



## **CITY OF SOLANA BEACH**

635 SOUTH HIGHWAY 101 • SOLANA BEACH, CA 92075 • (858) 720-2400 • FAX (858) 792-6513  
[www.ci.solana-beach.ca.us](http://www.ci.solana-beach.ca.us)

### **CITY OF SOLANA BEACH COMMUNITY DEVELOPMENT DEPARTMENT**

#### **REQUEST FOR QUALIFICATIONS/PROPOSALS: ON-CALL LANDSCAPE PLAN REVIEW AND INSPECTION SERVICES**

**DUE DATE:** 5:00pm, June 24, 2025

DATE OF RELEASE: May 26, 2025

#### **I. OVERVIEW**

The City of Solana Beach Community Development Department is seeking proposals from qualified consulting firm(s) for landscape architectural plan review and site inspection services for private development projects and projects on City owned property. The City anticipates selecting one firm or landscape architect to provide consulting services.

The City will, based on qualifications presented in response to this RFP, select the firm best able to provide landscape plan review and inspection services for private development projects and some City-initiated projects.

#### **II. PROPOSAL DUE DATE, TIME AND LOCATION**

Proposals shall be submitted in an electronic PDF version by email to: [jlim@cosb.org](mailto:jlim@cosb.org)  
Or shall be submitted to the Office of the City Clerk:

JOSEPH LIM, COMMUNITY DEVELOPMENT DIRECTOR  
COMMUNITY DEVELOPMENT DEPARTMENT  
CITY OF SOLANA BEACH  
635 S. HIGHWAY 101  
SOLANA BEACH, CA 92075

By no later than 5:00 PM on Tuesday, June 24, 2025. If submitting on a USB flash drive it shall be submitted in a sealed envelope clearly marked "Proposal for On-Call Landscape Review and Inspection Services."

- III. Questions regarding this RFP are to be directed by e-mail to: Joseph Lim, Community Development Director at [jlim@cosb.org](mailto:jlim@cosb.org). Such contact shall be for clarification purposes only. The City must receive all questions no later than 5:00 PM on Wednesday, June 11<sup>th</sup>. Material changes, if any, to the scope of services or proposal procedures will only be transmitted by written addendum and posted to the City website. Addendums and answers to submitted questions will be available via the City of Solana Beach website under "Notice" for the RFP announcement.

Proposals arriving after the specified date and time will not be considered. Each consultant assumes responsibility for timely submission of its proposal. Any proposal may be withdrawn or modified by a written request signed by the Consultant and received by the City prior to the final time and date for the receipt of proposals. Once the deadline is past, Consultants are obligated to fulfill the terms of their proposal. The City reserves the right to accept any proposal, to reject any and all proposals, and to call for new proposals, or dispense with the proposal process.

#### **IV. PROPOSAL EVALUATION AND CONTRACT AWARD**

All timely received responsive proposals will be reviewed and evaluated by the City in order to determine which Consultants best meet the City's needs by demonstrating the competence and qualifications necessary for the satisfactory performance of the required services, and will be based on a determination of which services offered serve the best interest of the City, except as otherwise provided by law.

For each evaluation criteria listed below, all proposals will be reviewed and evaluated based on their relative strengths, deficiencies, and weaknesses:

1. Firm Experience
2. Qualifications and Experience of Key Personnel and/or Sub-Consultants
3. Understanding of Work to be Performed - Work Plan
4. Pricing/Cost of Services (efficient use of resources and subs, if any)
5. Supportive Information/References

If necessary, interviews may be scheduled with the top-ranked firms to help the City determine the most-qualified Consultant. Negotiations will be made with the selected Consultant based on internal rankings, with the intent to award the contracts. The City intends to award one contract. Nothing herein shall obligate the City to award a contract to any responding Consultant.

#### **V. PROPOSAL PROCESS SCHEDULE**

The City intends to follow, but will not be bound by, the following schedule:

Public Notification of RFP:	May 26, 2025
Proposals Due:	5:00 p.m. on June 24, 2025
Consultant(s) Selection/Negotiation:	July – September 2025

#### **V. GUIDELINES FOR PROPOSAL**

The following guidelines are provided for standardizing the preparation and submission of proposals. The intent is to assist respondents in the preparation of their submissions and to assist the City by simplifying the review process providing standards for comparison of submissions.

