

RESOLUTION NO. 4261

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTANT SERVICES
AGREEMENT WITH CSG CONSULTANTS INCORPORATED FOR FIRE MARSHAL
SERVICES**

WHEREAS, Carmel Fire Protection Services has conducted Fire Marshal Services for the City of Soledad since March 15, 2006; and

WHEREAS, after interviewing several Consultants it was determined that CSG Consultants Inc can perform the City's Fire Marshal responsibilities; and

WHEREAS, CSG Consultants Inc. has agreed to provide Fire Marshal consulting services to the City, with costs for such services coming from plan check fees and inspection fees.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad as follows:

1. The Council hereby approves the Consulting Services Agreement between the City and CSG Consultants Incorporated.
2. The City Manager is hereby authorized and directed to execute a contract, attached as Exhibit A and by this reference incorporated herein with CSG Consultants Inc to perform Fire Marshal authorized services for the City of which associated costs will be paid from Inspection and Plan Check fees collected by the City.
3. The City Council, in accordance with California Fire Code Section 3.08.020(a) titled "Establishment and duties of bureau of fire prevention" places all Fire Marshal duties and responsibilities under the Fire Department supervised by the Fire Chief.

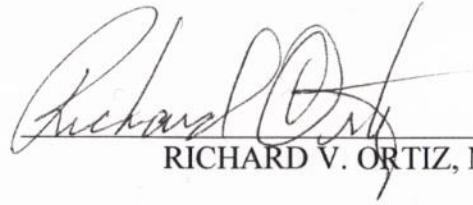
PASSED AND ADOPTED by the City Council of the City of Soledad at a meeting duly held on the 16th day of July, 2008, by the following vote:

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

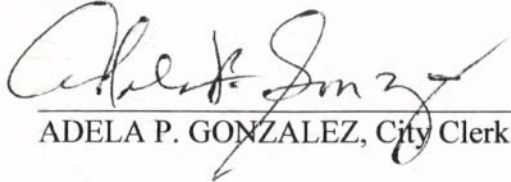
NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmembers: None


RICHARD V. ORTIZ, Mayor

ATTEST:


ADELA P. GONZALEZ, City Clerk

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SOLEDAD
AND
CSG CONSULTANTS, INC. (Consultant)**

PREAMBLE

This agreement for the performance of professional services ("Agreement") is made and entered into on this 17th day of July, 2008 ("Effective Date"), by and between CSG CONSULTANTS, INC., a California corporation, with its principal place of business located at 1700 S. Amphlett Blvd., 3rd Floor, San Mateo, CA 94402 ("Consultant") and the City of Soledad, California, a chartered California municipal corporation, with its principal place of business located at P.O. Box 156/248 Main St. Soledad, CA ("City"). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure professional services as follows:

Fire Marshal services; and
- B. Consultant represents that it and its sub-consultants possess the professional qualifications and expertise to provide such services and
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SCOPE OF SERVICES

Except as specified in this Agreement, Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at its own risk and expense. Services to be provided to City are Fire Marshal services including, but not limited to, fire plan review and fire inspection for compliance with codes and ordinances.

It is understood by the City and Consultant that it may be necessary, for Consultant to perform or secure the performance of consulting and related services other than those set forth in this contract. If additional services are requested by City,

Consultant shall advise City in writing of the cost and estimated time to perform the services. Consultant shall not proceed to perform any such additional service until City has determined that such service is beyond the scope of the basic services to be provided by Consultant and has given its written authorization to perform. Written approval for performance and compensation for additional services may be granted by the Fire Chief. Except as herein stated, any additional service shall require an amendment to this agreement and shall be subject to all the provisions of this agreement.

2. **TERM OF AGREEMENT**

- A. Consultant shall begin providing the Services under the requirements of this Agreement upon execution of the agreement.
- B. Unless extended by mutual written agreement of Parties, or terminated earlier in accordance with this Agreement, Consultant's obligation to perform Services to be provided under the terms of this Agreement shall commence as described above in paragraph 2A and shall continue in full force and effect until satisfactory completion of Services, but not exceeding (3) years from the commencement date hereof. The Fire Chief or his or her designee may, by written instrument signed by the Parties, extend the duration of this Contract for an additional period not to exceed the less or of one year or the original term of this Contract.

