

RESOLUTION NO. 5373

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING A CONSULTING SERVICES AGREEMENT WITH EMC PLANNING
GROUP, INC. IN AN AMOUNT NOT TO EXCEED \$126,607 TO PERFORM PHASE I
CONTRACT PLANNING SERVICES FOR THE PINNACLES PARKWAY PROJECT
AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON
BEHALF OF THE CITY OF SOLEDAD**

WHEREAS, on November 8, 2016 the voters of Monterey County approved Measure X, a three-eighths cent sales tax to the Transportation Agency of Monterey County to support local and regional road construction and maintenance and local mobility projects; and

WHEREAS, 60% of these funds are dedicated to local governments for their own projects, of which the City of Soledad has specifically designated the Pinnacles Parkway project, a plan to connect the southern commercial area of the City at Los Coches Road to Metz Road, for Measure X funding; and

WHEREAS, the City has a need to perform a number of planning activities prior to consideration and construction of the project and is in need of outside professional assistance in the processing of this Project; and

WHEREAS, the City of Soledad has a qualified list of firms pre-qualified to provide technical assistance for projects as needs arise; and

WHEREAS, the City selected EMC Planning Group, Inc. to provide planning services for the Project, in the base contract amount of \$126,607.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that the Agreement between the City and EMC Planning Group, Inc., in an amount not to exceed \$126,607, a copy of which is attached hereto as **Exhibit A** and by this reference incorporated herein, is hereby approved and the City Manager is authorized and directed to execute the same on Behalf of the City.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Soledad duly held on the 7th day of February, 2018, by the following vote:

AYES, and in favor thereof, Councilmembers: Mayor Pro Tem Alejandro Chavez, Christopher Bourke, Carla Stewart, Anna Velazquez and Mayor Fred Ledesma

NOES, Councilmembers: None

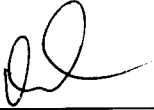
ABSENT, Councilmembers: None

ABSTAIN, Councilmembers: None



FRED J. LEDESMA, Mayor

ATTEST:



MICHAEL McHATTEN, City Clerk



Planning for Success.

February 12, 2018


Brent Slama, AICP
Community & Economic Development Director
City of Soledad
248 Main Street
Soledad, CA 93960

**Re: Pinnacles Parkway Project
Consulting Services Agreement**

Dear Brent:

Enclosed is the city's copy of the executed consulting services agreement for the Pinnacles Parkway project. Thank you again for choosing EMC Planning Group to assist you with this project.

Sincerely,


Teri Wissler Adam
Senior Principal

Enc:

EMC PLANNING GROUP INC.
A LAND USE PLANNING & DESIGN FIRM

301 Lighthouse Avenue Suite C Monterey California 93940 Tel 831-649-1799 Fax 831-649-8399
www.emcplanning.com



**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SOLEDAD AND
EMC PLANNING GROUP, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Soledad ("City") and EMC Planning Group, Inc. ("Consultant") (together referred to as the "Parties") as of February 7, 2018 (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 by February 7, 2020, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to 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.
- 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.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$126,607 (One Hundred Twenty Six Thousand Six Hundred Seven Dollars), 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;

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 **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.

2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as **Exhibit B.**

- 2.5 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit A, and shall not exceed \$1,680.00. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 **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 termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.8 **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 or has provided evidence to City that subcontractor(s) have obtained in compliance with Section 4.4.6. 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 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.

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

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, 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 the negligence, recklessness or willful misconduct of Consultant 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 14 days written notice to City and shall include in such notice the reasons for cancellation.

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

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. 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 beyond the maximum amount provided for in this Agreement.

- 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 Seek the difference from Consultant 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.

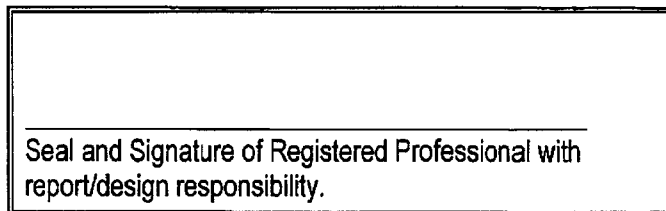
- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Michael McHatten, City Manager ("Contract Administrator"). 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:

EMC Planning Group, Inc.
Attn:
301 Lighthouse Avenue, Suite C
Monterey, CA 93940

Any written notice to City shall be sent to:

City Manager
City of Soledad
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

CONSULTANT



Michael McHatten, City Manager



Michael Groves, Senior Principal
EMC Planning Group, Inc.

