



The Danish Capital of America

REQUEST FOR PROPOSALS Professional Services

INFORMATION TECHNOLOGY MANAGED SERVICES



RFP Issued.....	November 12, 2021
All questions must be received by 5:00 p.m.....	November 22, 2021
Proposal Due by 5:00 p.m.....	December 1, 2021
Evaluation Period Concludes.....	December 8, 2021
Award Contract.....	December 13, 2021
Contract Period Commences.....	January 1, 2022

PUBLIC NOTICE
REQUEST FOR PROPOSALS
PROFESSIONAL SERVICES
CITY OF SOLVANG
INFORMATION TECHNOLOGY
MANAGED SERVICES

The City of Solvang (“City”) is inviting qualified firms to submit proposals for Professional Services to provide Information Technology Managed Services to the City.

All proposals will be compared on the basis of understanding the scope of work to be performed, methods and procedures to be used, management, personnel and experience, and consultation and coordination with the City of Solvang.

If your firm is interested and qualified, please submit five (5) hard copies and one (1) electronic copy of your Proposal on or before December 1, 2021, by 5:00 p.m. to:

City of Solvang
Attn: David Packard,
Assistant to the City Manager
1644 Oak St.
Solvang, CA 93463
CityHall@CityofSolvang.com

Proposal shall be clearly labeled “PROPOSAL for Professional Services – Information Technology Managed Services.”

Any changes, additions, or deletions to this Request for Proposal will be in the form of written addenda issued by the City. Addenda will be posted on the City website, along with the RFP. Prospective proposers must check the website for addenda or other relevant new information during the response period. The City is not responsible for the failure of any prospective proposer to receive such addenda. All addenda so issued shall become a part of this Request for Proposal. In addition, any questions submitted shall be posted with answers on the website as well.

ATTACHMENTS:

- A **City of Solvang Organizational Chart**
- B **SAMPLE City of Solvang Professional Services Agreement**
- C **Insurance Requirements**

REQUEST FOR PROPOSALS
Information Technology Managed Services

1) CITY PROFILE

Solvang, meaning “Sunny Field,” was founded in 1911 by a group of Danish educators from the Midwest who were in search of a site for a Danish-type folk school. They envisioned the location of the potential town, nestled between the Santa Ynez and San Rafael mountain ranges, as an ideal place to launch the school and where settlers could develop a Danish Colony that we now know as Solvang. The City is located inland along the Central Coast, some 45 miles north of Santa Barbara, in the historic Santa Ynez Valley. The City of Solvang provides a full range of municipal services, including contracted police services, the construction and maintenance of City streets, storm drains, bridges and similar infrastructure type assets, park maintenance and community recreation activities. Water, wastewater and transit services are provided through the use of an enterprise fund or business- type fund structure. The City was incorporated on May 1, 1985. It subsequently transitioned from a General Law City to a Charter City in November 2006.

Although Solvang has since developed into one of California’s main tourist attractions, its many Danish-American residents continue to perpetuate their Danish heritage as seen by the architectural style in the downtown tourist area. With a residential population of 6,126, the City is host to approximately 1.5 million tourists per year. Tourist Occupancy Tax (TOT) is 50% of the General Fund revenues. With this emphasis on tourism as a strong tradition and a core contributor to the economic health of the City, the importance of the unique architectural feel of the City is part of the Solvang ‘brand.’



2) PROJECT OBJECTIVES

The City of Solvang is requesting proposals from qualified firms or individuals interested in providing a comprehensive full-service Information Technology (IT) program for the City. The City currently contracts with a third-party IT services provider for technical support/helpdesk for users, equipment purchases and installation, software application licensing and installation, and network/server/firewall management.

The City wishes to select a single organization to provide a comprehensive Information Technology program. The City will accept proposals under several models including but not limited to:

- 1) Full strategic and day-to-day IT services and support provided directly by the proposer;
- 2) Strategic services and support provided by proposer, with day-to-day IT service and support provided by proposer's qualified subcontractor(s); or
- 3) Strategic services and support provided by proposer, and day-to-day IT services and support provided by a separate City-contracted vendor, with that vendor's relationship management (selection, negotiation, contract management, vendor relations, and quality control services) provided by the proposer.