3. **RESPONSIBILITY OF CONSULTANT**

Consultant shall be responsible for the quality, technical accuracy and coordination of Services furnished by it under this Agreement as outlined in this agreement. Contractor (Consultant) will endeavor to provide Services in a manner consistent with the level of care and skill ordinarily exercised by other professionals providing the same service in the same locale. Consultant shall be solely responsible to City for the performance of Consultant, and any of his or her employees, agents, subcontractors, or suppliers, under these Contract Documents.

4. **RESPONSIBILITY OF CITY**

- A. City has established a budget for professional services including all costs as outlined in this agreement. On behalf of City, and through the authority of the Fire Chief shall be City's authorized representative and will ensure all required budget, purchase orders, service orders and any other internal documentation necessary to comply with the terms of this agreement are properly and timely prepared in order to enable Consultant to commence and continue services according to terms of agreement.
- B. On behalf of City, and through the authority of the Fire Chief shall be City's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The Fire Chief or their

representative shall render decisions in a timely manner pertaining to documents submitted by Consultant in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services. The Fire Chief may delegate authority in connection with the Contract to designees. Consultant shall promptly comply with instructions from Fire Chief or his/her designees.

5. **PAYMENT OF COMPENSATION**

- A. In consideration for Consultant's performance of Services, City shall pay Consultant for all Services rendered by Consultant pursuant to Consultant's Standard Rate Schedule, the current version of which is \$95 an hour. Payments made by City under this Agreement shall be the amounts charged for Services provided and billed by Consultant, subject to verification by City, pursuant to the standard rates set forth in the "Services Fee Schedule" supplied in writing by Consultant and maintained on file with City annually.
- B. Consultant shall bill City on a monthly basis for Services provided by Consultant during the preceding month, subject to verification by City. Payment to Consultant for Services will be made within thirty (30) days of date of Consultant invoice. Amounts unpaid 60 days after the invoice date shall accrue interest at the rate of 1% per month.

6. **RIGHT TO TERMINATION**

Both parties reserve the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to the other party. As of the date of termination, Consultant shall immediately cease all services hereunder, except such as may be specifically approved by both Consultant and City's authorized representative. Consultant shall be entitled to compensation for all services rendered prior to termination and for any services authorized by the authorized representative thereafter.

7. **NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST**

This Agreement is a contract for professional services. City and Consultant bind themselves, their partners, successors, assigns, executors and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of both parties.

8. **NO AGENCY**

Consultant shall not have authority, expressed or implied, to act on behalf of City as an agent, or to bind City to any obligations whatsoever, unless specifically authorized in writing by the Fire Chief or his/her authorized representative.

9. **NO THIRD PARTY BENEFICIARY**

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. **CONSULTANT IS AN INDEPENDENT CONSULTANT**

It is agreed that in performing the work required under this Agreement, Consultant and any person employed by or contracted with Consultant to furnish labor and/or materials under this Agreement is not an agent nor employee of City. Consultant has full rights to manage its employees subject to the requirements of the law.

11. **CONFIDENTIALITY OF MATERIAL**

All memoranda, specifications, plans, data, drawings, descriptions, documents, discussions or other information received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Consultant, which is otherwise known to Consultant or becomes generally known to the public or is of public record, shall be deemed confidential.

12. **RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT**

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant's compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. City shall disallow any expenses not so recorded.

Consultant shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Consultant agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Consultant's Services hereunder.

13. **CORRECTION OF SERVICES**

Consultant will be given the opportunity and agrees to correct any incomplete, inaccurate or defective Services at no further cost to City, when such defects are due to the negligence, errors or omissions of Consultant.

14. **FORCE MAJEURE**

The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of any public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes and unusually severe weather if Consultant shall, within ten (10) days of the commencement of such condition, notify Contract Officer who shall thereupon ascertain the facts and extent of any necessary delay, and extend the time for performing services for period of enforced delay when and if Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

15. FAIR EMPLOYMENT

Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background, or marital status, in violation of state or federal law.

16. HOLD HARMLESS/INDEMNIFICATION

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold City harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Consultant's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her sub-consultants or anyone for whom Consultant is legally liable.