Attest:



Michael McHatten, City Clerk

Approved as to Form:

Michael Rodriguez, City Attorney

EXHIBIT A
SCOPE OF SERVICES

Phase 1 Scope of Work and Budget

As noted in Section 1.0, Phase 1 is both a discovery phase and an effort to initiate the ROW acquisition process. Completion of tasks in this phase would allow development of a project description as part of the subsequent Phase 2 scope of work. Please also refer to Yamabe & Horn's Phase 1 proposal in Appendix A, Keith Higgins' proposal in Appendix B, and ARWS's right-of-way services proposal in Appendix C for reference to their respective tasks as identified in Phase 1.

2.1 PHASE 1 SCOPE OF WORK

Task 1 Administration and Management

This task covers a range of management tasks for executing and implementing the contract with the city. Activities include prime and subconsultant contract management, invoicing, file management, internal staff management, timekeeping, etc.

Task 2 Base Map and APN Map Preparation

EMC Planning Group will coordinate with Yamabe & Horn to facilitate preparation of a base map/topographic map for the subject planning area. Yamabe & Horn will also prepare an aerial photograph that includes APNs, property owner names, and parcel acreages.

Note that Yamabe & Horn's scope includes detailed base mapping and topographic mapping. This information can be used in Phase 1 to support the ROW appraisal process and through all subsequent phases of the proposed project to support planning and analysis tasks. If the outcome of meetings with property owners as summarized in Task 7 below suggest that urban land use designations will not be applied to intervening lands, the scope (and associated cost) of this task may be reduced.

Task 3 Research and Document Review/Policy Issues Review

EMC Planning Group will review pertinent documents which provide insight into site conditions; general plan policy regarding urban growth, circulation planning, agricultural land preservation/Williamson Act; the Soledad/County MOU, etc. EMC Planning Group will prepare a summary memo of key policy issues with potential to influence development of a project description.

Task 4 Williamson Act Contract Research and Project Planning Implications

EMC Planning Group will conduct research and communicate with city and county staff to identify Williamson Act variables that will affect the city's strategy for project planning. The status of Williamson Act contracts on potentially affected parcels will be identified and validated with city and county staff. California Government Code provisions relating to the California Land Conservation Act will be reviewed. The purpose is to identify options for canceling/rescinding/terminating contract obligations for public improvement projects and for urban development projects. This information will be reviewed with city staff prior to meetings with responsible agencies and property owners as described in subsequent tasks. Given that the Pinnacles Parkway is the city's priority (over annexing additional intervening land), the research outcomes may influence whether or not potential annexation opportunities are presented to property owners or ultimately pursued by the city.

EMC Planning Group will prepare a summary memo of key findings and identify planning strategy options as such may be affected by Williamson Act contract issues.

Task 5 Parkway and Palm Avenue ROW Planning

The conceptual parkway and Palm Avenue roadway requirements (single lane in each direction plus bicycle lanes) assumed by Yamabe & Horn in previous work are based on analysis of traffic operations in the southeast part of the city over both short- and longer-term growth conditions. However, these requirements do not reflect "complete street" needs. Complete streets are designed and operated to enable safe access for all users, including pedestrians, bicyclists, motorists and transit riders of all ages and abilities. A complete street may include: sidewalks, bike lanes (or wide paved shoulders), special bus lanes, accessible public transportation stops, frequent and safe crossing opportunities, median islands, accessible pedestrian signals, curb extensions, narrower travel lanes, roundabouts, and more.

To take the initial Yamabe & Horn roadway improvement assumptions to the "next level" that includes complete street improvements, Keith Higgins, Traffic Engineer, will review operational needs for the parkway and Palm Avenue, and the intersections of these roadways with each other and with existing roads. Further, pedestrian, bicycle, transit and other improvement needs will be examined. Based on this information, Keith Higgins will make full roadway cross-section recommendations, including ultimate road ROW requirements. This information will be incorporated into draft roadway cross-section and roadway/intersection configurations. The draft information will be reviewed with city staff and Yamabe & Horn for validation/refinement. As needed (as part of Task 6 below), the refined draft proposed lane configuration and cross-section information can be shared with TAMC.

Based on the draft ROW requirements, Yamabe & Horn will estimate land demands for each parcel over which the preliminary plan line passes. Land demand will be identified in table form for each affected parcel. This information will be reviewed with city staff with further refinements made as may be deemed necessary in preparation for meetings with responsible agencies and affected property owners. EMC Planning Group's role will be facilitate Yamabe & Horn's work and to review the results.