Statements submitted in response to this RFP shall include a complete response to the

requirements in this section in the order presented. Statements should be a straightforward delineation of the respondent's capability to satisfy the intent and requirements of this RFP, and should not contain redundancies and conflicting statements.

Proposals shall contain the following information in the order listed:

**A. Introductory Letter**

The introductory letter should be addressed to:

Joseph Lim  
Community Development Director  
City of Solana Beach  
635 S. Highway 101  
Solana Beach, CA 92075

The letter should state the Prime Consultant and include the Consultant's name submitting the proposal, their mailing address, telephone number, and contact name. The letter shall address the Consultant's understanding of the project based on this RFP and any other information the Consultant has gathered. The letter should include a statement discussing the Consultant's interest and qualifications for this type of work. A principal of the firm authorized to legally bind the firm shall sign the letter.

**B. Table of Contents**

Consultants shall insert a comprehensive table of contents within their proposals denoting Sections C through I, as indicated below:

**C. Firm Experience**

Demonstrate experience relative to the work provided in the scope below; capacity to balance multiple projects/priorities; ability to provide a full range of services; and/or work on similar projects.

**D. Qualifications and Experience of Key Personnel**

Describe the Consultant's capability for actually undertaking and performing the work as described in this RFP. Include qualifications of each key team member and their Consultant affiliation (prime or sub-consultant). List types and locations of similar work performed by the Consultant in the last five (5) years that best characterizes the quality and past performance. Include names and current phone numbers of references. References may be contacted as part of the selection process.

**E. Work Plan**

The work plan should indicate the Consultant's ability to meet the requirements of the RFP as outlined in the Scope of Work (see Exhibit A). The plan should be simple, easy to read and follow, and should address the objectives and specifications as listed in the Scope of Work. Particular attention shall be paid to how the Consultant proposes to address matters of quality control/quality assurance and deliver work product within identified timelines.

## **F. Pricing**

This section shall include the cost for requested services outlined in the Scope of Work (see Exhibit A). Consultant shall provide a summary of any and all staff by position classifications, responsibilities and hourly rates dedicated to each major professional service task. The City requests that all administrative services necessary to support the scope of services in this proposal be reflected in your overhead/indirect cost rate. Administrative services include travel, training, billing/invoicing, equipment/supplies, rent/utilities, and similar, and shall not be billed directly. No cost increases during the selection process shall be passed onto the City after the proposal has been submitted, except as otherwise provided for in the contract.

## **G. Supportive Information/References**

Consultants are encouraged to include graphs, charts, photos, resumes, references, and similar, in support of their qualifications.

## **H. Changes to the Standard On-Call Contract**

Attached to the RFP (Exhibit B) is a copy of the City's standard Professional Services Agreement (Contract). The City's standard Contract may be modified, in the City's sole discretion, to address the specific provisions of this RFP and Consultants should note that any specifications or other requirements specific to this RFP shall be included in the Contract and Contract's exhibits following an award of the Contract. Please review the Contract carefully and note in your proposal any exceptions or alterations to the Contract. Alterations or changes to the Contract that are not in the Consultant's response shall not be allowed after the selection of the Consultant. This includes alterations, exceptions, or changes to the insurance and indemnity provisions. By requiring these requests up front, the City can compare all respondents on an equal basis. However, the City reserves the right, in its sole discretion, to accept or reject any and all proposed changes to the City's standard Contract.

Exhibits:

A – Scope of Work

B – Professional Services Agreement (Template located on City webpage at <https://www.ci.solana-beach.ca.us/>)

## **EXHIBIT “A”**

### **SCOPE OF WORK**

#### **LANDSCAPE PLAN REVIEW AND INSPECTION CONSULTING SERVICES**

The City of Solana Beach adopted the Water Efficient Landscape Ordinance in 2011. Solana Beach Municipal Code (SBMC) Section 17.56 established the procedures to increase water use efficiently by establishing water budgets, promoting installation and maintenance of efficient irrigation systems, encouraging use of plants that use water efficiently based on climate, soil type and site features and reduce water waste that occurs from irrigation runoff and overspray; Pursuant to these procedures, the City requires a Landscape Architect to ensure that landscape plans for private development are in compliance and to perform onsite inspections to verify that the landscaping has been installed according to the approved plan. The City anticipates approximately 8-15 plan reviews and 2-4 inspections per month.

