

# CITY OF SOLANA BEACH

## REQUEST FOR PROPOSALS For PROFESSIONAL AUDITING SERVICES



Issued: March 6, 2023  
Closes: 5 PM on April 3, 2023

635 South Highway 101  
Solana Beach, CA 92075

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

**Contents**

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>3</b>
A.	General/Information.....	3
B.	Term of Engagement.....	4
C.	Subcontracting .....	4
<b>II.</b>	<b>NATURE OF SERVICES REQUIRED.....</b>	<b>4</b>
A.	Scope of the Work to be Performed.....	4
B.	Auditing Standards to be Followed: .....	5
C.	Working Paper Retention .....	5
D.	Irregularities and Illegal Acts .....	6
<b>III.</b>	<b>DESCRIPTION OF THE GOVERNMENT .....</b>	<b>6</b>
A.	Background Information .....	6
B.	Fund Structure.....	7
C.	Financial Software.....	7
<b>IV.</b>	<b>TIME REQUIREMENTS.....</b>	<b>7</b>
A.	Proposal Calendar.....	7
B.	Date Audit May Commence .....	7
C.	Date Reports Are Due .....	7
D.	Report Preparation .....	8
<b>V.</b>	<b>ASSISTANCE TO BE PROVIDED TO THE AUDITOR AND REPORT PREPARATION .....</b>	<b>8</b>
<b>VI.</b>	<b>PROPOSAL REQUIREMENTS.....</b>	<b>8</b>
A.	General Requirements .....	8
B.	Format for Technical Proposal .....	9
C.	Contents of Technical Proposal .....	9
D.	Contents of <b>Sealed Cost Proposal</b> .....	12
<b>VII.</b>	<b>EVALUATION PROCEDURES .....</b>	<b>12</b>
A.	Review of Proposals.....	12
B.	Evaluation Criteria .....	13

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

**VIII. MISCELLANEOUS PROVISIONS..... 14**

**Proposals Become the Property of The City..... 14**

**Confidential Material ..... 14**

**Rejection Of Proposals..... 14**

**Conditions ..... 14**

**City’s Rights Reserved ..... 15**

**Register as a Proposer ..... 15**

**Exceptions ..... 15**

**Special Consideration ..... 15**

**Right To Cancel ..... 15**

**Additional Information ..... 16**

**ATTACHMENTS:..... 16**

**A – Schedule of Professional Fees and Expenses..... 16**

**B – Organizational Chart ..... 16**

**C – Sample Agreement for Consultant Service ..... 16**

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

**I. INTRODUCTION**

**A. General/Information**

The City of Solana Beach is requesting proposals from qualified certified public accountant firms to audit its financial statements for five fiscal years beginning with the fiscal year ending June 30, 2023, with the option of auditing its financial statements for each of the two (2) subsequent fiscal years, in addition to performing other financial audits and reviews as specified below. These audits are to be performed in accordance with auditing standards generally accepted in the United States of America, the standards set forth for financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States, and the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards.

There is no expressed or implied obligation for the City of Solana Beach to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250 et seq.), unless exempt.

If your firm would like to consider this engagement, we invite your response due no later than **5:00 P.M., April 3, 2023.**

Additional information may be obtained by contacting:

Rodney Greek, Interim Finance Director/Treasurer  
Phone: 858-720-2463  
Email: [rgreek@cosb.org](mailto:rgreek@cosb.org)

Proposers must submit Technical Proposal and **Sealed Cost Proposal** by **5:00 P.M., April 3, 2023**, three (3) bound copies of their proposals to the following mailing address with one electronic flash drive copy enclosed of their proposals to the following address:

City of Solana Beach  
Attn: Rodney Greek, Interim Finance Director/Treasurer  
635 South Highway 101  
Solana Beach, Ca 92075

The City reserves the right to reject any or all proposals submitted. During the evaluation process, the City of Solana Beach reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of the City of Solana Beach, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all proposals submitted and to use any idea(s) in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in the request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of Solana Beach and the firm selected.

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

The selection of a firm may include an interview process. It is anticipated the selection of a firm will be completed by April 28, 2023. Following the notification of the selected firm, a recommendation and proposed contract will be prepared for review and approval by the City Council at its May 10, 2023 meeting. The City reserves the right to reject any or all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any items or combination of items.

**B. Term of Engagement**

It is the intent of the City to contract for the services presented herein for a term of five (5) years. The City of Solana Beach reserves the right to extend the term of this contract for two (2) additional one-year terms subject to the satisfactory negotiation of terms, including a price acceptable to both the City and the selected firm.

**C. Subcontracting**

Should any firm submitting a proposal consider subcontracting portions of the engagement, that fact must be clearly identified in the proposal along with the name of the proposed subcontracting firm(s). Following the award of the audit contract, no additional subcontracting will be allowed without the express written consent of the City Manager of the City of Solana Beach.

The proposal package shall present all-inclusive audit fees for each year of the contract term.

