

**RESOLUTION NO. 5065**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD  
APPROVING AN AGREEMENT WITH SAVE THE WHALES FOR STORMWATER  
PUBLIC EDUCATION AND OUTREACH IN THE AMOUNT OF \$23,606 AND  
AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON  
BEHALF OF THE CITY OF SOLEDAD**

**WHEREAS**, Soledad operates under a Phase II Stormwater Municipal Permit (WQ Order 2003-0005-DWQ); and

**WHEREAS**, part of the requirements for stormwater management is to perform *measurable* public outreach; and

**WHEREAS**, Save The Whales has been an integral part in the Monterey Regional Stormwater Management Program, Public Education and Participation for the past ten years; and

**WHEREAS**, Soledad has received a proposal from the Save The Whales nonprofit organization to perform the public outreach requirement to comply with the City's stormwater permit; and

**WHEREAS**, Staff recommends the City Council approve the attached Agreement with Save The Whales to provide stormwater public education and outreach, in the amount of \$23,606; and

**WHEREAS**, as per the "Agreement for Stormwater Education Services Between the City of Gonzales and the city of Soledad," staff will work with Gonzales staff to split the costs of Save the Whales' services equitably with Gonzales reimbursing Soledad for Gonzales's fair share.

**NOW, THEREFORE, BE IT HEREBY RESOLVED**, by the City Council of the City of Soledad that the "Agreement for Stormwater Public Education and Outreach" between the City of Soledad and Save The Whales, a copy of which is attached hereto as Exhibit "A" and by reference incorporated herein, is hereby approved and the City Manager is hereby authorized and directed to execute the same on behalf of the City of Soledad.

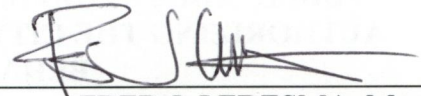
**PASSED AND ADOPTED** by the City Council of the City of Soledad at a regular meeting duly held on the 4th day of March, 2015, by the following vote:

**AYES**, and in favor thereof, Councilmembers: Christopher K. Bourke, Richard J. Perez, Patricia D. Stephens, Mayor Pro Tem Alejandro Chavez and Mayor Fred J. Ledesma

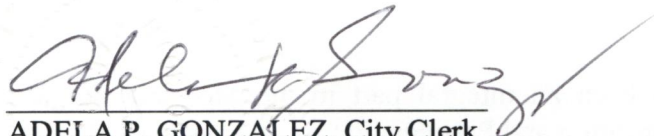
**NOES**, Councilmembers: None

**ABSTAIN**, Councilmembers: None

ABSENT, Councilmembers:           None

  
\_\_\_\_\_  
FRED J. LEDESMA, Mayor

ATTEST:

  
\_\_\_\_\_  
ADELA P. GONZALEZ, City Clerk

PUBLIC EDUCATION AND OUTREACH  
CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF SOLEDAD AND  
SAVE THE WHALES

Exhibit     A    

THIS AGREEMENT for consulting services is made by and between the City of Soledad ("City") and Save the Whales ("Consultant") (together referred to as the "Parties") as of March 4, 2015 (the "Effective Date").

**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 Work 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 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2016. Notwithstanding said term, this Agreement shall be subject to earlier termination as set forth in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 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.
- 1.5 **Public Works Requirements.**

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**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a not-to-exceed amount of \$23,606 (Twenty-three thousand six hundred six), 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, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, 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 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 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 Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
  - The Consultant's signature;
  - Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. 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 Consultant and City, if applicable.
- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 **Final Payment.** City 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 of a final invoice, if all services required have been satisfactorily performed.
- 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 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.** 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 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.

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 \$1,000,000 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.

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 \$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, 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 Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant'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, 10 days notice if cancellation is due to nonpayment of premium.