The selected Consulting firm(s) must be prepared to perform the following:

1. Provide a standard deposit amount that would cover the cost to review approximately three conceptual reviews, three construction reviews and at least two on-site inspections. Staff would take in the deposit amount at project submittal and pay per review. The consultant must maintain records to ensure that reviews will only take place if there is money in the deposit account.
2. Perform electronic reviews of all conceptual and construction level landscape plans for private residential and commercial development projects in accordance with the requirements of SBMC Section 17.56 and the City's adopted Off-Street Parking Design Manual (OSPDM) for applicable landscape requirements. Some projects may have additional review criteria from the City's LUP/LCP due to their location in proximity to ESHA or potential ESHA or their location on the Coastal Bluff.
3. Review emailed plans within an assumed three-week return date on new project submittals and up to two weeks for secondary submittals. Plans would be emailed to the consultant with a cover sheet providing a submittal date, routing date and proposed due date for any review comments.
4. Review construction level plans to match approved conceptual level plans in terms of plant type and location, mature plant height, water use classification and any other specific City Council conditions of approval. Extensive changes may require additional conceptual review and approval from the City Council.
5. Perform onsite landscape installation inspections once landscaping has been installed and a certificate of completion has been provided from the landscape professional of record. The consultant will confirm that the landscaping has been installed according to the approved construction plans and any specific conditions of project approval.
6. Compile annual landscape review information in order to assist in annual reporting to the County's MWELo reporting system.
7. Provide professional advice regarding preferred plant species according to height and/or water use specifications etc. to City Staff and private developers.

8. Communicate, cooperate and team with City staff and other City consultants as necessary.
9. Provide strong emphasis on the management of multiple projects and competing priorities while maintaining quality, and meeting schedules.

**EXHIBIT “B”**

**PROFESSIONAL SERVICES AGREEMENT**

# City of Solana Beach

## PROFESSIONAL SERVICES AGREEMENT

### FOR [INSERT DESCRIPTION OF PROFESSIONAL SERVICES (e.g., PROJECT MANAGEMENT)]

This Professional Services Agreement ("AGREEMENT") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between the CITY OF SOLANA BEACH, a municipal corporation ("CITY"), and, [INSERT CONSULTANT LEGAL NAME (e.g., URBAN FUTURES, INC.)] a INSERT CONSULTANT ENTITY TYPE (e.g, California corporation)], ("CONSULTANT") (collectively "PARTIES").

**WHEREAS**, the CITY desires to employ a CONSULTANT to furnish [INSERT DESCRIPTION OF PROFESSIONAL SERVICES (e.g., PROJECT MANAGEMENT)] ("PROFESSIONAL SERVICES") for [INSERT DESCRIPTION OF PROJECT] ("PROJECT"); and

**WHEREAS**, the CITY has determined that CONSULTANT is qualified by experience and ability to perform the services desired by CITY, and CONSULTANT is willing to perform such services; and

**WHEREAS**, CONSULTANT will conduct all the work as described and detailed in this AGREEMENT to be provided to the CITY.

**NOW, THEREFORE**, the PARTIES hereto mutually covenant and agree with each other as follows:

#### 1. PROFESSIONAL SERVICES.

- 1.1. **Scope of Services.** The CONSULTANT shall perform the PROFESSIONAL SERVICES as set forth in the written Scope of Services, attached as Exhibit "A" Scope of Services and Fee, at the direction of the CITY. CITY shall provide CONSULTANT access to appropriate staff and resources for the coordination and completion of the projects under this AGREEMENT. For all work to be performed on site in the City, the CITY and CONSULTANT agree that the CONSULTANT's work on the Scope of Services begins when the CONSULTANT arrives on site and terminates when the CONSULTANT leaves the site. Travel time to and from project site shall not be considered time on the job or compensated by the CITY.
- 1.2. **Project Coordinator.** The Insert Title is hereby designated as the Project Coordinator for CITY and will monitor the progress and execution of this AGREEMENT. CONSULTANT shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this AGREEMENT for CONSULTANT. Insert Title is hereby designated as the Project Director for CONSULTANT.
- 1.3. **City Modification of Scope of Services.** CITY may order changes to the Scope of Services within the general scope of this AGREEMENT consisting of additions, deletions, or other revisions. If such changes cause a change in the CONSULTANT's cost of, or time required for, completion of the Scope of Services, an equitable adjustment to CONSULTANT's compensation and/or contract time shall be made, subject to the CITY's approval. All such changes shall be authorized in writing, executed by the PARTIES.

