RESOLUTION NO. 89-79

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PASO ROBLES APPOINTING,
AUTHORIZING, AND PROVIDING APPROPRIATION
FOR RETENTION OF A CONSULTANT TO COMPLETE
THE REQUIREMENTS OF SENATE BILL 547 ON BEHALF
OF THE CITY OF PASO ROBLES

Whereas, the State of California has mandated, through the adoption of Senate Bill 547, that all Cities, Counties, and Municipalities must identify, inventory, and notify the legal owners of all buildings within their jurisdiction found to be constructed of unreinforced masonry, unreinforced concrete, or contain masonry enfills; and

Whereas, certain structures located within the City of Paso Robles were determined to have been constructed of masonry materials, and thus require evaluation by the City of Paso Robles as directed by Senate Bill 547; and

Whereas, the City Council wishes to consider retention of a consultant to perform this evaluation, and meet all requirements associated with Senate Bill 547, ultimately filing the mandated inventories and reports with the State of California on behalf of the City of Paso Robles;

NOW THEREFORE, BE IT RESOLVED, that in accordance with the covenants and conditions contained within the contract provided by the City of Paso Robles, that the City Council hereby authorizes City staff to appoint Melvyn Green and Associates to act as the consultant charged with the completion of all requirements associated with Senate Bill 547.

In consideration of this appointment, Council hereby appropriates $ 18,000.00 to cover the estimated costs of completing the survey. It is also requested that Council appropriate an additional $ 2000.00 to act as a contingency fund, thereby increasing the total appropriation to that of $ 20,000.00. The $ 2000.00 will provide additional capital to be used to cover work not included under the accepted proposal deemed necessary by the administrative authority (City Manager), as in the best interest of the City.

19. **DISCRIMINATION**

No discrimination shall be made in the employment of persons under this Agreement because of the race, color, national origin, ancestry, religion or sex of such person.

If **CONSULTANT** is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or excutive order in the performance of this Agreement, it shall thereby be found in material breach of this Agreement. Thereupon, **CITY** shall have the power to cancel or suspend this Agreement, in whole or in part, or to deduct from the amount payable to **CONSULTANT** the sum of Twenty-five Dollars ($25) for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract, or both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this paragraph.

If **CONSULTANT** is found in violation of the nondiscrimination provisions of this Agreement or the applicable affirmative action guidelines pertaining to this Agreement, **CONSULTANT** shall be found in material breach of the Agreement. Thereupon, **CITY** shall have the power to cancel or suspend this Agreement, in whole or in part, or to deduct from the amount payable to **CONSULTANT** the sum of Two Hundred Fifty Dollars ($250) for each calendar day during which **CONSULTANT** is found to have been in such noncompliance as damages for paid breach of contract, or both.

20. **AGREEMENT CONTAINS ALL UNDERSTANDINGS**

This document (including all exhibits referred to above and attached hereto) represents the entire and integrated Agreement between **CITY** and **CONSULTANT** and supersedes all prior negotiations, representations, or Agreements, either written or oral. This document may be amended only by written instrument, signed by both **CITY** and **CONSULTANT.** All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, CITY and **CONSULTANT** have executed this Agreement the day and year first above written.

Melvyn Green and Associates, Inc.

By Melvyn Green, president

CITY Paso Robles

By Jerry Bandelow, City Mgr.

PASSED AND ADOPTED by the City Council of the City of Paso Robles, this 20 th. day of June, 1989, on the following vote:

AYES: Russell, Dolan, Conway and Martin

NOES: None

ABSENT: Reneau

Steve Martin
Mayor

ATTEST:

Jerry Bankston
City Clerk

RECEIVED
JUN 27 1989
COMMUNITY
DEVELOPMENT

CONSULTANT'S SERVICES AGREEMENT

THIS AGREEMENT, made this 20th day of June, 1989, by and between the **CITY OF PASO ROBLES**, California (hereinafter referred to as "**CITY**"), and Green & Associates (hereinafter referred to as "**CONSULTANT**").