### **4.3 Professional Liability Insurance.**

**4.3.1 General requirements.** 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 N/A covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$250,000 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, Consultant 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 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, Consultant shall furnish City with certificate of insurance evidencing the coverages and endorsements required by this agreement. Upon request, Consultant shall provide City with 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 does not receive the required insurance documents, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written 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. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 **Wasting Policies.** No policy required by this Section 4, except professional liability insurance, shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant 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 consultant, its employees, agents, and subcontractors.

4.4.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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 acceptable to City, and hold harmless City 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 and to the extent of Consultant's negligence or other wrongful conduct in Consultant'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, active negligence or willful misconduct of City.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant 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 Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

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

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 consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

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 Not an 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 are 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 90 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. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant 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 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
  - 8.6.4 Charge Consultant 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 would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

## **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 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 \$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 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.** 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 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.

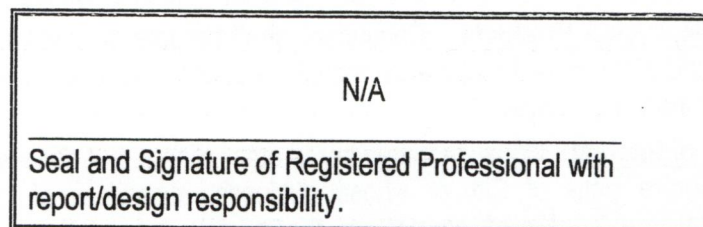
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Donald T. Wilcox, Public Works Director ("Contract 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:

Save the Whales  
Maris Sidenstecker  
1192 Waring Street  
Seaside, CA 93955

Any written notice to City shall be sent to:

City of Soledad  
Adela P. Gonzalez, City Manager  
248 Main Street  
Soledad, CA 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.

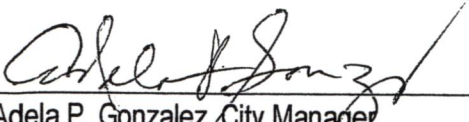


- 10.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as **Exhibits A** represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 **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.

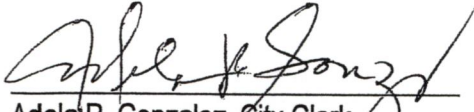
CITY OF SOLEDAD

SAVE THE WHALES

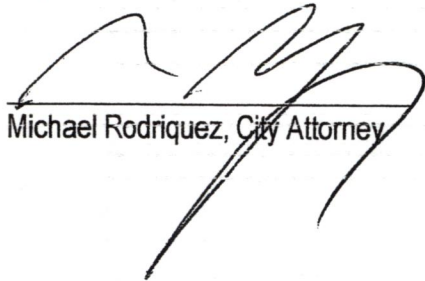
  
Adela P. Gonzalez, City Manager

  
Maris Sidenstecker, Program Director

Attest:

  
Adela P. Gonzalez, City Clerk

Approved as to Form:

  
Michael Rodriguez, City Attorney

## EXHIBIT - A

### Save The Whales PUBLIC EDUCATION & OUTREACH PROPOSAL for Frank Lopez, Harris and Associates

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**Organization:** Save The Whales  
**Program Director:** Maris Sidenstecker  
**Office Address:** 99 Pacific Street, Suite 200D, Monterey, CA 93940  
**Mailing Address:** 1192 Waring Street, Seaside, CA 93955  
**Phone:** (831) 899-9957  
**Email:** [maris@savethewhales.org](mailto:maris@savethewhales.org)

**Project Duration:** January 25, 2015 – June 30, 2015

**Summary of Work:** The nonprofit organization Save The Whales is proposing to perform the Public Education/Outreach and Public Involvement/Participation requirements to fulfill the NPDES Permit requirements. The program will be implemented from January 25, 2015- June 30, 2015, and will include the Participating Entities: Cities of Soledad, and Gonzales.