#### 2. DURATION OF AGREEMENT.

- 2.1. **Term.** The term of this AGREEMENT shall be for a period of [INSERT INITIAL TERM DURATION (e.g, two (2) years)] beginning from the date of execution of the AGREEMENT. Time is of the essence in the performance of work under this AGREEMENT, unless otherwise specified.



- 2.2. Extensions.** ☒ If marked, the CITY shall have the option to extend the AGREEMENT for INSERT NUMBER OF EXTENSIONS (e.g., one (1)) additional [INSERT DURATION OF EXTENSION PERIODS (e.g., one (1) year)] periods or parts thereof for an amount not to exceed [ENTER AMOUNT IN WORDS AND DOLLAR FIGURES (e.g., twenty-four thousand nine hundred ninety-nine dollars (\$24,999))] per AGREEMENT year. Extensions shall be in the sole discretion of the City Manager and shall be based upon CONSULTANT's satisfactory past performance, CITY needs, and appropriation of funds by the City Council. The CITY shall give written notice to CONSULTANT prior to exercising the option.
- 2.3. Delay.** Any delay occasioned by causes beyond the CONSULTANT's control may merit an extension of time for the completion of the Scope of Services. When such delay occurs, CONSULTANT shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the PROFESSIONAL SERVICES when justified by the circumstances.
- 2.4. City's Right to Terminate for Default.** Should CONSULTANT be in default of any covenant or condition hereof, CITY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.
- 2.5. City's Right to Terminate without Cause.** Without limiting its rights in the event of CONSULTANT's default, CITY may terminate this AGREEMENT, without cause, by giving written notice to CONSULTANT. Such termination is effective upon receipt of the written notice. CONSULTANT shall be compensated for all effort and material expended on behalf of CITY under the terms of this AGREEMENT, up to the effective date of termination. All personal property remaining in CITY facilities or on CITY property thirty (30) days after the expiration or termination of this AGREEMENT shall be, at CITY's election, considered the property of CITY.

### **3. COMPENSATION.**

- 3.1. Total Amount.** The total cost for all work described in the Scope of Services and Fee (Exhibit "A") shall not exceed [ENTER AMOUNT IN WORDS AND DOLLAR FIGURES (e.g., twenty-four thousand nine hundred ninety-nine dollars (\$24,999))] without prior written authorization from CITY. CONSULTANT shall bill the CITY for work provided and shall present a written request for such payment monthly.
- 3.2. Additional Services.** CITY may, as the need arises or in the event of an emergency, request additional services of CONSULTANT. Should such additional services be required, CITY and CONSULTANT shall agree to the cost prior to commencement of these services.
- 3.3. Not a pledge of general funds.** The CITY does not pledge any general funds for the payment of the services rendered. The CITY shall establish a separate fund to pay the fees and costs incurred that are reflected in the monthly general account invoice. The separate fund shall be funded by monies collected from the CITY's permit applicants or other persons requiring the CITY's services pursuant to the adopted USER FEE schedule which CONSULTANT will provide according to the terms of this AGREEMENT.
- 3.4. Costs.** Any costs billed to the CITY shall be approved in writing in advance and in accordance with any terms negotiated and incorporated herein as part of Exhibit "A" Scope of Services and Fee.

