

RESOLUTION NO. 4171/333

A JOINT RESOLUTION OF THE CITY COUNCIL AND THE REDEVELOPMENT AGENCY OF THE CITY OF SOLEDAD AUTHORIZING THE CITY MANAGER/EXECUTIVE DIRECTOR TO EXECUTE A THREE-YEAR CONTRACT WITH BRYANT L. JOLLEY CPA , TO PERFORM ANNUAL AUDITING SERVICES

WHEREAS, the City of Soledad's existing contract with TCA Partners , for City and Agency auditing services expired on June 30th of 2007; and

WHEREAS, the City/Agency issued a RFP for Audit Services to twenty-six CPA firms; and

WHEREAS, the City/Agency received four responses to its RFP; and

WHEREAS, after taking into consideration qualifications and experience, cost and responsiveness, Staff has determined that Bryant L. Jolley CPA's proposal represents the best offer for audit services; and

WHEREAS, for the FY 2007-08 audit, a total of \$30,600 will be budgeted in the FY 2008-09 General Fund budget and \$5,400 in the FY 2008-09 Redevelopment Agency Budget and Funding for FY 08/09 and FY 09/10 audits will also be funded in subsequent years.

THEREFORE, BE IT HEREBY RESOLVED by the City Council and the Redevelopment Agency Board of the City of Soledad and the Soledad Redevelopment Agency, respectively, that the City Manager/Executive Director is hereby directed to execute an Agreement for financial audit services between the City, Redevelopment Agency and Bryant L. Jolley CPA for a three year period beginning June 30, 2008 with the right to extend the term of this contract for two (2) additional one-year terms subject to the satisfactory negotiation of terms, including a price acceptable to both City and Bryant L. Jolley CPA.

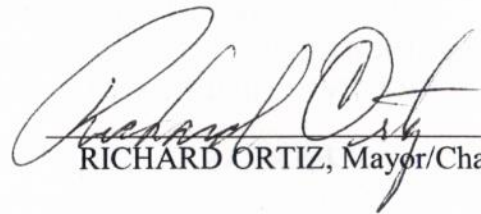
PASSED AND ADOPTED at a regular meeting of the City Council and Board of Directors of the Soledad Redevelopment Agency duly held on the 5th day of March, 2008 by the following vote:

AYES, and in favor thereof, Councilmembers/Agencymembers: Martha Camacho, Juan Saavedra, Mayor Pro Tem/Vice Chairman Christopher Bourke, Mayor/Chairman Richard Ortiz

NOES, Councilmembers/Agencymembers: None

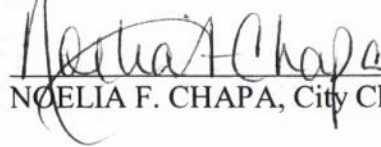
ABSTAIN, Councilmembers/Agencymembers: None

ABSENT, Councilmembers/Agencymembers: None



RICHARD ORTIZ, Mayor/Chairman

ATTEST:



NOELIA F. CHAPA, City Clerk/Agency Clerk

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SOLEDAD, THE SOLEDAD REDEVELOPMENT AGENCY
AND BRYANT L. JOLLEY, CPA**

THIS AGREEMENT for consulting services is made by and between the City of Soledad, a municipal corporation ("City"), Soledad Redevelopment Agency ("Agency") and Bryant L. Jolley CPA ("Contractor") (together referred to as the "Parties") as of March 5, 2008.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City/Agency the services described in the Scope of Services attached as Exhibit A, and incorporated herein, 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 **Scope of Services.** The term of this Agreement shall begin on the Effective Date and shall continue over a three year period and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's/Agency's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Contractor is engaged.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City/Agency, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City/Agency of such desire of City/Agency, reassign such person or persons.
- 1.4 **Time.** Contractor 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 Contractor's obligations hereunder.

Section 2. COMPENSATION. City/Agency hereby agrees to pay Contractor a sum not to exceed \$111,000, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City/Agency shall pay Contractor 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/Agency to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City/Agency in the manner specified herein. Except as specifically authorized by City/Agency in writing, Contractor shall not bill City/Agency for duplicate services performed by more than one person.