City agrees, to the fullest extent permitted by law, to indemnify and hold Consultant harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by City's negligent acts, errors or omissions and those of his or her contractors, sub-contractors or consultants or anyone for whom City is legally liable, and arising from the project that is the subject of this Agreement.

Consultant is not obligated to indemnify City in any manner whatsoever for City's own negligence.

17. INSURANCE REQUIREMENTS

A. Without limiting Contractor's indemnification of City, and prior to commencing any Services required under this Agreement, Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

1. Commercial General Liability Policy (bodily injury and property damage): Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
3. Comprehensive Business Automobile Liability Insurance Policy with policy limits at minimum limit of not less than one million dollars (\$1,000,000) each accident using. Liability coverage shall apply to all owned, non-owned and hired autos.
4. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim/aggregate.

B. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with endorsements and deductibles indicated in this Agreement. Contractor shall file with City all certificates for required insurance policies for City's approval as to adequacy of insurance protection.

18. AMENDMENTS

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and incorporated into this Agreement. Such changes, which are mutually agreed upon by City and Consultant, shall be incorporated in amendments to this Agreement.

19. **WAIVER**

No term or provision hereof shall be deemed waived and no default or breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented to such breach. The consent by any party to, or waiver of, a breach or default by the other, shall not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach or default

The failure of either party to insist upon or enforce strict conformance by the other party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such party's right unless made in writing and shall not constitute any subsequent waiver or relinquishment.

20. **INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT**

This agreement embodies the agreement between City and Consultant and its terms and conditions. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of City prior to execution of this agreement shall affect or modify any of the terms or obligations contained in any documents comprising this agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

Contract Documents comprise the entire agreement between City and Consultant concerning the work to be performed for this project. Contract Documents are complementary; what is called for in one of the Contract Documents is binding as if called for by all of them.

21. **SEVERABILITY CLAUSE**

In the event any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

If any part of this agreement is for any reason held to be excessively broad as to time, duration, geographical scope, activity or subject, it will be construed, by limiting or reducing it, so as to be enforceable to the extent reasonably necessary for the protection of the Company.

22 **NOTICES**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

Rich Foster, Fire Chief
P.O. Box 156
248 Main St.
Soledad, CA 93960

And to the Consultant addressed as follows:

Name: CSG CONSULTANTS, INC.
Address: 1700 S. Amphlett Blvd., 3rd floor
San Mateo, CA 94402

23. STATUTES AND LAW GOVERNING CONTRACT

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

24. WAIVER OF CONSEQUENTIAL DAMAGES

City and Contractor mutually agree to waive all claims of consequential damages arising from disputes, claims, or other matters relating to this Agreement.

25. DISPUTE RESOLUTION

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Consultant and City regarding the construction or application of this Agreement, and claims arising out of this contract or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Superior Court of San Mateo appoint a mediator. The mediation meeting shall not exceed one day or eight (8) hours. The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. Any and all claims between City and Contractor shall be submitted to binding arbitration after the dispute is submitted to mediation. Mediation and binding arbitration under this section is a condition precedent to filing an action in any court. In the event any binding arbitration, legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of this Contract, or to recover damages for the breach thereof, the Party prevailing in any such action or proceeding shall be entitled to recover from the non-

prevailing Party all reasonable attorneys' fees, costs and expenses incurred by the prevailing Party.

26. **VENUE**

In the event that suit shall be brought by either Party, the Parties agree that the venue shall be exclusively vested in the State Courts of the County of San Mateo or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Francisco.

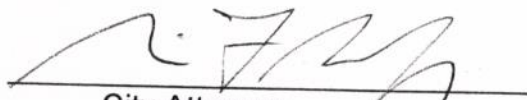
27. **SIGNATURES**

The individuals executing this Contract represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Contract on behalf of the respective legal entities of Consultant and City.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SOLEDAD, CALIFORNIA,
A Chartered California Municipal Corporation


Approved as to form:



City Attorney




City Manager

Attest:


City Clerk

"City"

CSG CONSULTANTS, INC.
A California Corporation



Richard Mao, P.E.
President
1700 S. Amphlett Blvd., 3rd floor,
San Mateo, CA 94402
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