#### **4. INDEPENDENT CONTRACTOR.**

- 4.1.** CONSULTANT is, for all purposes arising out of this AGREEMENT, an independent contractor. The CONSULTANT has and shall retain the right to exercise full control and supervision of all persons assisting the CONSULTANT in the performance of said services hereunder, the CITY only being concerned with the finished results of the work being performed. Neither CONSULTANT nor CONSULTANT's employees shall in any event be entitled to any benefits to which CITY employees are entitled, including, but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave or other leave benefits. CONSULTANT is solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.
- 4.2 PERS Eligibility Indemnification.** In the event that CONSULTANT's employee providing services under this AGREEMENT claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS of the CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY from such claims and for the payment of any employer and employee contributions for PERS benefits on behalf of the employee as well as for payment of any costs (including attorney fees and costs), and penalties and interest on such contributions which would otherwise be the responsibility of the CITY. Notwithstanding any other agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, CONSULTANT's employees providing service under this AGREEMENT shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation and benefit including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contributions to be paid by CITY for employer contributions and/or employee contributions for PERS benefits.
- 4.3 Limitation of CITY Liability.** The payment made to CONSULTANT pursuant to this AGREEMENT shall be the full and complete compensation to which CONSULTANT and CONSULTANT's officers, employees, agents and subcontractors are entitled for performance of any work under this AGREEMENT. Neither CONSULTANT nor CONSULTANT's officers or employees are entitled to any salary or wages, or retirement, health, leave, or other fringe benefits applicable to employees of the CITY. The CITY will not make any federal or state tax withholdings on behalf of CONSULTANT. The CITY shall not be required to pay any workers' compensation insurance on behalf of CONSULTANT.
- 4.4 Indemnification for Employee Payments.** CONSULTANT agrees to defend and indemnify the CITY for any obligation, claim, costs (including attorney fees and expert costs), suit, or demand for tax, retirement contribution including any contribution to the PERS, social security, salary or wages, overtime payment, or workers' compensation payment which the CITY may be required to make for work done under this AGREEMENT.
- 4.5** The provisions of this section 4 are continuing obligations that shall survive expiration or termination of this AGREEMENT.

#### **5. STANDARD OF PERFORMANCE.**

While performing the PROFESSIONAL SERVICES, CONSULTANT shall exercise the reasonable professional care and skill customarily exercised by reputable members of CONSULTANT's profession practicing in the metropolitan Southern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

#### **6. WARRANTY OF CONSULTANT'S LICENSE.**

CONSULTANT warrants that CONSULTANT is properly licensed with the applicable government agency(ies) for any PROFESSIONAL SERVICES that require a license. If the CONSULTANT lacks such license, this AGREEMENT is void and of no effect.

## 7. AUDIT OF RECORDS.

- 7.1. At any time during normal business hours and as often as may be deemed necessary the CONSULTANT shall make available to a representative of CITY for examination all of its records with respect to all matters covered by this AGREEMENT and shall permit CITY to audit, examine, and/or reproduce such records. CONSULTANT shall retain such financial and program service records for at least four (4) years after termination or final payment under this AGREEMENT.
- 7.2. The CONSULTANT shall include the CITY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

## 8. CONFIDENTIALITY.

- 8.1. **Confidential Work Product.** All professional services performed by CONSULTANT, including but not limited to all drafts, data, correspondence, proposals, reports, research, and estimates compiled or composed by CONSULTANT, pursuant to this AGREEMENT, are for the sole use of the CITY, its agents, and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the CITY. This provision does not apply to information that (a) was publicly known, or otherwise known to CONSULTANT, at the time that it was disclosed to CONSULTANT by the CITY, (b) subsequently becomes publicly known through no act or omission of CONSULTANT or (c) otherwise becomes known to CONSULTANT other than through disclosure by the CITY. Except for any CITY-approved subcontractors, neither the documents nor their contents shall be released to any third party without the prior written consent of the CITY. The sole purpose of this section is to prevent disclosure of CITY's confidential and proprietary information by CONSULTANT or subcontractors.
- 8.2. **Confidentiality.** Both PARTIES recognize that their respective employees and agents, in the course of performance of this AGREEMENT, may be exposed to confidential information and that disclosure of such information could violate the rights of private individuals and entities, including the PARTIES and third parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., social security numbers) and trade secrets, each as defined by applicable state law, and all other information protected by applicable law ("Confidential Information"). The party receiving Confidential Information ("Receiving Party") of the other ("Disclosing Party") shall not, and shall cause its employees and agents who are authorized to receive Confidential Information, not to, use Confidential Information for any purpose except as necessary to implement, perform or enforce this AGREEMENT or comply with its legal obligations. Receiving Party will use the same reasonable efforts to protect the Confidential Information of Disclosing Party as it uses to protect its own proprietary information and data. The Receiving Party will not disclose or release Confidential Information to any third person without the prior written consent of the Disclosing Party, except for where required by law or for authorized employees or agents of the Receiving Party. Prior to disclosing the Confidential Information to its authorized employees or agents, Receiving Party shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this AGREEMENT. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure. If Receiving Party believes the Confidential Information must be disclosed under applicable law, Receiving Party may do so provided that, to the extent permitted by law, the other party is given a reasonable notice and opportunity to contest such disclosure or obtain a protective order. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Receiving Party; (ii) the Disclosing Party regularly discloses to third parties without restriction on disclosure; or (iii) the Receiving Party obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation. Notwithstanding any provision to the contrary in this AGREEMENT, Confidential Information

does not include any information that the CITY determines, in its sole discretion is required to be disclosed to the public pursuant to the laws of the United States and/or California such as the California Public Records Act. The non-disclosure and non-use obligations of this AGREEMENT will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after the Receiving Party's receipt of that item.