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

- 2.1 **Invoices.** Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
 - The beginning and ending dates of the billing period;
 - A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
 - At City's/Agency's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
 - The total number of hours of work performed under the Agreement by Contractor and each employee, agent, and sub of Contractor performing services hereunder;
 - The Contractor's signature;
 - Contractor shall give separate notice to the City/Agency when the total number of hours worked by Contractor and any individual employee, agent, or sub of Contractor reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Contractor and City/Agency. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Contractor and City/Agency, if applicable.
- 2.2 **Monthly Payment.** City/Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City/Agency shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 2.3 **Final Payment.** City/Agency shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City/Agency of a final invoice, if all services required have been satisfactorily performed.

- 2.4 **Total Payment.** City/Agency shall pay for the services to be rendered by Contractor pursuant to this Agreement. City/Agency shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City/Agency shall make no payment for any extra, further, or additional service pursuant to this Agreement.

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

- 2.5 **Hourly Fees.** Fees for work performed by Contractor on an hourly basis shall not exceed the amounts shown on the payment schedule attached hereto as Exhibit B.

- 2.6 **Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.7 **Payment upon Termination.** In the event that the City/Agency or Contractor terminates this Agreement pursuant to Section 8, the City/Agency shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.

- 2.8 **Authorization to Perform Services.** The Contractor 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, Contractor 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/Agency shall make available to Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City/Agency shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Contractor's use while consulting with City/Agency employees and reviewing records and the information in possession of the City/Agency. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City/Agency. In no event shall City/Agency 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, Contractor, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below 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 Contractor and its agents, representatives, employees, and subs. Consistent with the following provisions, Contractor shall provide proof satisfactory to City/Agency of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City/Agency. Contractor 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 Contractor's bid. Contractor shall not allow any sub to commence work on any subcontract until Contractor has obtained all insurance required herein for the sub(s) and provided evidence that such insurance is in effect to City/Agency. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. Contractor 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 Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Contractor 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 Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City/Agency and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Contractor, 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 \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). 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 a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an occurrence basis, and not on a claims-made basis.
- b. City/Agency, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor
- c. For any claims related to this Agreement or the work hereunder, the Contractor's insurance covered shall be primary insurance as respects the City/Agency, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City/Agency, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City/Agency.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Contractor, 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 \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-made limitations. 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. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Contractor must purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City/Agency for review 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, Contractor shall furnish City/Agency with complete copies of all policies delivered to Contractor by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City/Agency does not receive the required insurance documents prior to the Contractor beginning work, it shall not waive the Contractor's obligation to provide them. The City/Agency reserves the right to require complete copies of all required insurance policies at any time.
- 4.4.3 Deductibles and Self-Insured Retentions.** Contractor shall disclose to and obtain the written approval of City/Agency for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City/Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City/Agency, its officers, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City/Agency guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.4.4 Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.4.5 Waiver of Subrogation.** Contractor hereby agrees to waive subrogation which any insurer or may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Contractor, its employees, agents, and subs.

4.4.6 Subs. Contractor shall include all subs as insureds under its policies or shall furnish separate certificates and endorsements for each sub. All coverages for subs shall be subject to all of the requirements stated herein.

4.5 Remedies. In addition to any other remedies City/Agency may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City/Agency may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City/Agency may have and are not the exclusive remedy for Contractor'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 Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

Contractor shall indemnify, defend with counsel acceptable to City/Agency, and hold harmless City/Agency and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City/Agency.

The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate Liability or because the Contractor evaluates Liability and determines that the Contractor is not liable to the claimant. The Contractor must respond within 30 days, to the tender of any claim for defense and indemnity by the City/Agency, unless this time has been extended by the City/Agency. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of this Agreement as shall reasonably be considered necessary by the City/Agency, may be retained by the City/Agency until disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Contractor, the Contractor waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Contractor to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Contractor or any employee, agent, or sub of Contractor 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/Agency, Contractor shall indemnify, defend, and hold harmless City/Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subs, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City/Agency.

Section 6. STATUS OF CONTRACTOR.

6.1 **Independent .** At all times during the term of this Agreement, Contractor shall be an independent and shall not be an employee of City/Agency. City/Agency shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City/Agency shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City/Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subs 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/Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City/Agency and entitlement to any contribution to be paid by City/Agency for employer contributions and/or employee contributions for PERS benefits.

