKS

This is an example scope of work.

Task 1 Administration/Project Management

- Task 1.1 Execute project contract, prepare project and contract files, prepare and monitor project budgets, and coordinate with city staff and personnel
- Task 1.2 Communicate regularly with city staff regarding progress

Task 2 Project Initiation

- Task 2.1 Meet with city staff and applicant to discuss the project, scope of work (tasks), schedule, possible controversy, issues, and expectations; conduct a site visit of the project site and surrounding area
- Task 2.2 Review the general plan, zoning ordinance, subdivision ordinance, LAFCO annexation policies, and other applicable plans/codes as they apply to the project; review documents for projects in the immediate vicinity
- Task 2.3 Review application materials and draft EIR

Task 3 Draft EIR Distribution/Public Hearing

- Task 3.1 Review proof draft and approve for printing
- Task 3.2 Prepare public hearing notices as required by city code
- Task 3.3 Distribute draft EIR to libraries and other locations as directed by the city
- Task 3.4 Present the project to the Planning Commission during the public review period

Task 4 Final EIR

- Task 4.1 Review draft EIR comments and ensure EIR consultant and applicant receive all written, email, and verbal comments
- Task 4.2 Review EIR consultant's response to comments and administrative final EIR

- Task 4.3 Meet with city staff to discuss major issues, if any, with the EIR
- Task 4.4 Prepare comment letter to the EIR consultant, clearly indicating what changes are necessary prior to production of the final EIR

Task 5 Conditions of Project Approval

- Task 5.1 Communicate with various city departments regarding conditions of project approval
- Task 5.2 Prepare draft conditions of approval
- Task 5.3 Distribute draft conditions of approval to city departments for review
- Task 5.4 Revise conditions of approval in response to staff comments

Task 6 Staff Report, Findings, Resolutions, Public Hearings

- Task 6.1 Prepare meeting notices, staff report, CEQA findings, resolutions, and public hearing presentations
- Task 6.2 Consult with city staff regarding any remaining issues
- Task 6.3 Prepare text of proposed or recommended General Plan amendments, ensure final documentation is ready for planning commission and city council packets, and obtain any revised or additional project materials from applicant
- Task 6.4 Prepare and deliver presentations to planning commission and city council (four meetings)
- Task 6.5 Prepare revisions to the draft Specific Plan as approved by the Planning Commission/City Council; prepare adopted conditions of approval
- Task 6.6 Ensure that the record is complete for city files

Task 7 Prepare LAFCO Annexation Application

- Task 7.1 Prepare LAFCO annexation application package
- Task 7.2 Submit package to LAFCO
- Task 7.3 Follow up to ensure LAFCO requirements are met
- Task 7.4 Prepare and deliver presentation to commission at public hearing

Task 7.5 Follow up with any additional requests by the commission

Task 8 Additional Meetings/Communications

Task 8.1 Meet/communicate with the city staff as necessary (Soledad)

Task 8.2 Meet/communicate with the applicant as necessary (Monterey and/or Soledad)

Task 8.3 Meet/communicate with other agencies, such as LAFCO, as necessary

Task 8.4 Meet/communicate with the EIR consultant as necessary (Monterey and/or Soledad)

Additional Tasks

Other Miravale III-related tasks may arise throughout the course of project review. These will be performed as directed by the Community Development Director on a time and materials basis.

Soledad Staff Planning (Miravale III) Estimate									
Task	EMC Planning Group Inc.								
	Sr. Principal	Principal	Senior Planner	Assistant Planner	Administrative	Total Hours	Total Cost	Total Hours	Total Cost
Billing Rate (Per Hour)	\$235.00	\$200.00	\$125.00	\$95.00	\$75.00				
Administration/Project Management	6.0	2.0	50.0	0.0	0.0	58.0	\$8,060.00	58.0	\$8,060.00
Initiation	0.0	0.0	30.0	0.0	0.0	30.0	\$3,750.00	30.0	\$3,750.00
Proof Draft EIR Review/Public Hearing Notices	0.0	1.0	25.0	1.0	1.0	28.0	\$3,495.00	28.0	\$3,495.00
Final EIR	0.0	4.0	50.0	4.0	1.0	59.0	\$7,505.00	59.0	\$7,505.00
Conditions of Project Approval	0.0	0.0	40.0	4.0	1.0	45.0	\$5,455.00	45.0	\$5,455.00
Staff Report, Findings, Resolutions, Public Hearing	0.0	0.0	75.0	6.0	5.0	86.0	\$10,320.00	86.0	\$10,320.00
LAFCO Annexation Application	0.0	0.0	45.0	4.0	1.0	50.0	\$6,080.00	50.0	\$6,080.00
Meetings/Communications	0.0	0.0	120.0	0.0	0.0	120.0	\$15,000.00	120.0	\$15,000.00
Subtotal (Hours)	6.0	7.0	435.0	19.0	9.0	476.0	Total Cost	476.0	\$59,665.00
Subtotal (Cost)	\$1,410.00	\$1,400.00	\$54,375.00	\$1,805.00	\$675.00				