**II. NATURE OF SERVICES REQUIRED**

**A. Scope of the Work to be Performed**

The City of Solana Beach desires is to provide the public and our constituents with financial statements that give complete, accurate and understandable information about the financial condition of the City and its component units. The selected independent auditor will be required to perform the following tasks:

1. The audit firm will perform an audit of all funds of the City of Solana Beach. The audit will be conducted in accordance with auditing standards generally accepted in the United States of America and Government Auditing Standards, issued by the Comptroller of the United States. **The City's Annual Comprehensive Financial Report (ACFR) will be prepared and word processed by the audit firm.** The ACFR will be in full compliance with all GASB statements. The audit firm will render their auditors' report on the basic financial statements which will include both Government-Wide Financial Statements and Fund Financial Statements. The audit firm will also apply limited audit procedures to Management's Discussion and Analysis (MD&A) and required supplementary information pertaining to the General Fund and each major fund of the City.

The City of Solana Beach has obtained the *Certificate of Achievement for Excellence in Financial Reporting* from the Government Finance Officers Association of the United States and Canada for nineteen of the past twenty years. It is the City's intention to continue to receive these awards annually and will expect the ACFR to meet the requirements of those programs. The audit firm will be expected to review the final draft of the ACFR for compliance with the certificate program checklists.

2. The audit firm will perform the Single Audit (if applicable) on the expenditures of federal grants in accordance with OMB Circular A-133 and render the appropriate audit reports

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

on Internal Control over Financial Reporting based upon the audit of the City's financial statements in accordance with Government Auditing Standards and the appropriate reports on compliance with Requirements Applicable to each Major Program, Internal Control over Compliance and on the Schedule of Expenditures of Federal Awards. The single audit report will include an appropriate schedule of expenditures of federal awards, footnotes, findings and questioned costs, including reportable conditions and material weaknesses, and follow up on prior audit findings where required .

3. The audit firm shall perform agreed-upon auditing procedures pertaining to the City's GANN Limit (Appropriations Limit) and render a report annually to the City regarding compliance.
4. The audit firm shall issue a separate management letter that includes recommendations and disclosures of material and non-material weakness for improvements in the City's financial operations.
5. The audit firm shall issue a separate report on internal controls over compliance and other matters based on an audit of the financial statements performed in accordance with Government Auditing Standards.
6. The audit firm shall issue reports to and communication with those charged with governance, as required by auditing standards.
7. The audit firm shall issue any other reports that may become required as a result of a change in accounting standards or new pronouncements that become effective during the term of the engagement.

**B. Auditing Standards to be Followed:**

To meet the requirements of this Request for Proposal, the audit shall be performed in accordance with:

1. Generally accepted auditing standards as set forth by the American Institute of Certified Public Accounts;
2. The standards for financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States;
3. The provisions of the Single Audit Act; and
4. The provisions of the U.S. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

**C. Working Paper Retention**

All working papers and reports must be retained at the auditor's expense for a minimum of five (5) years, unless the firm is notified in writing by the City of Solana Beach of the need to extend the retention period. The auditor will be required to make working papers available to the City of Solana Beach or any government agencies included in the audit of federal grants. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

D. Irregularities and Illegal Acts

Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties: City Manager; City Attorney; and the Finance Director/Treasurer.

**III. DESCRIPTION OF THE GOVERNMENT**

A. Background Information

The City of Solana Beach was incorporated on July 1, 1986, under the general laws of the State of California and is home to a population of 2,867 residents per the Bureau of Labor and Statistics. Included within the City's financial statements is the financial information of the Solana Beach Public Facilities Corporation. The City is considered the primary government and the Public Facilities Corporation is a component unit. Additionally, since the governing boards of the City and the component unit are the same, the financial statements of the City and the component unit are blended.

The Solana Beach Public Facilities Corporation was incorporated on July 25, 1990, as a nonprofit public benefit corporation duly organized and existing under the Nonprofit Public Benefit Corporation Law. Its purpose is to benefit the City by providing financing for the planning, development, acquisition, construction, improvement, extension, repair, and renovation of public works projects, public facilities, furnishings, and equipment for use by the City.

The City of Solana Beach is a coastal community encompassing approximately 3.4 square miles and is located twenty-one miles north of the City of San Diego's downtown district. It is bordered to the North and South by the cities of Encinitas and Del Mar, respectively; to the East by the County San Diego; to the southeast by the City of San Diego; and by the Pacific Ocean to the West.

The City is a general law city that operates under the Council-Manager form of government. The City Council (Council) is comprised of four Council members elected within separate Council Districts to staggered four-year terms of office. The Mayor is elected at large to a four-year term and the Deputy Mayor is selected by the Council from among its four Councilmembers to serve a one-year term. The Council acts as the legislative and policy-making body of the City, enacting all laws and directing such actions as required providing for the general welfare of the community.