6.2 **Contractor Not an Agent.** Except as City/Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City/Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City/Agency 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.** Contractor and any subs 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, Contractor and any subs shall comply with all applicable rules and regulations to which City/Agency is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Contractor represents and warrants to City/Agency that Contractor and its employees, agents, and any subs have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City/Agency that Contractor and its employees, agents, any subs 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, Contractor and any subs shall obtain and maintain during the term of this Agreement valid Business Licenses from City/Agency.
- 7.5 **Nondiscrimination and Equal Opportunity.** Contractor 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, sub, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor 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 Contractor thereby.

Contractor 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/Agency may cancel this Agreement at any time and without cause upon written notification to Contractor.

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

- 8.2 **Extension.** City/Agency 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. Contractor understands and agrees that, if City/Agency grants such an extension, City/Agency shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City/Agency shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City/Agency and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City/Agency for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subs 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/Agency and Contractor shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's/Agency'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 Contractor pursuant to this Agreement;
 - 8.6.3 Retain a different Contractor to complete the work described in Exhibit A not finished by Contractor; or
 - 8.6.4 Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City/Agency would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Contractor'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 Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City/Agency. Contractor hereby agrees to deliver those documents to the City/Agency 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/Agency and are not necessarily suitable for any future or other use. City/Agency and Contractor agree that, until final approval by City/Agency, 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 **Contractor's Books and Records.** Contractor 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/Agency under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Contractor 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/Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City/Agency or as part of any audit of the City/Agency, for a period of 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 or in the United States District Court for the Northern District of California.

- 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.** Contractor 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.** Contractor may serve other clients, but none whose activities within the corporate limits of City/Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

Contractor hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City/Agency. If Contractor was an employee, agent, appointee, or official of the City/Agency in the previous twelve months, Contractor warrants that it did not participate in any manner in the forming of this Agreement. Contractor understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Contractor will be required to reimburse the City/Agency for any sums paid to the Contractor. Contractor 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.** Contractor 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 the City Manager/Executive Director and/or his or her designee ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

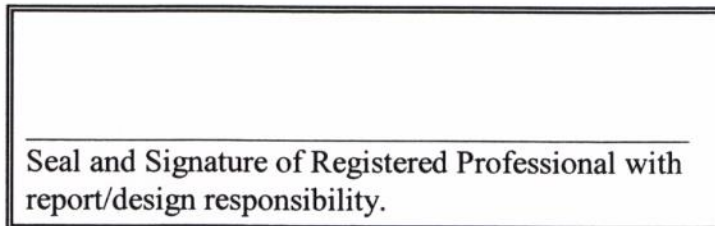
10.10 Notices. Any written notice to Contractor shall be sent to:

Bryant L. Jolley CPA
901 "N" Street, Suite 104
Firebaugh, CA. 93622

Any written notice to City/Agency shall be sent to:

City of Soledad
Noelia F. Chapa, City Manager/Executive Director
Post Office Box 156 (248 Main Street)
Soledad, California 93960

10.11 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



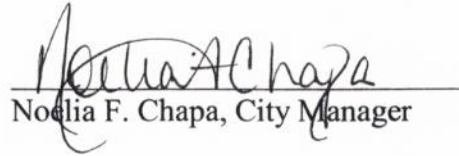
10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City/Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services
Exhibit B Payment Schedule

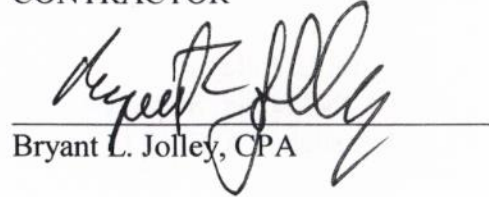
10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

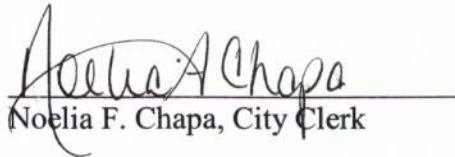
CITY OF SOLEDAD


Noelia F. Chapa, City Manager

CONTRACTOR


Bryant L. Jolley, CPA

Attest:


Noelia F. Chapa, City Clerk

Approved as to Form:

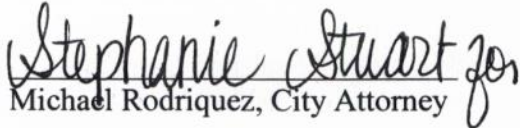

Michael Rodriguez, City Attorney

EXHIBIT A

SCOPE OF SERVICES

1. Perform an examination of the City's financial systems for the purpose of rendering an opinion thereon. The examination is to be made in accordance with generally accepted auditing standards and, accordingly, is to include such tests of the accounting records and such other auditing procedures as considered necessary in the circumstances.
2. Review the City's system of internal control, including an evaluation of City's operating and accounting procedures, and prepare a "Management Letter" notifying the City of any discrepancies or irregularities which are discovered during the course of this examination together with any recommendations concerning changes to correct any inefficiencies or weaknesses in internal procedures which are discovered in connection with this review.
3. Audit its financial statements for the fiscal year ended June 30, 2008, June 30, 2009 and June 30, 2010 and furnish twenty-five (25) copies of the Annual Audit Report for both the City and Redevelopment Agency.
4. Attend one (1) City meeting for the purpose of discussing the audit draft and management letter with City staff. Complete audit no later than October of each year and present Audit Report to City Council/Redevelopment Agency in November of each year.
5. Attend (1) meeting with Finance Department staff for review and discussion of audit reports prior to finalization. This meeting should be scheduled during the month of September.
6. Prepare the following annual reports to the State Controller: City and Redevelopment Financial Transactions Report, the Annual Street Report, Transit Operations Financial Transactions Report and GANN Limit Review Report.
7. Provide consultation and advice regarding generally accepted accounting practices as needed throughout the year to facilitate the audit process.
8. The firm shall be responsible for performing certain limited procedures involving management's discussion and analysis (MD&A) and required supplementary information (RSI) required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.
9. Perform an examination of the RDA's financial systems for the purpose of rendering an opinion thereon. The examination is to be made in accordance with generally accepted auditing standards and, accordingly, is to include such tests of the accounting records and such other auditing procedures as considered necessary in the circumstances.
10. Prepare the Single Audit report, when required.

EXHIBIT B

PAYMENT SCHEDULE

CITY/AGENCY shall pay Contractor in accordance with the schedule set forth in Exhibit A. Each payment will be made by the CITY/AGENCY within thirty (30) days of billing. The parties hereto acknowledge and agree that Contractor's billings should separately reflect audit fees, expenses, Single Audit fees and other approved services. City is under no obligation to advance payment of any of Contractor's fees from City funds.

The total sum due under this Audit Contact will not exceed \$111,000 over a three year period. Amount to be funded from General Fund over a three year period shall not exceed \$94,350 and Redevelopment Agency \$16,650.

CITY shall make no payment for any extra, further or additional service pursuant to this Agreement unless such extra service and the price therefore is agreed to in writing executed by the City Manager or other designated official of CITY/AGENCY authorized to obligate CITY/AGENCY thereto prior to the time such extra service is rendered.

The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of CITY/AGENCY. In this event, CITY/AGENCY shall compensate the Contractor for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Contractor shall maintain adequate logs and timesheets in order to verify costs incurred to date.



March 12, 2008

Bryant L. Jolley
Bryant L. Jolley, CPA
901 'N' Street, Suite 104
Firebaugh, CA 93622

RE: CONSULTING SERVICES AGREEMENT

Dear Mr. Jolley:

Enclosed are two (2) copies of the Consulting Services Agreement approved by the City Council and the Soledad Redevelopment Agency on March 5, 2008. Please review and if acceptable, please sign both documents, keep a copy for yourself and return them to my attention. I in turn will secure the rest of the signatures and send you a fully executed agreement. Also enclosed is a certified copy of Resolution No. 4171/333, which was signed by our Mayor/Chairman and the City Clerk/Secretary *for your files*.

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





4/15/08

April 21, 2008

Bryant L. Jolley, CPA
901 'N' Street, Suite 104
Firebaugh, California 93622

RE: CONSULTING SERVICES AGREEMENT

Dear Mr. Jolley:

Enclosed is your signed copy of the Consulting Services Agreement for preparation of the audits for the City of Soledad adopted by the City Council and the Soledad Redevelopment Agency on March 5th, 2008 for your files.

If you have any questions or if I can be of any help, please let me know. You can reach me at 831/223-5012.

Sincerely,

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

LUPE A. MARTINEZ
Deputy City Clerk

Enclosure