Cumulative Cost
 \$8,060.00
 \$11,810.00
 \$15,305.00
 \$22,810.00
 \$28,265.00
 \$38,585.00
 \$44,665.00
 \$59,665.00

Additional Costs	
Production Costs	\$150.00
Travel Costs	\$1,200.00
Postal/Deliverables	\$125.00
Communication	\$200.00
Miscellaneous	\$200.00
Administrative Overhead 10%	\$187.50
Total	\$2,062.50

Total Costs	\$61,727.50
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FORMULA CHECK:	
Hours, Vertica	476
Hours, Horiz.	476
Cost, Vertical	\$59,665.00
Cost, Horiz.	\$59,665.00

Costs assume a 12 month schedule. Rates are subject to change January 1, 2008.

*Planning for Success.***FEE SCHEDULE****(Effective January 1, 2007)**

<u>Personnel</u>	<u>Hourly Billing Rate</u>
Senior Principal	\$235.00
Principal	\$200.00
Principal Planner	\$150.00
Senior Planner	\$125.00
Desktop Publisher	\$125.00
Associate Planner	\$105.00
Assistant Planner	\$95.00
Administrative Assistant	\$75.00
Office Assistant	\$60.00
<u>Expenses</u>	<u>Rate</u>
Mileage	\$0.485 (Per Mile)
Photocopying	\$0.10 (Per Copy)

This fee schedule is exclusive of direct reimbursable expenses, such as word processing, editing, printing, copying, travel, lodging, dining, communications, supplies, equipment rental, etc. All expenses are billed at cost plus ten percent (10%) for administration. All outside services are billed at cost plus ten percent (10%) for administration. This fee schedule is subject to revision at any time.

A retainer of up to fifty percent (50%) of the approved contract amount may be required for new clients or projects. Invoices are due and payable within 30 days. Past due balances are subject to a service charge of one and one-half percent (1.5%) per month. Service charges are in addition to approved contract amount.

Expert witness services are provided at a 50 percent mark-up.

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



Planning for Success.

October 9, 2007

RECEIVED

OCT 11 2007

PLANNING DEPARTMENT

Susan Hilinski,
Interim Planning Director
City of Soledad
248 Main Street
Soledad, CA 93960

**Re: Miravale Subdivision Phase 3
Contract Staff Assistance Proposal and Cost Estimate**

Dear Susan;

Attached for your use is a revised proposed scope of work with estimated costs per your request. Please bear in mind that the estimated costs are for budgeting purposes only, as our work would be billed on a time and materials basis, based upon the actual amount of time necessary to see the project through the approval process.

Please call me at ext. 210, or Teri Wissler Adam, Principal at ext. 203, if you have any questions regarding this proposal.

Sincerely,

Sally Rideout
Senior Planner

Enc.: Scope of Work, Cost Estimate

Exhibit "A"

EMC PLANNING GROUP INC.
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November 19, 2007

Sally Rideout, Senior Planner
EMC Planning Group Inc.
301 Lighthouse Avenue, Suite C
Monterey, California 93940

RE: CONSULTING SERVICES AGREEMENT – MIRA VALE III

Dear Ms. Rideout:

Enclosed are two original copies of the Consulting Services Agreement approved by the City Council on October 17, 2007. Please review and if acceptable, please have both documents signed and return to my attention. Also enclosed is a copy of the approved resolution *for your files*. I will secure the other signatures and return a signed copy to you.

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





Planning for Success.

November 27, 2007

Lupe A. Martinez, Deputy City Clerk
City of Soledad
P.O. Box 156
Soledad, CA 93960

**Re: Miravale Subdivision Phase 3
Consulting Services Agreement**

Dear Lupe:

As requested, enclosed are two signed copies of the above-referenced consulting services agreement.

Sincerely,

Teri Wissler Adam
Principal

Encs

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