Day-to-day IT services are provided to the City at seven (7) different locations: City Hall (Administration), The Annex (Planning/Building, Public Works, Recreation), Maintenance Offices, Water Offices, Wastewater Treatment Plant, Veteran's Memorial Building, and Solvang Visitor's Center. In all, the City maintains more than 50 workstations between these different locations. A copy of the City's organizational chart is included as Attachment A.

PURPOSE OF THE REQUEST

The purpose for this Request for Proposals (RFP) is to evaluate qualified firms for providing a comprehensive set of IT managed services necessary for day-to-day IT operations. Additionally, the City seeks assistance coordinating additional equipment and security upgrades, which may be proposed separately by the contractor or another entity. It is the City's desire to act affirmatively over the next several years to align itself with best practices in municipal government information technology for a city our size, and to provide a full suite of interactive technology services to the public.

Qualified firms are asked to prepare a proposal that addresses all value-added service requirements as outlined below. The initial contract is anticipated for a period of 2 years commencing on January 1, 2022 with the option to renew for two additional one-year periods.

3) SCOPE OF WORK

Project tasks shall include, but are not necessarily limited to, the following. If the Proposer feels that additional tasks are warranted, they must be clearly identified in the Proposer's proposal.

- Remote support (as needed) and On-site support (anticipated every 1-2 weeks)
- Inventory Control & Reporting (Quarterly)
- Service Call Tracking System (Real Time)
- Warranty Management
- Asset Tracking
- Purchasing new computers and peripherals and advising on specs related to purchases
- Setting up new computers for users with a wide variety of needs
- Patching and compliance for Operating Systems and Installed Applications
- Software updates and installation
- Mobile Device Management
- Endpoint Encryption
- Anti-virus & Anti-malware management and remediation
- Security Policy Management
- Remote Monitoring of hardware and software for errors, warnings, or non-compliance
- Installation and maintenance of UPS units
- Troubleshoot printer/scanning issues; interface with vendors to coordinate repairs
- Guidance and user support pertaining to proper use of city applications and systems
- Guidance and user support pertaining to proper response to security concerns such as websites, emails, and application behavior.

4) GENERAL CONDITIONS

Limitations

This Request for Proposals (RFP) does not commit the City to award a contract, to pay any costs incurred in the preparation of the proposal in response to this request, or to procure or contract for services or supplies. The City expressly reserves the right to reject any and all proposals or to waive any irregularity or information in any proposal or in the RFP procedure and to be the sole judge of the responsibility of any proposer and of the suitability of the materials and/or services to be rendered. The City reserves the right to withdraw this RFP at any time without prior notice. Further, the City reserves the right to modify the RFP schedule described above.

Award

The City may ask RFP finalists to present oral presentations regarding their firms and any special expertise in the necessary areas. All finalists may be required to participate in negotiations and submit such price, technical, or other revisions of their proposals as may result from negotiations. The City also reserves the right to award the contract without discussion or interviews, based upon the initial proposals. Selection will be based upon demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required. Following the initial qualifications-based selection, the price proposal provided will be the basis for negotiations to ensure the City receives a fair and reasonable price.

Inquiries and Responses

All questions pertaining to this RFP shall be submitted in writing to David Packard at CityHall@CityofSolvang.com. The question and its response will be forwarded via email to all potential proposers and/or posted on the RFP webpage.

Bidders are specifically directed not to contact any other City personnel for meetings, conferences, or technical discussions related to this Request for Proposals. Failure to adhere to this policy may be grounds for rejection of proposal.

The City of Solvang will not be responsible for oral interpretations given by any City employee, representative, or others. Bidders are cautioned that any statements made that materially change any portion of the proposal documents shall not be relied upon unless subsequently ratified by a formal written amendment to the proposal document. The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. Any changes, additions, or deletions to this Request for Proposal will be in the form of written addenda issued by the City. Prospective proposers must check the website for addenda or other relevant new information during the response period. The City is not responsible for the failure of any prospective proposer to receive such addenda. All addenda so issued shall become a part of this Request for Proposal.