#### Relevant Experience of Save The Whales

Save The Whales has been an integral partner in the Monterey Regional Storm Water Management Program (MRSWMP) Public Education and Public Participation program for the past ten years. The entities include: City of Carmel-by-the-Sea, City of Del Rey Oaks, City of Monterey, City of Pacific Grove, City of Sand City, City of Seaside and the County of Monterey and Coordinating Entities: Carmel Unified School District, Monterey Peninsula Unified School District, Pacific Grove Unified School District, and the Pebble Beach Company. In addition, Save The Whales is contracted with the City of Marina, and the City of Santa Cruz to assist with their program needs.

Led by Maris Sidenstecker and her qualified staff they cover the following elements: community-based social marketing (CBSM), school outreach programs, public outreach events, partnering with community organizations, storm drain stenciling, water monitoring, obtaining grant funding to augment program efforts, program effectiveness measures, and business, tourist and restaurant outreach. Save The Whales' nonprofit status and established community partnerships brings reduced rates for radio airtime and print ad buys, in-kind services from businesses, and enables recruitment of college service-learning students.

Save The Whales is integrated in the community and has the ability to start programs from scratch, nurture, grow, and sustain them. Maris has worked directly in storm water education and outreach efforts for 18 years. Reviews of Save The Whales' respected work in the community can be read online through Great Nonprofits: <http://greatnonprofits.org/reviews/save-the-whales-inc>.

The talented and dedicated staff of Save The Whales make the hands-on school programs on watersheds, whales, sea otters, sea turtles, and endangered species requested every year by teachers and organizations in Monterey and Santa Cruz Counties. All programs meet California Science Standards. The unique marine mammal artifacts that accompany the programs engage children and incite them to learn more about marine animals and how to help them. To date Save The Whales has educated over 300,000 school children with the highly popular educational series. All of the programs make the connection between human activities on land that can contribute to water pollution and how each person can make a difference. Please see the teacher reviews on page 5 which includes Soledad schools.

### **Bilingual Education Specialist: Cheryl Butner**

Cheryl Butner is the social media and bilingual Education Specialist for Save The Whales. Cheryl has an M.A. in International Environmental Policy from the Monterey Institute of International Studies, where her main focus of study was on marine conservation and ecotourism in California and northwestern Mexico. She has also lived abroad in Spain, Guatemala, and Mexico. Cheryl has worked on several bilingual conservation projects on both sides of the border, including outreach and education to save the world's most endangered marine mammal, the vaquita porpoise, from extinction.

*Scope of Services:* Lead restaurant outreach and conduct CBSM intercept surveys at local grocery stores, lead public events and community outreach. Develop Facebook page and maintain the site with information in Spanish and English as directed by the Program Director.

### **Marine Educator: Thomas R. Kieckhefer**

Thomas Kieckhefer is a marine ecologist and educator. Tom has been teaching Save The Whales hands-on programs for several years to rave reviews from students and teachers. He helped develop the new outreach programs including Whale of a Rhythm Program (WOARP), Endangered Species, and the Amazing Lives of Sea Turtles program. Tom received a master's degree in marine science through Moss Landing Marine Laboratories/San Jose State University in 1992, and has over 25 years of research and education experience in the marine mammal field. His work has focused on: the impact of vessel traffic and noise pollution on humpback whales, killer whales, and sea otters; long-term humpback whale feeding ecology and bioacoustic monitoring of humpback whales, killer whales, and bottlenose dolphins for the University of Rhode Island Office of Marine Programs. Tom founded the Pacific Cetacean Group and was Education Director for Friends of the Sea Otter, for which he created several outreach programs that have now been incorporated into Save The Whales' programs. Tom joined Save The Whales as an educator in 2007.

*Scope of Services:* Provide education and outreach programs to schools, obtain pre/post student surveys and teacher evaluations, assist with teacher workshops and public events, and lead CSUMB students, as directed by the Program Director.