- 8.3. Enforcement.** Each party acknowledges that any breach of any of the provisions of Section 8 of this AGREEMENT may result in irreparable injury to the other for which money damages would not adequately compensate. If there is a breach, then the injured party shall be entitled, in addition to all other rights and remedies which it may have, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach.

## **9. CONFLICTS OF INTEREST.**

- 9.1.** CONSULTANT shall at all times comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code Section 81000 *et seq.* (Political Reform Act) and Section 1090 *et seq.* CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the CITY.
- 9.2.** If, in performing the PROFESSIONAL SERVICES set forth in this AGREEMENT, the CONSULTANT makes, or participates in, a "governmental decision" as described in Title 2, Section 18700.3(a) of the California Code of Regulations, or performs the same or substantially all the same duties for the CITY that would otherwise be performed by a CITY employee holding a position specified in the department's conflict of interest code, the CONSULTANT shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the CONSULTANT's relevant financial interests.
- 9.3.** ☐ If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act. Specifically, the CONSULTANT shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the CITY's determination that the CONSULTANT is subject to a conflict of interest code. The CONSULTANT shall also file a Form 700 (Annual Statement) on or before April 1 of each year of the AGREEMENT, disclosing any financial interests held during the previous calendar year for which the CONSULTANT was subject to a conflict of interest code.
- 9.4.** CITY represents that pursuant to California Government Code Section 1090 *et seq.*, none of its elected officials, officers, or employees has an interest in this AGREEMENT.

## **10. DISPOSITION AND OWNERSHIP OF DOCUMENTS.**

- 10.1.** All documents, data, studies, drawings, maps, models, photographs, and reports prepared by CONSULTANT under this AGREEMENT, whether paper or electronic, shall become the property of CITY, and shall be turned over to the CITY upon completion of the PROJECT or any phase thereof, as contemplated by this AGREEMENT.
- 10.2.** Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the CITY and CONSULTANT thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications, or other work prepared under this AGREEMENT, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

- 10.3.** CONSULTANT warrants that all documents it drafts and completes pursuant to this AGREEMENT constitute original work. Specifically, CONSULTANT understands and agrees that use of artificial intelligence (AI) tools including, without limitation, ChatGPT, Microsoft's Bing Chat, Google's Bard, and Meta's LLaMA (Large Language Model Meta AI), in the performance of this AGREEMENT does not constitute an original work, i.e., submitting documents generated by such AI tools to CITY and representing it as CONSULTANT's original work constitutes a material breach of this AGREEMENT, constitutes a false claim, and may also violate applicable intellectual property right laws including, without limitation, United States Copyright Law. Accordingly, and notwithstanding any other provision of this AGREEMENT as to ownership, CITY specifically rejects ownership of such documents. CONSULTANT is required to indemnify and defend CITY to the fullest extent allowed by applicable law should it violate this Section.