Pre-contractual Expense

Pre-contractual expenses are defined as expenses incurred by proposers and selected contractor in:

1. Preparing proposals in response to this RFP;
2. Submitting proposals to City;
3. Negotiations with City on any matter related to proposals; and
- ~~4. Other expenses incurred by a contractor or proposer prior to the date of award of any agreement.~~

In any event, the City shall not be liable for any pre-contractual expenses incurred by any proposer or selected contractor. Proposers shall not include any such expenses as part of the price proposed in response to this RFP. 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.

Proprietary Information

The proposals received shall become the property of the City of Solvang and are subject to public disclosure. Proposers are to indicate any restrictions on the use of data contained in their responses. Those parts of a proposal which are defined by the bidder as business or trade secrets, as that term is defined in California Government Code, Section 6254.7, and are reasonably marked as "Trade Secrets", "Confidential" or "Proprietary" shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most or all, of their proposal as exempt from disclosure may be deemed non-responsive.

Contract Requirements

The selected consultant must enter into a Professional Services Agreement with the City for provisions related to compensation, conflict of interest, indemnification, insurance, etc. The scope, budget and schedule to complete the study will be incorporated into the professional services agreement. See RFP Attachment B – SAMPLE City of Solvang Professional Services Agreement and Attachment C – Insurance Requirements.

The Consultant has total responsibility for the accuracy and completeness of all data, plans, and estimates prepared for this project, and shall check all such material accordingly. While the City may review for quality, completeness and conformity, the responsibility for accuracy and completeness of such items remains solely that of the Consultant.

Method of Payment

For all services rendered as described in the Scope of Work (including all labor, equipment, materials, and expenses) the Consultant shall be compensated on a "time and material, not-to-exceed basis" by task for work completed. Each invoice submitted for payment shall contain a brief description of the work billed on that invoice, total billed to date, total paid to date and amount remaining.

5) PROPOSAL CONTENT AND ORGANIZATION

The Proposal, consisting of five (5) hard copies and one (1) electronic copy must be received by mail, recognized carrier, or hand delivered no later than **5:00 p.m. on December 1, 2021**. Late Proposals will not be considered and will be returned, unopened.

Proposal shall be addressed to:

City of Solvang
Attn: David Packard
1644 Oak Street
Solvang, CA 93463
CityHall@CityofSolvang.com

All proposals received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the proposer. To be considered, the modification must be received in writing, and in the same number of copies as the original proposal, prior to the date and time specified for receipt of proposals.

Until award of the contract, the proposals shall be held in confidence and shall not be available for public review. Upon award of a contract to the successful proposer, all proposals shall be public records. No proposal shall be returned after the date and time set for opening thereof. Following execution of the contract between the City and the consultant, a project kick-off meeting will be held to finalize the project scope and begin the project.

The proposal must be concise, well organized, and demonstrate the consultant's qualifications. The proposals shall also include the information listed below:

1) *Cover Letter.* The cover letter should briefly state the consultant's understanding of the work to be performed, the commitment to perform quality and timely work under the contract, and why the consultant believes it is best qualified to perform the duties and achieve the goals outlined and described in scope of work contained in this request.

2) *Qualifications Statements.* The proposal should include the following information and materials:

- Qualifications and Related Experience of Personnel Who Will Perform Work. Résumés of all personnel who are proposed to provide professional services to the City of Goleta within the Scope of Work outlined and described in this request should be included. Résumés should include all relevant experience, education, and other qualifications over the past 3 years.
- Prior Relevant Experience. A description of prior work experience and projects relevant to the Scope of Work outlined and described in this request should be included.
- References of local clients. Please include a list of at least three (3) current and/or previous clients located in California for which the consultant has rendered professional services relevant to the scope of work outlined and described in this request.
- Include a similar demonstration of the qualifications of any proposed subcontractors.