### **Marketing Coordinator: Joy Julian**

Joy Julian will provide assistance to the Program Director on Community Based Social Marketing (CBSM). Joy has solid business experience in public relations, marketing, writing, sales, event coordination, recruiting, planning, public speaking, negotiating, telemarketing, liaison, customer service, database management, website maintenance, purchasing, finance, and more. This experience comes from a variety of for-profit and non-profit businesses, including corporate organizations, foundations, small businesses, and freelance business. Joy is experienced in local and national marketing, from initiating focus groups to conducting pilot tests to launching marketing campaigns. Highlighted companies are Johnson Wax, Carmel Public Library Foundation, American Enterprises, Cypress Baking Company, Lou Deserio Gallery, and DPIC (now XLDesign). Joy has a B.A. degree with a double major in Marketing and Business Administration from Carthage College, in Kenosha, Wisconsin.

*Scope of Services:* Develop intercept CBSM surveys with the Program Director for the target audience, test the surveys in public, and refine as needed; and assist with various aspects of CBSM.

### **Outreach Assistant: Erin VerHage**

Erin VerHage is a recent graduate from California State University, Monterey Bay. Her capstone project was a detailed GIS map and report of the stormwater system joined with the progress of storm drain

## COMMENTS FROM TEACHERS 2013-2014

The following is a representative sample of comments written by teachers on the Teacher Evaluation Forms following Save The Whales' WHALES ON WHEELS™ classroom presentations. To read more reviews by teachers, principals, and community organizations go to: <http://greatnonprofits.org/reviews/save-the-whales-inc>

*"This presentation was excellent, as always, and I look forward to future presentations from this group."*  
Janelle Cap, 4<sup>th</sup> Grade Teacher, San Vicente Elementary School, Soledad

*"Students will remember that pollution harms our oceans. Great visuals help with students understanding and he (Tom) allowed all students to participate. Great presentation."*  
Ms. Lopez, 4<sup>th</sup> Grade Teacher, San Vicente Elementary School, Soledad

*"Great energy, excellent presentation."*  
David Nava, La Paz Boys and Girls Club of Monterey County, grades 7 and 8

*"Very interesting, informative, and fun. ... [The students] were very engaged and excited. They came back and looked at books about whales."*  
Kay McNamara, 3<sup>rd</sup> Grade Teacher, Henry F. Kammann Elementary School, Salinas



*"Maris has been coming to teach my fourth grade class for many years now, and I always look forward to her presentations. Maris speaks from her heart, uses interesting models, and keeps the children totally engaged in the learning process. The presentation covers many aspects of ocean conservancy that are being taught to my students...be guardians of the oceans, habitat protection, caring for animals of the oceans, oil spills, littering, and pollution of earth, air, and oceans. Maris brings materials for us to use such as posters about drains leading to the oceans, stencils for us to put around our school drains that say that these lead to the sea, whale bones and measuring of their sizes, costumes of sea otters and whale parts etc. It is always intriguing to the children, and each year I learn new facts from the presentations. It is totally honest of me to say that having Maris visit my classroom is one of our highlights of the year."*

Iris Sullivan, 4<sup>th</sup> Grade Teacher, All Saints' Episcopal Day School, Carmel

## Fee Proposal

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The fee proposal is attached in a separate document. Thank you for the opportunity to submit a proposal for program services.

Sincerely,

*Maris Sidenstecker*

Maris Sidenstecker  
Program Director  
Save The Whales  
P: 831-899-9957  
Cell: 831-917-0662