## **11. INSURANCE**

- 11.1.** CONSULTANT shall procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, their agents, representatives, employees, or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" unless otherwise approved in writing by the CITY's Risk Manager.
- 11.2.** CONSULTANT's liabilities, including but not limited to CONSULTANT's indemnity obligations, under this AGREEMENT, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the CITY is entitled to thirty (30) days prior written notice of cancellation or non-renewal of the policy or policies, or ten (10) days prior written notice for cancellation due to non-payment of premium. Maintenance of specified insurance coverage is a material element of this AGREEMENT.
- 11.3. Types and Amounts Required.** CONSULTANT shall maintain, at minimum, the following insurance coverage for the duration of this AGREEMENT. If CONSULTANT maintains broader coverage and/or higher limits than the minimums shown below, the CITY shall be entitled to the broader coverage and/or the higher limits maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.
- 11.3.1.** ☒ **Commercial General Liability (CGL).** If checked the CONSULTANT shall maintain CGL Insurance written on an ISO Occurrence form or equivalent providing coverage at least as broad as CG 00 01 which shall cover liability arising from any and all personal injury or property damage, including ongoing and completed operations, in the amount no less than \$2,000,000.00 per occurrence and subject to an annual aggregate of \$4,000,000.00. If limits apply separately to this project (CG 25 03 or 25 04) the general aggregate limit shall not apply. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy. Any excess or umbrella policies being used to meet the required limits of insurance will be evaluated separately and must meet the same qualifications as the CONSULTANT's primary policy.
- 11.3.2.** ☒ **Commercial Automobile Liability.** If checked the CONSULTANT shall maintain Commercial Automobile Liability Insurance for all of the CONSULTANT's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit no less than \$1,000,000.00 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

- 11.3.3.** ☐ **Workers' Compensation.** If checked the CONSULTANT shall maintain Worker's Compensation insurance for all of the CONSULTANT's employees who are subject to this AGREEMENT and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum \$1,000,000.00 employers' liability coverage. The CONSULTANT shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.
- 11.3.4.** ☒ **Professional Liability.** If checked the CONSULTANT shall also maintain Professional Liability (errors and omissions) coverage with a limit no less than \$1,000,000 per claim and \$2,000,000 annual aggregate. The CONSULTANT shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this AGREEMENT whichever occurs last. The CONSULTANT agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the CITY's exposure to loss. All defense costs shall be outside the limits of the policy.
- 11.4. Self-Insured Retentions.** Any self-insured retentions are the responsibility of the CONSULTANT and must be declared to and approved by the CITY. At the option of the CITY, either (1) the insurer shall reduce or eliminate such self-insured retentions as respects the CITY, its officers, officials, employees, and volunteers, or (2) the CONSULTANT shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- 11.5. Waiver of Subrogation.** CONSULTANT hereby grants to CITY and its respective elected officials, officers, employees, agents and representatives a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.
- 11.6. Additional Required Provisions.** The commercial general liability, including any excess or umbrella policies being used to meet the required limits of insurance, and automobile liability policies shall contain, or be endorsed to contain, the following provisions:
- 11.6.1.** The CITY, its officers, officials, employees, and representatives shall be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. The CITY's additional insured status must be reflected on additional insured endorsement form (20 10 1185 or 20 10 1001 and 20 37 1001) which shall be submitted to the CITY.
- 11.6.2.** The policies are primary and non-contributory to any insurance that may be carried by the CITY, as reflected in an endorsement at least as broad as CG 20 01 04 13 which shall be submitted to the CITY. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or representatives shall be excess of the CONSULTANT's insurance and shall not contribute with it.

- 11.7. Verification of Coverage.** CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this Section 11, as well as a complete, certified copy of any general liability policy being used to meet the required limits of insurance, which shall include the declaration pages, a schedule of forms listing all policy endorsements, and all policy forms. The endorsements should be on forms approved by the CITY or on other than the CITY's forms provided those endorsements conform to CITY requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- 11.8. Excess or Umbrella Policies.** If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this agreement, said policies shall meet all of the insurance requirements stated in this document, including, but not limited to, the additional insured, contractual liability, "insured contract" definition, occurrence definition, primary and non-contributory, indemnity, and defense requirements. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the CONSULTANT's primary and excess liability policies are exhausted.
- 11.9. Special Risks or Circumstances.** CITY reserves the right to modify these requirements, including limits, based on the nature of risk, prior experience, insurer, coverage, or other special circumstances.

## **12. INDEMNIFICATION.**

CONSULTANT agrees to indemnify, defend (with counsel acceptable to CITY), and hold harmless the CITY, and its officers, officials, agents, representatives, and employees from any and all claims, demands, costs or liabilities that arise out of, or pertain to, or relate to, directly or indirectly, the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of or failure to perform services or obligations under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the CITY elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONSULTANT shall pay the CITY for all costs related thereto, including without limitation, reasonable attorney's fees and costs. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs, or expense CITY incurs or makes to or on behalf of an injured employee under the CITY's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this AGREEMENT.

## **13. SUBCONTRACTORS.**

- 13.1.** The CONSULTANT's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the PROJECT is subject to prior written approval by the CITY in each instance.