3) *Approach to Completing Work.* Provide a proposed approach to conduct services anticipated in the Scope of Work. Include any performance or timing commitments that proposer is prepared to make (e.g. help desk response times, network up time, and other measures).

4) *Cost structure.*

- Cost Structure and annual Cost Estimate with justification
- Justification of hours and costs may be required prior to final selection and will be required prior to execution of a contract.
- Proposal shall include hourly rates for personnel who will provide work under the contract.
- Proposal should include options for reducing or adding services.

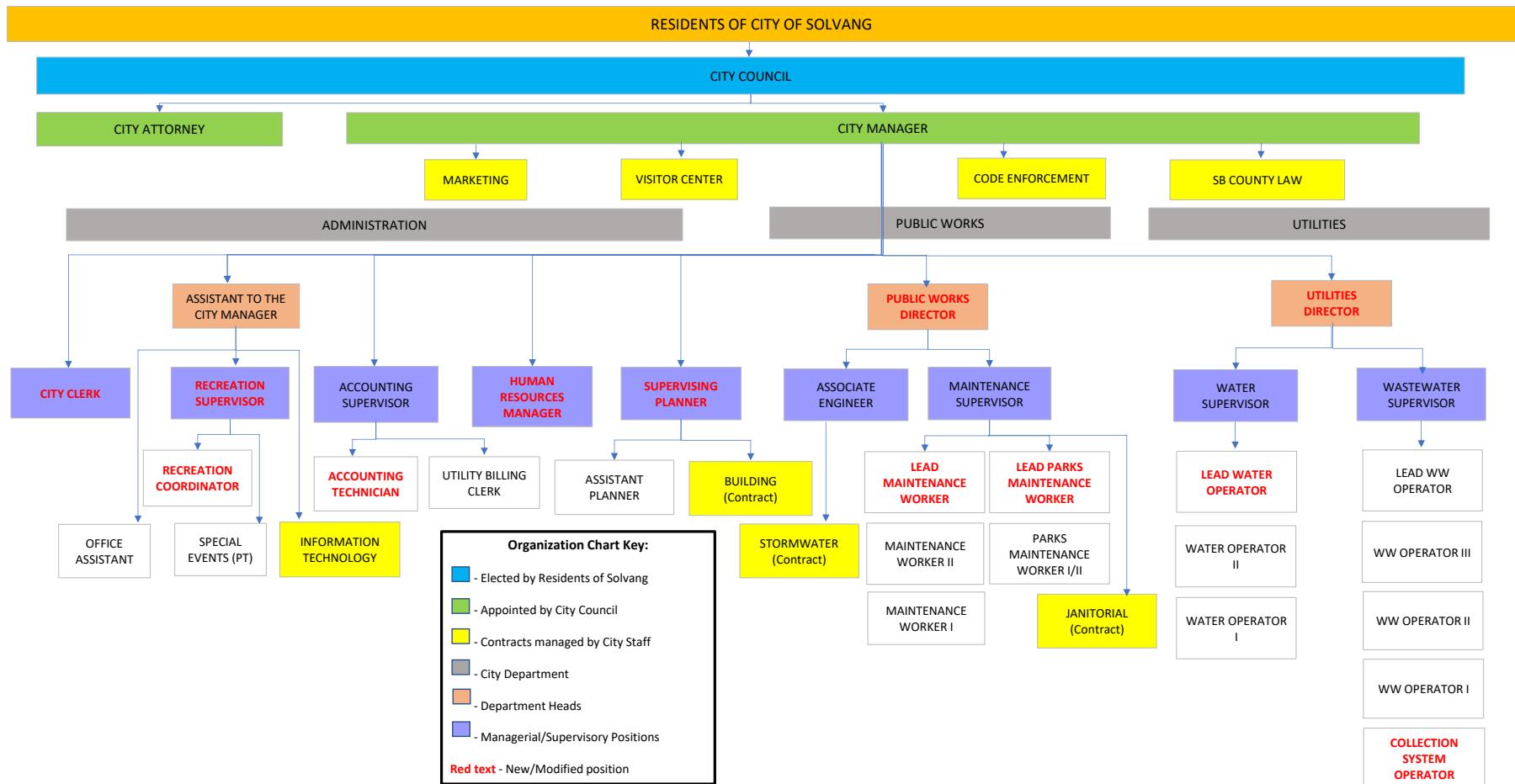
6) PROPOSAL EVALUATION and CONSULTANT SELECTION