The City Manager, appointed by the Council, serves as the Chief Executive Officer and is responsible to the Council for the proper administration of all City affairs and for the implementation of all policies established by the Council. The City Attorney is the only other position appointed by the Council. All other department heads and employees are appointed by the City Manager.

Services provided by the City include administration, public safety (fire, marine safety, code enforcement and animal control), public works (civil engineering, traffic safety, environmental services, parks facilities and sanitation) planning and community development, and community services. Building inspection and law enforcement are provided by contracted entities. The City has 71.8 full time equivalent employees.

The City of Solana Beach's Adopted Fiscal Year 2022/23 Operating and Capital Budget is \$36.7 million with estimated revenues of \$34.1 million for all funds.

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

**B. Fund Structure**

The City of Solana Beach uses the following fund types and account groups in its financial reporting:

<b>Fund Type/Account Group</b>	<b>Number of Individual Funds</b>
General Fund	3
Special Revenue Funds	36
Debt Service Funds	9
Capital Project Funds	12
Enterprise Funds	2
Internal Service Funds	8
Agency Funds	2
Trust Fund	1
Private Purpose Trust Funds	2

Copies of the City's recent audited financial statements and budgets are available online on the City of Solana Beach's website: [www.cityofsolanabeach.org](http://www.cityofsolanabeach.org)

**C. Financial Software**

The City accounting functions are computerized using Tyler Munis for general ledger, accounts payable, payroll, and human resources and Trakit for cashiering and business certificates.

**IV. TIME REQUIREMENTS**

**A. Proposal Calendar**

The following is a list of key dates up to, and including, the date proposals are to be submitted:

<u>Date</u>	<u>Activity</u>
March 6, 2023	Request for Proposal Issued
April 3, 2023	Due Date for Proposals (due by 5:00p.m.)
April 11, 2023 *	Oral Interviews (conducted at City's discretion)
May 10, 2023 *	Contract Awarded by City Council

\*subject to change

**B. Date Audit May Commence**

Audit planning, including all necessary planning for the documentation of systems, review of internal control and compliance, and transaction testing should be completed during interim stage. It is expected the City will close its books and be ready for the final audit field work by the end of September 2023.

**C. Date Reports Are Due**



**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

The auditor shall provide all drafts and recommendations for improvements to the Finance Director/Treasurer within a reasonable time period after the last day of field work. The auditor will be available for any meetings that may be necessary to discuss the draft audit reports. Once all issues are resolved, the completed Annual Comprehensive Financial Report, Independent Auditor's Reports, Single Audit report and other reports shall be delivered to the Finance Director/Treasurer.

It is anticipated that this process will be completed and the final products delivered by the last week in November. In no case, later than the final GFOA due date of December 31<sup>st</sup> of each year.

**D. Report Preparation**

Report preparation and editing shall be the responsibility of the auditor. The City requires one electronic copy of each report. No hard copies are required.

**V. ASSISTANCE TO BE PROVIDED TO THE AUDITOR AND REPORT PREPARATION**

The Finance Department staff will be available during the audit to assist the firm by providing information, documentation, and explanations. Marie Marron Berkuti, Finance Manager will be responsible for acting as the liaison between the audit firm and the accounting personnel.

1. City Staff will prepare the final closing of the accounting ledgers. The City will provide the auditor with a Trial Balance by Fund and all of the accounting transaction detail necessary to perform the audit.
2. City Staff will generate the necessary confirmation letters for the auditor.
3. City Staff will assist with the preparation of the *Notes Disclosures* for the financial statements and required supplementary schedules.
4. City Staff will prepare the Statistical Section of the ACFR Document, but the auditor will be required to confirm that these schedules are adequate to meet GFOA Reporting Standards.
5. The City will provide the auditor with reasonable workspace, and access to a telephone line, photocopier, and Internet access for field work at City Hall.

**VI. PROPOSAL REQUIREMENTS**

**A. General Requirements**

1. Inquiries concerning the Request for Proposal and the subject of the Request for Proposal must be made to:

Rodney Greek,  
Interim Finance Director/Treasurer  
635 South Highway 101  
Solana Beach, Ca 92075  
(858) 720-2463

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

[rgreek@cosb.org](mailto:rgreek@cosb.org)

2. Submission of Technical Proposal and **Sealed Cost Proposal**. Three (3) copies of the Proposals with one electronic flash drive copy enclosed shall be received in the Solana Beach City Hall by 5:00 p.m. on April 3, 2023 for a proposal to be considered. The Proposal should address the items listed in sections C and D below.