WITNESSETH:

WHEREAS, CITY desires to retain a qualified individual(s), firm or business entity to provide consultant services in the completion of the requirements of SB 547; and

WHEREAS, CITY desires to engage **CONSULTANT** to provide services by reason of its qualifications and experience for performing such services, and **CONSULTANT** has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. **CONTRACT COORDINATION**

a. **CITY.** The Building Division of the Community Development Department, shall be the representative of the **CITY** for all purposes under the Agreement. The Building Official, or his designated representative, hereby is designated as the Contract Manager for the **CITY**. He shall supervise the progress and execution of the Agreement.

b. **CONSULTANT.** **CONSULTANT** shall assign a single Contract Manager to have overall responsibility for the progress and execution of this Agreement for **CONSULTANT**. Melvyn Green is hereby designated as the Contract Manager for **CONSULTANT**. Should circumstances of conditions subsequent to the execution of this Agreement require a substitute Contract Manager for any reason, the Contract Manager designee shall be subject to the prior written acceptance and approval of the **CITY'S** Contract Manager. **CONSULTANT'S** Contract Team is further described in Exhibit "A" attached hereto and incorporated herein by this reference. The individuals identified and the positions held as described in Exhibit "A" shall not be changed except by prior approval of **CITY**.

2. **DUTIES OF CONSULTANT**

a. **Services to be furnished.** **CONSULTANT** shall provide all specified services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.

b. **Laws to be observed.** **CONSULTANT** shall:

(1) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by **CONSULTANT** under this Agreement;

(2) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in **CONSULTANT'S** performance under this Agreement, or the conduct of the services under this Agreement;

(3) At all times observe and comply with, and cause all of its employees to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above.

(4) Immediately report to the **CITY'S** Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement.

c. **Release of reports and information.** Any video tape, reports, information, data, or other material given to, or prepared or assembled by, **CONSULTANT** under this Agreement shall be the property of **CITY** and shall not be made available to any individual or organization by **CONSULTANT** without the prior written approval of the **CITY's** Contract Manager.

d. **Copies of video tapes, reports and information.** If **CITY** requests additional copies of videotapes, reports, drawings, specifications, or any other material in addition to what the **CONSULTANT** is required to furnish in limited quantities as part of the services under this Agreement, **CONSULTANT** shall provide such additional copies as are requested, and **CITY** shall compensate **CONSULTANT** for the costs of duplicating of such copies at **CONSULTANT'S** direct expense.

e. **Qualifications of CONSULTANT.** **CONSULTANT** represents that it is qualified to furnish the services described under this Agreement.

3. **DUTIES OF CITY**

CITY agrees to cooperate with **CONSULTANT** and to perform that work described in Exhibit "A" attached hereto and incorporated by this reference.

4. **COMPENSATION**

The **CONSULTANT** will perform the work in phases as described in Exhibit "A". If separate phases are not indicated on said exhibit, then all work to be performed by **CONSULTANT** shall be considered to be included in a single phase.

CONSULTANT will bill **CITY** on a time and material basis upon completion of the project or as set forth in Exhibit "A". **CITY** will pay this bill(s) within 30 days of receipt. The **CONSULTANT** may not charge more that the amount shown in Exhibit "A" without prior approval of the **CITY's** Contract Manager.

5. **TIME FOR COMPLETION OF THE WORK**

Program scheduling shall be as described in Exhibit "A" unless revisions to the exhibit are approved by the **CITY's** Contract Manager.

Time extensions may be allowed for delays caused by **CITY**, other governmental agencies, or factors not directly brought about by the negligence or lack of due care on the part of the **CONSULTANT**.

6. **TEMPORARY SUSPENSION**

The **CITY's** Contract Manager shall have the authority to suspend this Agreement wholly or in part, for such period as he deems necessary due to unfavorable conditions or to the failure on the part of the **CONSULTANT** to perform any provision of this Agreement. **CONSULTANT** will be paid the compensation due and payable to the date of temporary suspension.

7. **SUSPENSION; TERMINATION**

a. **Right to suspend or terminate.** The **CITY** retains the right to terminate this Agreement for any reason by notifying **CONSULTANT** in writing seven (7) days prior to termination and by paying the compensation due and payable to the date of termination; provided, however, if this Agreement is terminated for fault of **CONSULTANT, CITY** shall be obligated to compensate **CONSULTANT** only for that portion of **CONSULTANT** services which are of benefit to **CITY**. Said compensation is to be arrived at by mutual Agreement of the **CITY** and **CONSULTANT** and should they fail to agree, then an independent arbitrator is to be appointed and his decision shall be binding upon the parties.

b. **Return of materials.** Upon such termination, **CONSULTANT** shall turn over to the **CITY** immediately all copies of videotapes, studies, sketches, drawings, computations, and other data, whether or not completed, prepared by **CONSULTANT**, and for which **CONSULTANT** has received reasonable compensation, or given to **CONSULTANT** in connection with this Agreement. Such materials shall become the permanent property of **CITY**.