Evaluation Criteria

The City will select a firm based on the demonstrated competence and on the professional qualifications necessary for satisfactory performance of the services required. When selecting the firm, the skill and ability of the entity or person performing the services is a key component of the selection criteria. Cost will be only one factor in determining the selection. The contract may not be awarded to the lowest bidder. The City will undertake the following evaluation process:

1. The City will review and evaluate all submitted documents received per this RFP.
2. Submittals will be evaluated on a combination of responsiveness, organization and clarity of proposal related to the scope of work, agreement to meet the City's general terms and conditions, fees, experience, qualifications and experience of assigned personnel, and responses of references.
3. Once the evaluation team has completed their review and determined the proposal with the highest overall points, the City will contact the successful Proposer on or by December 14, 2021.
4. After the submittals are evaluated and ranked, the City, at its sole discretion, may elect to interview one or more finalist respondents. Note, respondents may be asked to submit additional documentation. Additionally, the City reserves the right to select a proposal without conducting interviews.
5. If a commitment is made, it will be to the most qualified respondent with whom City is able to successfully negotiate the compensation and terms and conditions of any and all agreements.
6. Final selection of a firm, terms and conditions of any and all agreements, and authority to proceed with these services, shall be at the sole discretion of the City.
7. If the City is unable to negotiate a satisfactory agreement, with terms and conditions the City determines to be fair and reasonable, the City may then commence negotiations with the next most qualified firm in sequence, until an agreement is reached or determination is made to reject all submittals.

Attachment A: City of Solvang Organizational Chart



Attachment B:

SAMPLE - CITY OF SOLVANG
PROFESSIONAL SERVICES AGREEMENT

This agreement is made upon the date of execution, as set forth below, by and between _____ (“Consultant”), and the City of Solvang (“City”). The parties hereto, in consideration of the mutual covenants contained herein, hereby agree to the following terms and conditions:

1.0 GENERAL PROVISIONS

1.01 **Term:** This agreement will become effective on the date of execution set forth below, and will continue in effect until terminated as provided herein.

1.02 **Services :** Consultant shall perform the **scope of work (tasks)** described and set forth in **Exhibit A**, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the **project schedule** which is also set forth in **Exhibit A**.

Consultant shall determine the method, details and means of performing the above-referenced services.

Consultant may, at their own expense, employ such assistants and subconsultants, as Consultant deems necessary to perform the services required of Consultant by this agreement. However, Consultant may not assign this agreement to any other person or entity in the performance of required project-related services, and the City may not control, direct or supervise Consultant’s assistants or employees in the performance of those services.

1.03 **Standard of Performance:** Consultant’s services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant’s profession currently practicing under similar conditions. Whenever the scope of work requires or permits approval by the City, it is understood to be approval solely for the purposes of conforming to the requirements of the scope of work and not acceptance of any professional or other responsibility for the work. Such approval does not relieve the Consultant of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Consultant or its subcontractors. By delivery of completed work, Consultant certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws. If Consultant is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Consultant shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

1.04 **Compensation:** In consideration for the services to be performed by Consultant, City agrees to pay Consultant monetary consideration for professional services in accordance with the **fee schedule** set forth in **Exhibit A**. The parties agree that total compensation for fees and costs for the services detailed in **Exhibit A** shall not exceed the sum of \$_____, unless and until this Agreement is amended as provided herein.