The Proposal should be addressed as follows:

City of Solana Beach  
Attn: Rodney Greek, Interim Finance Director/Treasurer  
635 South Highway 101  
Solana Beach, CA 92075

**B. Format for Technical Proposal**

1. Title Page showing the request for proposals subject; the firm's name; the name, address and telephone number of the contact person; and the date of the proposal.
2. Table of Contents identifying the materials submitted by section and page number. Cross- referencing to section and page number in the RFP would be helpful.
3. Signed Transmittal Letter briefly stating the Proposer's:
  - a) understanding of the work to be done;
  - b) commitment to perform the work within the time period;
  - c) use and compliance with the terms and conditions of the City's standard Professional Services Agreement as provided in Attachment B of this RFP; and
  - d) name(s) of the person(s) authorized to represent the Proposer, title, address, and telephone number.
4. Detailed Proposal following the order set forth in Section C below.

**C. Contents of Technical Proposal**

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firm seeking to undertake an independent audit of the City in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more weight than the form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposals requirements.

The Technical Proposal should address all points outlined in the request for proposals (excluding any cost information which should only be included in the Sealed Dollar Cost Bid). The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this request for proposal. While additional data may be presented, the following subjects must be included. They represent the criteria against which the proposal will be evaluated.

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

1. License to Practice in California

An affirmative statement should be included verifying the firm and all assigned key professional staff are properly licensed to practice in California.

2. Independence

The firm should provide an affirmative statement that it is independent of the City of Solana Beach as defined by auditing standards generally accepted in the United States of America and the General Accounting Office's Government Auditing Standards.

3. Firm Qualifications and Experience

To qualify, the firm must have extensive experience in audits of local governments as well as experience with preparation of Annual Comprehensive Financial Statements. The Proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed, and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis. Staff consistency is an important consideration.

The Proposer should provide the range of activities performed by the local office, e.g., audit, accounting, tax service and/or management consulting services.

The Proposer must provide a list of all current municipal clients.

The Proposer is also required to submit a copy of a report on its most recent external quality control review (peer review), with a statement whether that quality control review included a review of specific government engagements (required by Government Audit Standards (1994).

The Proposer shall also provide information on the results of any Federal or State desk reviews or field reviews of its audits during the past three (3) years. In addition, the Proposer shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with State regulatory bodies or professional organizations.

If the proposer will be subcontracting any portion of the audit to another individual or firm, the proposal must include a list of all subcontractors to be used in conjunction with a list of the subcontractors' qualifications. No substitutions of subcontractors may be made without prior written consent of the City of Solana Beach.

4. Partner, Supervisory and Staff Qualifications and Experience

Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists who would be assigned to this engagement. Include resumes, indicating whether each such person is registered or licensed to practice as a certified public account in California. Provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past (3) three years and membership in professional organizations relevant to the performance of this audit.

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

Provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. Indicate how the quality of staff over the term of the agreement will be assured.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the City. However, in either case, the City retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the Proposer provided that replacements have substantially the same or better qualifications or experience.

**5. Similar Engagements with Other Government Entities**

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (maximum - 5) performed in the last three (3) years that are similar to the engagement described in this request for proposals. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

Please provide a list of not less than five client references for which services similar to those outlined in the RFP are currently being provided. For each reference listed, provide the name of the organization, dates for which the service(s) are being provided, type of service(s) being provided and the name, address and telephone number of the responsible person within the reference's organization. The City reserves the right to contact any or all of the listed references regarding the audit services performed by the Proposer.

**6. Specific Audit Approach**

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section II of this request for proposals. In developing the work plan, reference should be made to such sources of information as City of Solana Beach's budget and related materials, organizational charts, manuals, programs, and financial and other management information systems.

Proposers will be required to provide the following information on their audit approach:

- a) Proposed segmentation for the engagement;
- b) Level of staff and number of hours to be assigned to each proposed segment of the engagement;
- c) Sample size and the extent to which statistical sampling is to be used in this engagement;
- d) Extent of use of EDP software in this engagement;
- e) Type and extent of analytical procedures to be used in this engagement;

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

- f) Approach to be taken to gain and document an understanding of the City's internal control structure;
- g) Approach to be taken in determining laws and regulations that will be subject to audit test work;
- h) Approach to be taken in drawing audit samples for purposes of tests of compliance; and.
- i) Provided By Client (PBC) List

The proposal shall include a list of standard client-prepared audit schedules the firm anticipates City Staff will provide as audit support.

**7. Identification Anticipated Potential Audit Problems**

The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems and any special assistance that will be requested from the City.

**NO DOLLAR AMOUNTS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL.**

**D. Contents of Sealed Cost Proposal**

**1. Total All -Inclusive Maximum Price**

The cost proposal should contain all pricing information relative to performing the audit engagement as described in this request for proposals. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including all out-of-pocket expenses.

The City will not be responsible for expenses incurred in preparing and submitting the technical proposal or the **sealed dollar cost bid**. Such costs should not be included in the technical proposal.

The cost proposal should be submitted in the format provided in Attachment A, "Schedule of Professional Fees and Expenses".

**2. Manner of Payment**

Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's proposal. Interim billings shall cover a period of not less than a calendar month.