Please refer to Yamabe Horn's scope for Task 5 in Appendix A and to Keith Higgins' scope of work in Appendix B for more information.

Task 6 Meetings/Coordination with City Staff/Responsible Agencies

This task includes up to five (5) meetings with city staff and/or responsible agencies (e.g. LAFCO, MCWRA, TAMC, county, CPUC) to identify key issues and coordinate Phase 1 activities. EMC Planning Group, in coordination with Yamabe & Horn (as needed) will prepare associated materials needed to support the meetings with responsible agencies (land use maps, aerial photographs, preliminary roadway cross-sections/ROW, Williamson Act map, etc.). A summary memo containing key outcomes of meetings with responsible agencies will be prepared and submitted to city staff. Recommendations for next steps will be included.

Please refer to Yamabe & Horn's scope for Task 6 in Appendix A for more information on its participation in this task.

Task 7 Meetings with Potentially Affected Property Owners

Meetings with the potentially affected property owners will be a crux component of the Phase 1 scope of work. Up to four (4) meetings with individual property owners are assumed. Discussion topics will focus on: project background and need, preferred parkway and Palm Avenue alignments, ROW acquisition needs and process, land use/annexation interests (if pertinent based on prior Williamson Act constraint research), and overall planning and approval process. These meetings and meetings with city staff will be coordinated to occur on the same day where possible to reduce meeting costs.

In addition to EMC Planning Group, it is assumed that ARWS, Yamabe & Horn, and city staff would attend each of the property owner meetings. Please refer to Yamabe & Horn's scope for Task 7 in Appendix A for more information.

EMC Planning Group will assemble previously prepared materials to support the discussions and coordinate the meeting dates and times.

Task 8 Final Plan Line and ROW and City Council Adoption

The purpose of this task is to modify the parkway/Palm Avenue plan lines based on landowner input, if needed, formalized both in text/graphic form, and to then present the revised plan lines and roadway cross-sections to the City Council for adoption. Verifying the “stability” of the plan line locations and ROW needs is critical prior to initiating the ROW appraisal and acquisition process in the next task. Further consultation with Keith Higgins may be needed depending on whether and how the plan lines change relative to assumptions included in Task 5.

EMC Planning Group would support Yamabe & Horn’s work (as summarized for Task 8 in Appendix A), attend one (1) City Council hearing, prepare materials (e.g. PowerPoint presentation and a section of the staff report for this item), and be prepared to make the presentation or to support city staff and/or Yamabe & Horn in this capacity.

Task 9 ROW Appraisal/Acquisition and Team Support

ARWS specializes in ROW appraisal and acquisition/negotiation services. Its scope of work for the project is included in Appendix C. ARWS will use the roadway plan line and ROW information developed prior tasks as a basis for executing its scope of work.

The ARWS proposal includes a primary budget and an alternative budget. The primary budget assumes appraisal and negotiation services are needed solely to acquire ROW from over two parcels (with negotiations with two property owners). The ARWS proposal also includes an optional task for appraisal review and ROW certification that would be needed if the city solicits federal funding for the project. Both the primary budget and the option have been included in the Phase 1 budget. The option has been included in anticipation of the city needing to seek federal funding in the future—the added cost is nominal.

If ROW must be secured over more than two parcels, ARWS’ appraisal and negotiation costs would increase. ARWS’s proposal includes added costs that could be incurred if up to nine parcels are involved. These costs are not included in the Phase 1 budget, as it will remain uncertain how many parcels will be affected until the final draft plan lines are established (in Task 8). If more than two parcels will be involved, a Phase 1 contract amendment may be required.

Yamabe & Horn and EMC Planning Group have included a limited number of hours in our respective budgets to provide limited technical support to ARWS. ARWS’ scope of work includes assumptions about decisions that fall within city staff’s purview rather than the consulting team. It is assumed that city staff will also be available to support ARWS’ work.

Task 10 Present Appraisal Results to Property Owners

Once appraisal results have been prepared by ARWS, it would be prudent for city staff, EMC Planning Group, and potentially ARWS to meet with the property owners to present the results. The goal is to identify whether or not one or more owners are averse to the project based on the appraisal value (or other variables that may have arisen since the last round of meetings with them). EMC Planning Group would assemble previously prepared materials to support the meeting discussions, coordinate the meeting dates and times, and attend up to four (4) meetings with property owners.