1.05 **Billing/Payment Terms.** All charges for Consultant's services and authorized related reimbursable expenses shall be billed monthly, and all undisputed charges will be paid by City within 30 (thirty) days of receipt. The bills shall list all tasks under this Agreement, the task budget, project total budget, percentage completed for each task for that month, associated percentage billing against each task, and total billing for that month. In the event the Agreement is based on time & materials billing up to a not-to-exceed amount, the bill shall itemize by date all services and expenses provided during the invoice period (under this Agreement) including a brief description of the nature of work performed, the person or vendor performing them, the applicable billing rate, and the time expended. All Consultant service invoices must be approved by either the Public Works Director or the City Manager prior to payment.

2.0 OBLIGATIONS OF CONTRACTOR

2.01 **Contract Management and Service Performance:** Consultant Principal shall serve as the project manager and will personally prepare, or direct and supervise the preparation of, all work product called for by this agreement. Consultant represents that it has the qualifications, experience and facilities to properly perform all services hereunder in a thorough, competent, timely, and professional manner and shall, at all times during the term of this Agreement, have in full force and affect all licenses required of it by law. Consultant agrees to devote the hours and the human resources necessary to timely perform the services set forth in this agreement in an efficient, professional, and effective manner.

2.02 Avoidance of Conflict of Interest.

(a) Consultant may represent, perform services for, and be employed by additional individuals or entities, in Consultant's sole discretion, as long as the performance of these extra-contractual services does not interfere with or present a conflict with City's business or interfere with the timely performance and completion of Consultant's services under this Agreement.

(b) Consultant shall comply with all conflict of interest laws and regulations including, without limitation, the City's Conflict of Interest Code (on file in the City Clerk's Office). All officers, employees and/or agents of Consultant who will be working on behalf of the City pursuant to this Agreement may be required to file Statements of Economic Interest. Therefore, it is incumbent upon the Consultant to notify the City of any staff changes relating to this Agreement.

(c) In accomplishing the scope of services of this Agreement, all officers, employees and/or agents of the Consultant unless as indicated in Subsection (d), will be performing

a very limited and closely supervised function, and therefore, unlikely to have a conflict of interest arise. No disclosures are required for any officers, employees, and/or agents of Consultant, except as indicated in Subsection (d). _____ (*Initials*).

(d) In accomplishing the scope of services of this Agreement, Consultant will be performing a specialized or general service for the City, and there is substantial likelihood that the Consultant's work product will be presented, either written or orally for the purpose of influencing a governmental decision. As a result, the following persons shall be subject to the City's Conflict of Interest Code.

2.03 Tools and Instrumentalities: Consultant shall provide all tools and instrumentalities to perform the services under this agreement.

2.04 Workers' Compensation and Other Employee Benefits: City and Consultant intend and agree that Consultant is an independent contractor of City and agree that Consultant and Consultant's employees and agents have no right to Workers' Compensation and other City-sponsored employee benefits. Consultant agrees to provide Workers' Compensation and other employee benefits, where required by law, for Consultant's employees and agents. Consultant agrees to hold harmless and indemnify City for any and all claims arising out of any claim for injury, disability, or death of Consultant and any of Consultant's employees or agents.

2.05 Indemnification

(a) **Non-design, non-construction Professional Services:** To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents ("City Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Consultant's performance or Consultant's failure to perform its obligations under this Agreement or out of the operations conducted by Consultant, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City's option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

(b) **Non-design, construction Professional Services:** To the extent the Scope of Services involve a "construction contract" as that phrase is used in Civil Code Section 2783, this paragraph shall apply in place of paragraph (a). To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8),

Consultant shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents (“City Indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of the Consultant’s performance or Consultant’s failure to perform its obligations under this Agreement or out of the operations conducted by Consultant, except for such loss or damage arising from the active negligence, sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant’s performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City’s option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

(c) Design Professional Services: In the event Consultant is a “design professional”, and the Scope of Services require Consultant to provide “design professional services” as those phrases are used in Civil Code Section 2782.8, this paragraph shall apply in place of paragraphs (a) or (b). To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8) Consultant shall indemnify, defend and hold harmless the City and its elected officials, officers, employees, volunteers and agents (“City Indemnitees”), from and against all claims, damages, injuries, losses, and expenses including costs, attorney fees, expert consultant and expert witness fees arising out of, pertaining to or relating to, the negligence, recklessness or willful misconduct of Consultant, except to the extent caused by the sole negligence, active negligence or willful misconduct of the City. Negligence, recklessness or willful misconduct of any subcontractor employed by Consultant shall be conclusively deemed to be the negligence, recklessness or willful misconduct of Consultant unless adequately corrected by Consultant. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant’s performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City’s option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims. In no event shall the cost to defend charged to Consultant under this paragraph exceed Consultant’s proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs.