**VII. EVALUATION PROCEDURES**

**A. Review of Proposals**

City Staff, consisting at a minimum, of the following, will evaluate submitted proposals:

Gregory Wade, City Manager  
Dan King, Assistant City Manager

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

Rodney Greek, Interim Finance Director/Treasurer  
Kristine Pratt, Senior Accountant

**B. Evaluation Criteria**

Proposals will be evaluated using three (3) sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria, which will be considered during the evaluation process.

**1. Mandatory Elements**

- a) The audit firm is independent and licensed to practice in California.
- b) The firm has no conflict of interest with regard to any of the work performed by the firm for the City.
- c) The firm adheres to the instructions in this request for proposals on preparing and submitting the proposal.
- d) The firm submits a copy of its last external quality control review report and the firm has a record of quality audit work.

**2. Expertise and Experience**

- a) The firm's past experience and performance on comparable government engagements.
- b) The quality of the firm's professional personnel to be assigned to the engagement and the quality of the firm's management support personnel to be available for technical consultation.
- c) Adequacy of proposed staffing plan for various segments of the engagement.
- d) Thoroughness of approach to conducting the audit of the City and demonstration of the understanding of the objectives and scope of the audit.
- e) Commitment to timeliness in the conduct of the audit.

**3. Rates and Fees**

- a) Maximum fees to conduct the audit.

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

<b>Criteria</b>	<b>Points</b>
Thoroughness and understanding of the scope of work to be performed	0-15
Technical experience of the firm and references' responses	0-30
Qualification of staff- experience and education, including continuing education courses taken during the past three (3) years, position in the firm and years of experience will be considered (please include staff resumes)	0-30
Size and structure of firm and other considerations	0-15
<b>Sealed Cost Proposal</b>	0-10
<b>Total</b>	<b>100</b>

### **VIII. MISCELLANEOUS PROVISIONS**

#### **Proposals Become the Property of The City**

Proposals become the property of City and information contained therein shall become public property subject to disclosure laws after Notice of Intent to Award. The City reserves the right to make use of any information or ideas contained in the proposal.

#### **Confidential Material**

Proposing auditor must notify the City in advance of any proprietary or confidential material contained in the proposal and provide justification for not making such material public. Such alleged confidential material must be conspicuously marked as such on the face of the document prior to distribution to the City or any of its employees, agents, officers, or elected officials. The City shall have sole discretion to disclose or not disclose such material in accordance with the California Public Records Act, subject to any protective order which proposing auditor may obtain.

#### **Rejection Of Proposals**

The City may reject any or all proposals and may waive any immaterial deviation in a proposal. The City's waiver of an immaterial defect shall in no way modify the Request for Proposal (RFP) documents or excuse the proposing auditor from full compliance with the specifications if he/she is awarded the contract. Proposals referring to terms and conditions other than the City's terms and conditions may be rejected as being non-responsive.

The City may conduct investigations as it deems necessary to determine the ability of the proposing auditor to perform the work specified herein. The proposing auditor shall furnish to the City any and all information requested by the City for this purpose. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, such proposing auditor fails to satisfy the City that such proposing auditor is properly qualified to carry out the obligations of the contract and to complete the work specified.

#### **Conditions**

1. Failure to meet all requirements may not disqualify a firm. However, the City will evaluate each proposal to determine its overall fit in the best interests of the City.

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

2. All third-party solutions proposed as part of a joint proposal are subject to the same requirements of this RFP, unless otherwise stated.
3. This RFP, its general provisions, and the terms and conditions identified shall be incorporated in any agreement resulting from this solicitation, and the RFP and its terms and conditions, shall control unless the Agreement expressly provides otherwise.
4. All proposals and any subsequent clarification or response to the City's questions shall be valid for a minimum of 120 days.

**City's Rights Reserved**

1. The City reserves the right to select the proposal(s) which in its sole judgment best meets the needs of the City. The lowest proposed cost will not be the sole criterion for recommending the contract award.
2. The City reserves the right to award multiple contracts from this RFP.
3. The City reserves the right to reject any or all proposals and to waive technicalities and informalities when such waiver is determined by the City to be in the City's best interest.
4. The City may modify this RFP by issuance of one or more written addenda. Addenda will be sent electronically to all proposers registered with the City. The City reserves the right to extend the proposal due date.
5. The City reserves the right to meet with select proposers at any time to gather additional information.
6. The City shall not be liable for any pre-contractual expenses incurred by prospective auditors, including but not limited to costs incurred in the preparation or submission of proposals. The City shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

**Register as a Proposer**

All firms interested in receiving further correspondence regarding this RFP are required to register by sending an email to Rodney Greek, at [rgreek@cosb.org](mailto:rgreek@cosb.org) and provide the following information:

- Company name;
- Name of contact person along with his or her title;
- Email address; and
- Phone number

**Public Records**

All proposals submitted in response to this RFP become the property of the City, and may be subject to public review through a Public Records Act Request.