**South Monterey County Regional Alliance  
Public Education and Public Outreach Program (2015)**

BMP #	BMP Activity	Annual Measurable Goals	Fee		Agency			Activity Covers							
			Save the Whales	Soledad	Gonzales	Greenfield	King City	CBSM	FOG	Conserve Water	Waste Water	Litter	Recycle	Storm Water	
E.7.a.ii.j.3 E.7.a.ii.c E.7.a.ii.d	<p><b>3. Middle-High School:</b> Partner with Interact Environmental Clubs or YMCA after school programs to offer community service project.</p> <p>Activity to be coordinated with Gonzales and Soledad.</p>	<p>Offer 1 program per city (15-30 students) for participation in litter clean-up (on school campus, local park). OR litter clean-up while stenciling storm drains in the community (as selected by cities).</p> <p>-Litter collected will be tabulated on data cards and reported.</p> <p>-Report number of storm drain inlets marked and document location</p> <p>- Student community service hours will be tabulated for report</p> <p>- Report number of participants.</p> <p>Anticipated reach of 15-40 students.</p>	\$750	X	X				X		X	X	X	X	X
E.7.a.ii.j.4 E.7.a.ii.f E.7.a.ii.d	<p><b>4. Teacher Education:</b> Teachers will observe the hands-on classroom programs in #2 above and will be engaged in the learning process.</p>	<p>Collect 6-8 teacher evaluations regarding the instruction and content of classroom programs (see #2 above).</p>	\$0	X	X						X	X	X	X	X

A collaborative effort between the cities of Gonzales and Soledad

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E.7.a.ii.c E.7.a.ii.d E.7.a.ii.f E.7.a.ii.h	<b>8. Restaurant Outreach:</b> Targeted outreach materials provide training on pollution prevention practices to restaurants	Visit 20-24 restaurants in 2 cities. Distribute bilingual educational materials (posters, link to DVD online in English and Spanish). Purchase bilingual posters from MRSWMP to save \$ at \$2.00 per poster. Next Year rebrand the posters and do a small printing.	\$496	X	X				X	X						X
E.7.a.ii.c E.7.a.ii.d	<b>9. Bilingual Radio Ad:</b> Create, produce and air bilingual radio ad in English and Spanish.	This is the biggest bang for the buck to reach thousands of people and suggested for a start-up program. Produce 2 ads (one in English and one in Spanish) for \$1,600. Suggested topic: TRASH. Reach listeners on La Preciosa (KPRC) or other Spanish station. English station will be selected based on station demographics. Airtime for 2 stations (1 English and 1 Spanish)= \$900. Report statistics for annual report and report the percentage of Effective Reach. Ask radio station to do a free promotion of ad via the station website, station facebook, etc. and match nonprofit rates to reduce ad cost and get free ads. Average cost per ad aired with Save The Whales leverage is \$10 \$30 per ad. Ad can be loaded onto city websites and advertised on facebook to link to city website. Good branding tool. The majority chose radio over TV ads so we will not do TV ads.	\$2,500	X	X								X	X	X	

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E.7.a.ii.b	13. Intercept Surveys	Bilingual educator will conduct intercept surveys in front of 1-2 grocery stores per city in the 2 cities. Information will help cities establish a baseline on the public perception of storm water pollution, FOG, water conservation. Report results in the annual report.	\$500	X	X				X	X	X	X	X		X
E.7.a.ii.c E.7.a.ii.h E.7.a.ii.i	14. Educational Materials: General public, targeted business, tourists, schools  Note that this fee represents a startup cost and will be considerably lower the following years.	<b>Modify Trash 101</b> for the business community (from MRSWMP) in English and Spanish to fit your needs. <b>Modify existing Monterey Bay Begins On Your Street to Salinas River Begins On Your Street</b> in English and Spanish to fit your needs. This would provide a consistent regional look all around the bay as this is used in Santa Cruz and Monterey Counties and N. California. Popular print piece and great for schools. The modified brochure can be posted on each city website.  Soledad will translate both revised brochures into Spanish. Use both brochures as core educational pieces. Include other topics (FOG, water conservation, waste water, in above brochures). Brochures can be posted online, used for school outreach, public events, and given out at city counters. By using the existing brochures you save money on development, layout etc.	\$3,200	X	X					X	X	X	X	X	X

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E.8.i.c	17. Stenciling activity will be coordinated with Tri-Cities	Provide supplies and recruit volunteers and report the number of storm drains marked. \$450 per event.	\$900	X	X					X					X	X	X				
Supplies, printing, photocopies			\$500	X	X																
Overhead Costs (e.g., insurance, office, bookkeeper, etc.)			\$1,300	X	X																
<b>TOTAL COST:</b>			<b>\$23,606</b>																		

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