- 13.2.** All contracts entered into between the CONSULTANT and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this PROJECT and for the duration of this AGREEMENT. The CONSULTANT shall require the subcontractor to obtain, all policies described in Section 11 in the amounts required by the CITY, which shall not be greater than the amounts required of the CONSULTANT.
- 13.3.** In any dispute between the CONSULTANT and its subcontractor, the CITY shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONSULTANT agrees to defend and indemnify the CITY as described in Section 12 of this AGREEMENT should the CITY be made a party to any judicial or administrative proceeding to resolve any such dispute.

#### **14. NON-DISCRIMINATION.**

CONSULTANT shall not discriminate against any employee or applicant for employment because of sex, race, color, age, religion, ancestry, national origin, military or veteran status, disability, medical condition, genetic information, gender expression, marital status, or sexual orientation. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their sex, race, color, age, religion, ancestry, national origin, military or veteran status, disability, medical condition, genetic information, gender expression, marital status, or sexual orientation and shall make reasonable accommodation to qualified individuals with disabilities or medical conditions. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by CITY setting forth the provisions of this non-discrimination clause.

#### **15. NOTICES.**

All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States mail, postage prepaid and properly addressed as noted below.

NAME, TITLE, DEPARTMENT

City of Solana Beach  
635 S. Highway 101  
Solana Beach, CA 92075

Name

Address

Address

Address

#### **16. ASSIGNABILITY.**

This AGREEMENT and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated or sub-contracted, without the express written consent of the CITY in each instance.

#### **17. RESPONSIBILITY FOR EQUIPMENT.**

CITY shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by CITY. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT's employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, defend, indemnify, and hold harmless CITY from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.



#### **18. CALIFORNIA LAW; VENUE.**

This AGREEMENT shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this AGREEMENT shall be brought in the county of San Diego, California. CONSULTANT hereby waives any and all rights it might have pursuant to California Code of Civil Procedure Section 394.

#### **19. COMPLIANCE WITH LAWS.**

The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this AGREEMENT whether now in force or subsequently enacted. This includes maintaining a City of Solana Beach Business Certificate.

#### **20. ENTIRE AGREEMENT.**

This AGREEMENT sets forth the entire understanding of the PARTIES with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein. No change, alteration, or modification of the terms or conditions of this AGREEMENT, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

#### **21. NO WAIVER.**

No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this AGREEMENT, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this AGREEMENT shall constitute a waiver of any such breach of such covenant, term or condition.

#### **22. SEVERABILITY.**

The unenforceability, invalidity, or illegality of any provision of this AGREEMENT shall not render any other provision unenforceable, invalid, or illegal.

#### **23. DRAFTING AMBIGUITIES.**

The PARTIES agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this AGREEMENT, and the decision of whether or not to seek advice of counsel with respect to this AGREEMENT is a decision which is the sole responsibility of each Party. This AGREEMENT shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the AGREEMENT.

#### **24. CONFLICTS BETWEEN TERMS.**

If an apparent conflict or inconsistency exists between the main body of this AGREEMENT and the Exhibits, the main body of this AGREEMENT shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this AGREEMENT, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this AGREEMENT, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this AGREEMENT.

#### **25. EXHIBITS INCORPORATED.**

All Exhibits referenced in this AGREEMENT are incorporated into the AGREEMENT by this reference.

**26. SIGNING AUTHORITY.**

- 26.1.** The representative for each Party signing on behalf of a corporation, partnership, joint venture, association, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, association, or entity and agrees to hold the other Party or PARTIES hereto harmless if it is later determined that such authority does not exist.
- 26.2.** ☐ If checked, a proper notary acknowledgement of execution by CONSULTANT must be attached.

**IN WITNESS WHEREOF**, the PARTIES hereto have executed this AGREEMENT the day and year first hereinabove written.

CITY OF SOLANA BEACH, a municipal corporation

CONSULTANT'S NAME, a entity type

By:

By:

\_\_\_\_\_  
City Manager, Alyssa Muto

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

ATTEST:

\_\_\_\_\_  
City Clerk. Angela Ivey

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Name, Title

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney, Johanna N. Canlas

**EXHIBIT "A"**  
**SCOPE OF SERVICES AND FEE**

Scope of Services and Fees Defined