Task 11 Phase 1 Summary and Next Steps Options Memo

In this task, EMC Planning Group, in coordination with other team members, would prepare a summary memo of tasks conducted in Phase 1 and briefly discuss the major outcomes and opportunities and constraints to moving forward with project planning tasks. Recommendations will be provided based on the information derived in the prior tasks. The memo can be used to help craft the subsequent Phase 2 scope of work and can also be used as a basis for making update presentations to the Planning Commission and City Council about progress achieved to date.

Task 12 Planning Commission and City Council Update/Next Steps

EMC Planning Group and Yamabe & Horn would attend both a Planning Commission and a City Council meeting to update each body on progress to date, recommend next steps in coordination with city staff, and answer any questions from either body. EMC Planning Group would prepare handouts as needed to assist with the updates, prepare a brief PowerPoint presentation to summarize key points, and prepare the pertinent section of the staff report for this item.

2.2 PHASE 1 SCOPE OF WORK BUDGET

The EMC Planning Group team proposed Phase 1 budget is shown on the following page. Yamabe & Horn's cost is taken from its proposed budget found in Appendix A. Yamabe & Horn costs are shown as "Engineering Services Costs (Under Contract to the City)", while costs for ARWS, a subconsultant to EMC Planning Group, are shown under "Subconsultant Fees."

The budget includes only those tasks identified in the Phase 1 scope of work. Any changes requested by the city to the types of deliverables, number of meetings, scope of tasks, or level of effort per task assumed in the Phase 1 scope and the Phase 1 budget may require a contract amendment. A contract amendment may also be needed if the Phase 1 project duration exceeds one year.

EXHIBIT B
FEE SCHEDULE

Pinnacles Parkway - Phase 1 Budget

EMC Planning Group Inc.									
Staff	Sr. Principal	Principal	Associate Planner	Graphics	Admin/Production	Total Hours	Total Cost		
Billing Rate (Per Hour)	\$210.00	\$205.00	\$130.00	\$115.00	\$95.00				
Administration and Management	8.0	42.0	6.0	6.0	4.0	60.0	\$11,450.00		
Base Map and APN Map Preparation	0.0	3.0	3.0	3.0	0.0	9.0	\$1,350.00		
Research/Document Review/Summary Memo	1.0	6.0	12.0	0.0	0.0	19.0	\$3,000.00		
Williamson Act Research/Summary Memo	1.0	18.0	4.0	4.0	1.0	28.0	\$4,975.00		
Parkway/Palm ROW Planning	0.0	12.0	6.0	3.0	0.0	21.0	\$3,585.00		
Meetings/Coordination with City Staff/Responsible Agencies (5)	3.0	25.0	18.0	6.0	8.0	60.0	\$9,545.00		
Meetings with Property Owners (4)	0.0	22.0	8.0	6.0	3.0	39.0	\$6,525.00		
Plan Line/ROW Adoption (1)	1.0	12.0	6.0	4.0	0.0	23.0	\$3,910.00		
ROW Appraisal/Acquisition Support	1.0	18.0	6.0	4.0	1.0	30.0	\$5,235.00		
Appraisal Results Meetings with Property Owners (4)	0.0	18.0	4.0	2.0	3.0	27.0	\$4,725.00		
Phase 1 Summary and Next Steps Memo	1.0	16.0	4.0	2.0	1.0	24.0	\$4,335.00		
Planning Commission/City Council Update Meetings (2)	1.0	18.0	6.0	4.0	0.0	29.0	\$5,140.00		
Subtotal (Hours)	17.0	210.0	83.0	38.0	21.0	Total Hours: 369.0			
Subtotal (Cost)	\$3,570.00	\$43,050.00	\$10,790.00	\$4,370.00	\$1,995.00		Total Cost: \$63,775.00		

EMC Planning Group Additional Costs

Production Costs	\$700.00
Travel Costs	\$650.00
Postal/Deliverables	\$50.00
Miscellaneous	\$200.00
Administrative Overhead 5%	\$80.00
Total	\$1,680.00

EMC Planning Group Team Subconsultant Fees

Keith Higgins, Traffic Engineer	\$19,140.00
Associated Right of Way Services (Primary + Optional Scope for 2 Parcels)	\$39,100.00
Subconsultant Overhead 5%	\$2,912.00
Total	\$61,152.00

Total Phase 1 Costs¹

\$126,607.00

¹Budget assumes that all Phase 1 tasks are completed in no more than one year. A contract amendment may be needed if Phase 1 exceeds one year.

Engineering Services (Under Separate Contract to the City)

Yamabe and Horn (Engineering Services) **\$86,000.00**