

**RESOLUTION NO. 5088**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD APPROVING AN AGREEMENT WITH GREEN'S ACCOUNTING, CERTIFIED PUBLIC ACCOUNTANT, TO PROVIDE FINANCIAL, ACCOUNTING AND CONSULTING SERVICES AND ACTING AS THE CONTRACT FINANCE DIRECTOR FOR THE CITY; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY OF SOLEDAD**

**WHEREAS**, Green's Accounting, a Certified Public Accounting business firm is qualified to provide professional financial, accounting and consulting services to the City; and

**WHEREAS**, Green's Accounting has been providing financial, accounting and consulting services to the City of Soledad since July 11, 2012; and

**WHEREAS**, the current agreement between the City of Soledad and Green's Accounting will expire on June 30, 2015;

**WHEREAS**, the City Manager has determined that it is necessary to continue to contract out the professional management of the Finance Department to provide for a more effective, efficient and stable fiscal environment; and

**WHEREAS**, pursuant to Government Code Section 53060, the City Council is authorized to contract for financial, economic and accounting services.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the City Council of the City of Soledad that the "Consulting Services Agreement Between the City of Soledad and Green's Accounting", a copy of which is attached hereto as "Exhibit A", and by reference incorporated herein for a one (1) year term is hereby approved; and the City Manager is authorized and directed to execute the same on behalf of the City of Soledad.

**BE IT FURTHER RESOLVED**, that the City Manager, in her/his discretion, is authorized to approve, in writing a one (1) year extension of this Agreement beyond the expiration date, to June 30, 2017.


**PASSED AND ADOPTED** by the City Council of the City of Soledad at a regular meeting duly held on the 3<sup>rd</sup> day of June, 2015, by the following vote:

AYES, and in favor thereof, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

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

ATTEST:

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



**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF SOLEDAD AND  
GREEN'S ACCOUNTING, CERTIFIED PUBLIC ACCOUNTANT**

THIS AGREEMENT for consulting services is made by and between the City of Soledad ("City") and Green's Accounting, CPA, ("Consultant") (together referred to as the "Parties") as of July 1, 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 (the "Expiration Date"), unless the term of the Agreement is otherwise terminated or extended in order to allow for the completion of the identified work, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8. In addition to the provisions set forth in Section 8, the City Manager may approve, in writing, a one (1) year extension of this Agreement beyond the Expiration Date, to June 30, 2017, conditioned on a determination that Consultant is not in default under any of the terms of the Agreement. Said extension shall be subject to the same terms and conditions set forth in this Agreement.
- 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.**

*Intentionally left blank.*

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a not-to-exceed amount of \$111,000 in any 12-month term hereunder, comprised of \$3,000 per month (\$36,000 per term) for monthly contracted services, and a maximum of \$75,000 for "Other Items/Additional Services" per term, billed on an hourly basis, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed 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 agreed monthly payment for services performed prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- For each work item performed, the name of the person doing the work, the hours spent by each person, and a brief description of the work
- 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.

**2.2 Monthly Payment.** City shall make monthly payments in the fixed amount referenced above, based on invoices received, for services satisfactorily performed. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

**2.3 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 an invoice for an amount in excess of the maximum amount of the compensation per 12-month term set forth in Section 2, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

**2.4 Reimbursable Expenses.** All reimbursable expenses are included in the total amount of compensation provided under this Agreement.

- 2.5 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.6 **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.
- 2.7 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, 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 Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

- 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 \$1,000,000.00 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a

self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

#### **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 \$1,000,000.00 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting 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 00 01 11 88 (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.

#### 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 \$500,000.00 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, 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 complete copies of all policies delivered to Consultant 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 does not receive the required insurance documents prior to the Consultant beginning work, 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 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 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 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 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 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 (ninety) 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 for Completion of Work.** 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 include, 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.