**Exceptions**

Proposed Auditors shall certify that they take no exception to this RFP. If the Proposed Auditor does take exception to any portion of the RFP, the specific portion of the RFP to which exception is taken shall be identified and fully explained. Sample Agreement text may be considered for modification through the contract negotiations phase of the RFP; however, in no event will modifications be considered to any provisions not identified by proposer as part of their response to this RFP.

**Special Consideration**

This RFP does not commit City to award a contract, to defray any cost incurred in the preparation of a proposal pursuant to this RFP, or procure or contract for work.

**Right To Cancel**

This solicitation does not obligate the City to enter into an agreement with any proposing auditor. The City retains the right to cancel in part or in its entirety, this RFP at any time. No obligation, either expressed or implied, exists on the part of the City to make an award or to pay any cost incurred in the preparation or submission of a proposal. If City cancels or revises this RFP, City will notify all proposers in writing and post a notice of revision or cancellation on the City website.



**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

**Additional Information**

City reserves the right to request additional information and/or clarifications from any or all proposers to this RFP. City of Port Hueneme Request for Proposal - Professional Auditing Services Page 16

**ATTACHMENTS:**

- A – Schedule of Professional Fees and Expenses
- B – Organizational Chart
- C – Sample Agreement for Consultant Service

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

**Attachment A**

**Schedule of Professional Fees and Expenses**

1. The maximum fees for the audit of the City of Solana Beach should be provided in the following format for fiscal years ended June 30, 2023, 2024, 2025, 2026, and 2027. The fees should be inclusive of any out of pocket expenses incurred by the audit firm:

<b>SERVICE</b>	<b>2022/23</b>	<b>2023/24</b>	<b>2024/25</b>	<b>2025/26</b>	<b>2026/27</b>	<b>Option Years Annual Escalation %</b>
<b>ACFR and Related Reports</b>	\$	\$	\$	\$	\$	
<b>Single Audit and Related Reports (if applicable)</b>	\$	\$	\$	\$	\$	
<b>Total</b>	\$	\$	\$	\$	\$	

2. Hourly Rates of the Firm's Employees should be provided by the firm for services which may be requested outside the scope of the audits as follows:

**Auditor's Standard Billing Rates**

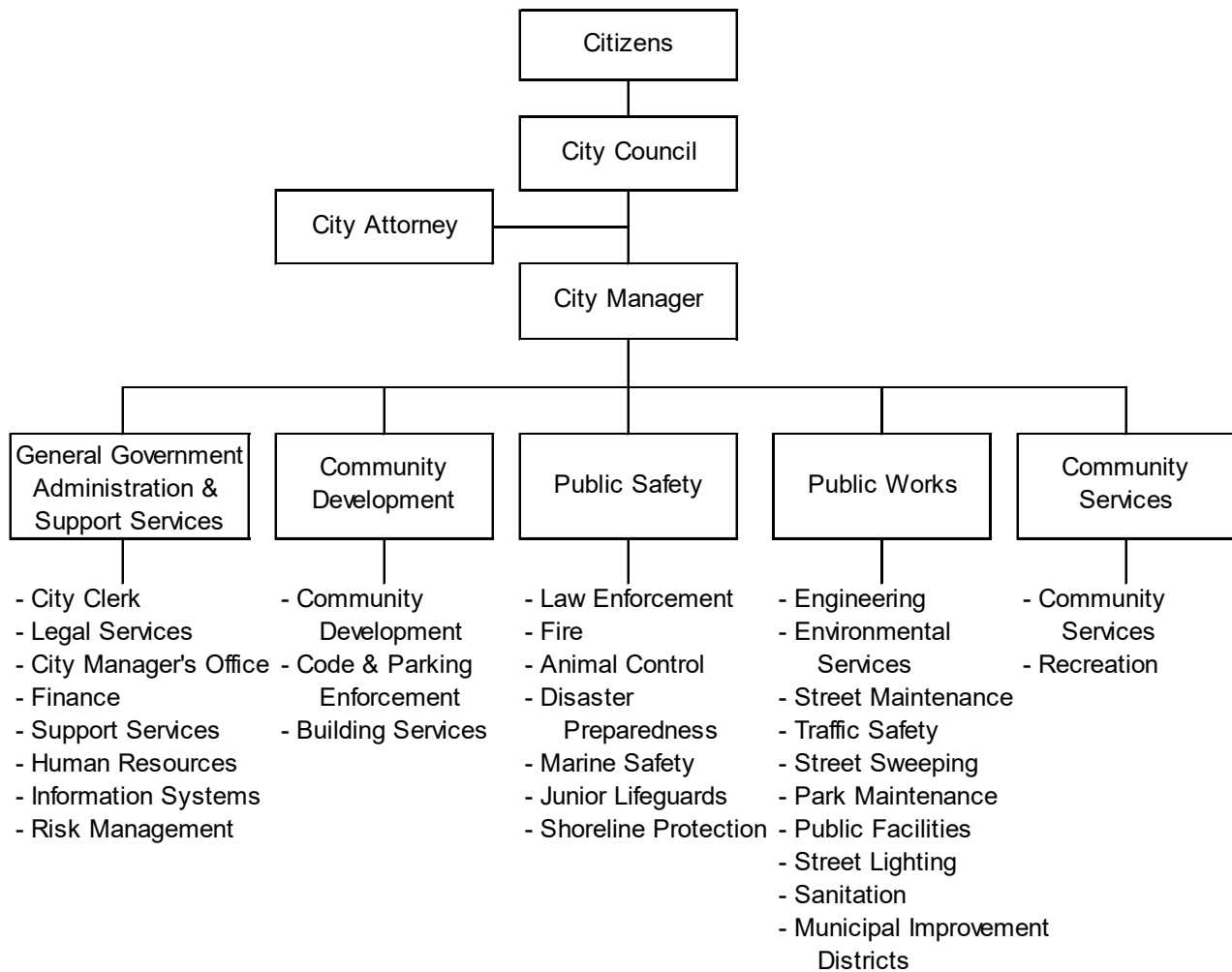
<b>POSITION</b>	<b>2022/23</b>	<b>2023/24</b>	<b>2024/25</b>	<b>2025/26</b>	<b>2026/27</b>	<b>Option Years Annual Escalation %</b>
<b>Partner</b>	\$	\$	\$	\$	\$	
<b>Manager</b>	\$	\$	\$	\$	\$	
<b>Supervisor</b>	\$	\$	\$	\$	\$	
<b>Senior Accountant</b>	\$	\$	\$	\$	\$	
<b>Staff Accountant</b>	\$	\$	\$	\$	\$	
<b>Clerical</b>	\$	\$	\$	\$	\$	