CONSULTANT, however, shall not be liable for **CITY's** use of incomplete materials or for **CITY's** use of complete documents if used for other than the project or scope of services contemplated by this Agreement.

8. **INSPECTION**

CONSULTANT shall furnish **CITY** with every reasonable opportunity for **CITY** to ascertain that the services of **CONSULTANT** are being performed in accordance with the requirements and intentions of the Agreement. All work done, and all materials furnished, if any, shall be subject to the **CITY's** Contract Managers's inspection and approval. The inspection of such work shall not relieve **CONSULTANT** of any of its obligations to fulfill its Agreement as prescribed.

9. **OWNERSHIP OF MATERIALS**

All original drawings, videotapes and other materials prepared by or in possession of **CONSULTANT** pursuant to this Agreement shall become the permanent property of the **CITY**, and shall be delivered to the **CITY** upon demand.

10. **ASSIGNMENT; SUBCONTRACTORS; EMPLOYEES**

This Agreement is for the performance of planning services of the **CONSULTANT** and is not assignable by the **CONSULTANT** without prior consent of the **CITY** in writing. The **CONSULTANT** may employ other specialists to perform services as required with prior approval by the **CITY.**

11. **NOTICES**

All notices hereunder shall be given in writing and mailed, postage prepaid, by Certified Mail, addresses as follows:

CITY: City of Paso Robles
P.O. Box 307
Paso Robles, Ca. 93447

CONSULTANT: **Melvyn Green and Associates, Inc.**
1145 Artesia Blvd., Suite 204
Manhattan Beach, CA 90266

12. **INTEREST OF CONSULTANT**

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. **CONSULTANT** further covenants that, in the performance of this Agreement, no sub-contractor or person having such an interest shall be employed. **CONSULTANT** certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of **CITY.** It is expressly agreed that, in the performance of the services hereunder, **CONSULTANT** shall at all times be deemed an independent contractor and not an agent or employee of **CITY.**

13. **INDEMNITY**

CONSULTANT hereby agrees to indemnify and save harmless **CITY**, its officers, agents and employees of and from:

a. Any and all claims and demands which may be made against **CITY**, its officers, agents, or employees by reason of any injury to or death of or damage to any person or corporation caused by any negligent act of omission of **CONSULTANT** under this Agreement or of **CONSULTANT's** employees or agents;

b. Any and all damage to or destruction of the property of **CITY**, its officers, agents, or employees occupied or used by or in the care, custody, or control of **CONSULTANT**, or in proximity to the site of **CONSULTANT's** work, caused by any negligent act or omission of **CONSULTANT** under this Agreement or of **CONSULTANT's** employees or agents;

c. Any and all claims and demands which may be made against **CITY**, its officers, agents, or employees by reason of any injury to or death of or damage suffered or sustained by any employee or agent of **CONSULTANT** under this Agreement, however caused, excepting, however, any such claims and demands which are the result of the sole negligence or willful misconduct of **CITY**, its officers, agents, or employees;

d. Any and all claims and demands which may be made against **CITY**, its officers, agents, or employees by reason of any infringement or alleged infringement of any patent rights or copyrights or claims caused by the use of any apparatus, appliance, or materials produced or furnished by **CONSULTANT** under this Agreement; and

e. Any and all penalties imposed or damages sought on account of the violation of any law or regulation or of any term or condition of any permit, when said violation of any law or regulation or of any term or condition of any permit is due to negligence on the part of the **CONSULTANT**.

f. **CONSULTANT**, at its own cost, expense, and risk, shall defend **CITY** from any and all claims, demands, suits, actions, or other legal proceedings, including those to enforce any penalty that may be brought against the **CITY**, its officers, agents, or employees, and pay and satisfy any judgment or decree that may be rendered against **CITY**, its officers, agents, or employees in any such suit, action or other legal proceeding, when same were due to negligence of the **CONSULTANT**.

14. **WORKERS COMPENSATION**

CONSULTANT certifies that it is aware of the provisions of the Labor Code of the State of California, which require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with such provisions before commencing the performance of the work of this Agreement.

15. **INSURANCE**

a. At the request of the **CITY, CONSULTANT** shall provide proof of comprehensive general liability insurance ($300,000) (including automobile) satisfactory to the **CITY.**

b. **CONSULTANT** shall provide proof of special insurance of the types (such as "errors and omissions" or professional liability) and in the amounts as may be set forth on Exhibit "A."

16. **AGREEMENT BINDING**

The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

17. **WAIVERS**

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be wavier of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

18. **COSTS AND ATTORNEY'S FEES**

The prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.