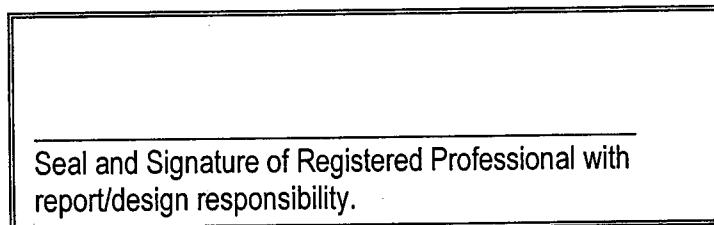
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Adela P. Gonzalez, City Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

Brent Green, CPA.  
Green's Accounting  
P.O. Box 698  
Greenfield, CA 93927

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 Exhibit A, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

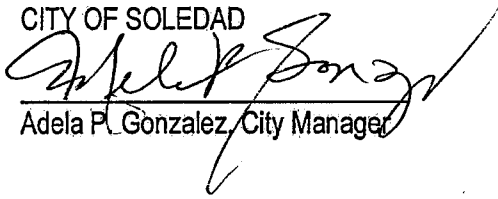
Exhibit A      Scope of Services

**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.

**[SIGNATURES ON FOLLOWING PAGE]**

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

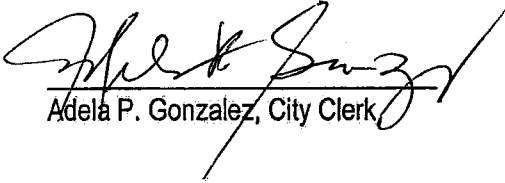
CITY OF SOLEDAD

  
Adela P. Gonzalez, City Manager

CONSULTANT- Green's Accounting

  
Brent Green, CPA

Attest:

  
Adela P. Gonzalez, City Clerk

Approved as to Form:

\_\_\_\_\_  
Michael Rodriguez, City Attorney

## EXHIBIT A

### SCOPE OF SERVICES

#### Payroll Services

Green's Accounting will perform the payroll processing function for the City of Soledad. The City of Soledad agrees to provide Green's Accounting with the following documents on a bi-weekly basis: Salary and hourly reports. Green's Accounting will process the bi-weekly payroll based on these reports; thus, the City of Soledad will verify time worked before submitting to Green's the payroll for processing. It is City management's responsibility to substantiate and authorize all time records. Green's Accounting will not audit, examine or review these time records. It is also City management's responsibility to determine employee versus independent contractor status.

Green's Accounting will prepare, on a quarterly basis, the federal and state payroll tax returns for the State of California. Green's Accounting will also reconcile all payroll tax returns with payroll withholding records and prepare the year-end payroll tax returns, including federal and state unemployment tax returns, Forms W-2, W-3, 1099, and 1096, as required.

#### Cash Disbursements

Green's Accounting will review bills and invoices rendered to the City and, if approved by the City, will generate checks drawn on various checking accounts. These bills include but not limited to transactions in the ordinary course of business, payroll taxes, and other payroll benefits. These checks will be forwarded to the City for signature. Green's Accounting will not have authority to sign checks. Electronic withdrawals will be utilized upon City authorization. Green's Accounting will prepare cash disbursement reports from the outstanding bills requested.

#### Cash Receipts

Green's Accounting will record cash receipts from the City of Soledad's daily cash receipt reports and deposit slips. Green's Accounting will not handle any cash or checks received nor make deposits. All daily cash receipt reports must be stamped by an authorized City employee and be accompanied by a deposit slip or bank receipt. Green's Accounting will also review electronic deposits and record these deposits into the general ledger. Green's Accounting will provide to the City Manager monthly internal cash receipt reports.

#### General Accounting

Green's Accounting will provide general bookkeeping functions for the City of Soledad. These functions included but are not limited to the appending and posting of cash receipts, license billing, accounts payable, cash transfers, adjusting journal entries and payroll to the general ledger. Each month Green's Accounting will review the reconciliation of the City of Soledad's bank accounts with the bank statements for proper account balance and to identify any errors. Green's Accounting will make any correcting entries directly into the

accounting software. Green's Accounting will close the monthly accounting and provide reports to staff and City Council as directed. On a quarterly basis, Green's Accounting will meet with the City Manager to discuss the City's accounting records and cash controls.