**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

**Attachment B**

**CITY OF SOLANA BEACH**

Organizational Chart  
Fiscal Year 2022-23



**CITY OF SOLANA BEACH**  
**Request for Professional Auditing Services**

**Attachment C**  
**Sample Agreement for Consultant Services**

# City of Solana Beach

## PROFESSIONAL SERVICES AGREEMENT

### FOR PROFESSIONAL SERVICE

This Professional Services Agreement ("AGREEMENT") is made and entered into this       day of       , 20   by and between the CITY OF SOLANA BEACH, a municipal corporation ("CITY"), and, CONSULTANT a partnership, LLC, LLP, California corporation, etc., ("CONSULTANT") (collectively "PARTIES").

**WHEREAS**, the CITY desires to employ a CONSULTANT to furnish PROFESSIONAL SERVICES ("PROFESSIONAL SERVICES") for 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 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 CONSULTANT and CITY.

#### 2. DURATION OF AGREEMENT.

- 2.1. **Term.** The term of this AGREEMENT shall be for a period of one (1) year 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 extension> four (4) additional one (1) year periods or parts thereof for an amount not to exceed <enter in amount in words and (\$0.00) in numbers> 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 control of CONSULTANT 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 shall be 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 \_\_\_\_\_ dollars (\$\_\_\_\_\_) 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. 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 for the payment of any employer and employee contributions for PERS benefits on behalf of the employee as well

as for payment of any 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 Indemnification for Employee Payments.** CONSULTANT agrees to defend and indemnify the CITY for any obligation, claim, 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.

**4.4** 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 AND SECURITY.**

**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 subcontractors that may be allowed to receive such information based upon a prior written agreement, 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. Confidential Information does not include any information that is required to be provided to the public pursuant to the laws of the United States and/or California such as the California Public Records Act, due to the nature of CITY being a local governmental agency. 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. Security.**

**8.3.1. Implementation.** CONSULTANT shall implement commercially reasonable administrative, technical and physical safeguards designed to: (i) ensure the security and confidentiality of data and information provided by the CITY or used in connection with providing services under this AGREEMENT, including data or information about third parties ("CITY'S Data"); (ii) protect against any anticipated threats or hazards to the security or integrity of CITY'S Data; and (iii) protect against unauthorized access to or use of CITY'S Data. CONSULTANT shall review and test such safeguards on no less than an annual basis.

**8.3.2. Network.** If CONSULTANT makes CITY'S Data accessible through the Internet or other networked environment, CONSULTANT shall be solely responsible for all aspects of Internet use, and shall maintain, in connection with the operation or use of CITY'S Data, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication.



**8.3.3. Personal Data.** If CONSULTANT processes or otherwise has access to any personal data or personal information on CITY's behalf when performing CONSULTANT's services and obligations under this AGREEMENT, then: (i) CITY shall be the data controller (where "data controller" means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and CONSULTANT shall be a data processor (where "data processor" means an entity which processes the data only on behalf of the data controller and not for any purposes of its own); (ii) CITY shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal data or personal information to CONSULTANT so that CONSULTANT may lawfully use, process and transfer the personal data and personal information in accordance with this AGREEMENT on CITY's behalf in order for CONSULTANT to provide the services and perform its other obligations under this AGREEMENT; (iii) CONSULTANT shall process the personal data and personal information only in accordance with any lawful and reasonable instructions given by CITY from time to time and in accordance with the terms of this AGREEMENT; and (iv) each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data and personal information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to the personal data and personal information and the nature of the personal data and personal information being protected. If necessary, the parties will cooperate to document these measures taken.

**8.3.4. Information Security.** CONSULTANT represents and warrants that its collection, access, use, storage, disposal and disclosure of Confidential Information accessed and/or collected from CITY does and will comply with all applicable federal and state privacy and data protection laws. In the event of any security breach, CONSULTANT shall: (a) Provide CITY with the name and contact information for an employee who shall serve as CITY's primary security contact and shall be available to assist CITY twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a security breach; and (b) Notify CITY of a security breach as soon as practicable, but no later than twenty-four (24) hours after CONSULTANT becomes aware of it. Immediately following CONSULTANT's notification to CITY of a security breach, the parties shall coordinate with each other to investigate the security breach. CONSULTANT agrees to fully cooperate with CITY in CITY's handling of the matter. CONSULTANT shall use best efforts to immediately remedy any security breach and prevent any further security breach at CONSULTANT's own expense in accordance with applicable privacy rights, laws, regulations and standards. CONSULTANT agrees to provide, at its expense, up to one year of credit monitoring services to third parties impacted by any data breach involving the loss of personally identifiable information.

- 8.4. Indemnity.** CONSULTANT shall defend (with counsel acceptable to CITY), indemnify and hold CITY harmless from and against all claims, actions, proceedings, losses, costs (including attorney fees and other charges), liabilities, damages, judgments, settlements, and court awarded attorney's fees resulting from, arising out of or related to a security or data breach unless the breach is proven to be caused solely by CITY. The terms of this section shall survive termination of this AGREEMENT. For purposes of this provision, "security breach" means any act or omission that compromises either the security, confidentiality, or integrity of Confidential Information or the physical, technical, administrative or organizational safeguards put in place by CONSULTANT or any authorized persons that relate to the protection of the security, confidentiality or integrity of Confidential Information or a breach or alleged breach of this AGREEMENT relating to such privacy practices or privacy obligations imposed by any applicable law.
- 8.5. Notice and Remedy of Breaches.** Each party shall promptly give notice to the other of any actual or suspected breach by it of any of the provisions of Section 8 of this AGREEMENT, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach.
- 8.6. 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 for use with respect to this PROJECT, 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.

## 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..
- 11.3.5.** ☒ **Cyber Liability.** If checked the CONSULTANT shall also maintain Cyber Liability coverage on a claims made basis with a limit no less than \$2,000,000 per occurrence or 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 any services under this AGREEMENT; 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. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by CONSULTANT in this AGREEMENT and shall include claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. All defense costs shall be outside the limits of the policy.
- 11.3.6.** ☐ **Fidelity and Crime Liability.** If checked, the CONSULTANT shall also maintain Fidelity and Crime coverage for theft of CITY property for an amount no less than \$1,000,000 per loss.
- 11.3.7.** ☐ **Sexual Abuse and Molestation ("SAM") Insurance.** If checked, the CONSULTANT shall also maintain sexual abuse and molestation (SAM) insurance with limits not less than \$1,000,000 per occurrence or claim with an aggregate of not less than \$2,000,000. The policy shall provide coverage including but not limited to claims for improper sexual conduct, damages because of bodily injury, and negligent hiring and supervision. All defense costs shall be outside the limits of the policy.
- 11.3.8.** ☐ **Contractor's Pollution Legal Liability.** If checked, the CONSULTANT shall procure and maintain contractors' pollution legal liability and/or errors and omissions with limits no less than \$1,000,000 per occurrence or claim with an aggregate of not less than \$2,000,000 to cover liability and legal expenses arising out of cleanup, removal, storage, or handling of hazardous or toxic chemicals, materials, substances, or any other pollutants by the CONSULTANT or any subcontractor resulting from pollution conditions.

- 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 (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37) 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. This requirement shall also apply to any Excess or Umbrella liability policies.
- 11.7. Verification of Coverage.** CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this Section 11 and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. 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 and employees from any and all claims, demands, costs or liabilities that arise out of, or pertain to, or relate to 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. 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.
- 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. CONSULTANT shall ensure that CITY is an additional insured on insurance required from subcontractors.
- 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.

## 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.

- 19.1.** 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.
- 19.2.** ☐ If checked, CONSULTANT represents and warrants that CONSULTANT is familiar with the requirements of AB506 (Business and Professions Code section 18975) and the Child Abuse and Neglect Reporting Act (Penal Code sections 11164 - 11174.3), and that it and each and every person performing any of the PROFESSIONAL SERVICES under this AGREEMENT on CONSULTANT's behalf does and will, at all times, comply with such requirements.

## 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, Gregory Wade

\_\_\_\_\_  
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