On a quarterly basis, Green's Accounting will prepare budget adjustments and journal entries as a result of City Council actions or as requested by the Department Directors and other City management staff. Examples of budget adjustments include Asset Forfeiture funds and Vehicle Abatement monies, to name a few.

### Fees

Fees for the monthly payroll and accounting services referenced above will be as follows:

Monthly Fee – Contract Services:                      \$3,000.00

Additional Regular Fees:

Annual/Quarterly payroll tax reports	\$150.00
Form 1099's	\$250.00

### Other Items/Additional Services

1. Green's Accounting will assist the City of Soledad in preparing for and completing annual audit of the City's financial statements. Green's Accounting will ensure that the City's Annual Audit is completed by December, which is six (6) months from the end of the fiscal year. Following receipt of the annual audit report, Green's Accounting shall prepare a written record to the City Manager identifying audit issues and recommendations, particularly concerning internal controls.
2. Green's Accounting will take the lead in the preparation and completion of the City's annual budget. Green's Accounting will make every attempt to ensure that the City's proposed annual budget is adopted by the City Council at the first City Council meeting in June. Green's Accounting will prepare and present to the City Manager a Mid-Year budget review by January 31<sup>st</sup>. Green's Accounting will make every attempt to present the Mid-Year budget report to the City Council at the regular City Council meeting in February.
3. Green's Accounting will prepare the state controller's reports required by the State of California.
4. Green's Accounting will prepare the ROPS reports for the Successor Agency and submit them to the City's Economic Development Director for processing and submittal to the Department of Finance as scheduled.

5. Green's Accounting will analyze asset purchases and loan arrangements.
6. Upon City request, Green's Accounting will provide consultation and assistance concerning any and all financial matters in which the City may become involved.
7. As needed, Green's Accounting will meet with the City's in-house finance staff person to assist with duties.
8. Upon City request, Green's Accounting will attend City Council regular and special meetings, Finance Committee meetings and meetings of the City's Measure "Y" Citizens Oversight Committee. Green's Accounting shall participate in at least one staff management meeting each month.

Fees for the "Other Items/Additional Services" referenced above, will be billed by Green's Accounting at the following hourly rates:

Brent Green or Mike Howard	\$150.00 per hour
Other Staff	\$110.00 per hour

This fee structure will be for a period of one year (July 2015 through June 2016). At the end of the fiscal year both parties will have the opportunity to review the fees as well as the services rendered and determine any changes if necessary.

Fees will be billed on a monthly basis and will be payable upon presentation. Billings become delinquent if not paid within 30 days of the invoice date. If billings are past due excess of 60 days, Green's Accounting will stop all work until the City's account is brought current, or withdraw from this engagement. City of Soledad acknowledges and agrees that Green's Accounting is not required to continue work in the event of the City's failure to pay on a timely basis for services rendered as required by this engagement letter. City of Soledad further acknowledges and agrees that in the event Green's Accounting stops work or withdraws from this engagement as a result of the City's failure to pay on a timely basis for services rendered as required by this engagement letter, Green's Accounting shall not be liable to the City of Soledad for any damages that occur as a result of our ceasing to render services.

#### Mediation

If any dispute arises among the parties hereto, the parties agree to first try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Rules for Professional Accounting and Related Services Disputes before resorting to litigation. Costs of any mediation proceeding shall be shared equally by all parties.

City of Soledad and Green's Accounting both agree that any dispute over fees charged by Green's Accounting will be submitted for resolution by arbitration in accordance with the

Rules for Professional Accounting and Related Services Disputes of the American Arbitration Association. Such arbitration shall be binding and final. IN AGREEING TO ARBITRATION, WE BOTH ACKNOWLEDGE THAT, IN THE EVENT OF A DISPUTE OVER FEES CHARGED BY GREEN'S ACCOUNTING, EACH OF US IS GIVING UP THE RIGHT TO HAVE THE DISPUTE DECIDED IN A COURT OF LAW BEFORE A JUDGE OR JURY AND INSTEAD WE ARE ACCEPTING THE USE OF ARBITRATION FOR RESOLUTION.