(d) Payment by City is not a condition precedent to enforcement of the indemnities in paragraph (a), (b), or (c). In the event of any dispute between Consultant and City, as to whether liability arises from the active negligence, sole negligence or willful misconduct of the City or its officers, employees, or agents, Consultant will be obligated to pay for City’s defense until such time as a final judgment has been entered adjudicating the City as having been actively negligent, solely negligent or as having engaged in willful misconduct. Except as otherwise required by Civil Code Section 2782.8, Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney’s fees, expert fees and costs of litigation. The provisions of this Section 2.05 shall survive completion of Consultant’s services or the termination of this Agreement.

2.06 **Insurance:** Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached to and part of this agreement.

3.0 OBLIGATIONS OF CITY

3.01 **Cooperation:** City agrees to comply with all reasonable requests of Consultant necessary to the performance of Consultant's duties under this agreement. City employees, agents and officers of the City agree to disclose all information relevant to this project to Consultant. Consultant shall be entitled to reasonably rely upon the accuracy and completeness of information furnished by City, provided that Consultant shall give City prompt written notice of any known defects in such information.

4.0 TERMINATION OF AGREEMENT

4.01 **Termination Notice:** Notwithstanding any other provision of this agreement, any party hereto may terminate this agreement, at any time, without cause, by giving at least 30 (thirty) days' prior written notice to the other parties to this agreement.

4.02 **Termination on Occurrence of Stated Events:** This agreement shall terminate automatically on the occurrence of any of the following events:

- a. Sale of the business of any party;
- b. The end of the 30 (thirty) days as set forth in section 4.01;
- c. End of the contract to which Consultant's services were necessary; or
- d. Assignment of this agreement by Consultant without the consent of City.
- e. Death of any party.

4.03 **Termination by any Party for Default:** Should any party default in the performance of this agreement or materially breach any of its provisions, the non-breaching party, at its option, may terminate this agreement, immediately, by giving written notice of termination to the breaching party.

4.04 **Termination:** This agreement shall terminate on _____, 20_____, unless earlier extended as set forth in this Section. The City, with the agreement of Consultant, is authorized to extend the term of this agreement beyond the termination date, as needed, under the same terms and conditions as set forth in this agreement. Any such extension shall be in writing and be an amendment to this agreement.

5.0 SPECIAL PROVISIONS

5.01 **Additional Tasks as May Be Assigned by Public Works Director or the City Manager:**

Prior to initiating any Consultant work on matters relating to the purposes of this Agreement, but outside the Scope of Services for this Agreement, it shall be the responsibility of Consultant to obtain written approval of the Public Works Director, or the City Manager, prior to initiation of such tasks.

5.02 **Time Schedule:** Consultant is to begin work upon receipt and execution of City contract. It is contemplated that most of the services hereunder will be completed on or before _____. **TIME IS OF THE ESSENCE OF THIS CONTRACT.** Consultant agrees to engage its best efforts to adhere strictly to the schedule set forth in **Exhibit A** and incorporated herein.

5.03 **Work Outside Contract Scope:** No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the City Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The Contract Manager may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Consultant or ordered by the City Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract.

5.04 **Confidentiality:**

- (a) Confidential Nature of Information. Consultant shall treat all information obtained from the City in the performance of this contract as confidential and proprietary to the City. Consultant shall treat all records and work product prepared or maintained by Consultant in the performance of this contract as confidential.
- (b) Limitation on use and disclosure. Consultant agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Consultant's scope of work. Consultant will not disclose any information prepared for the City, or obtained from the City or obtained as a consequence of the performance of work to any person other than the City, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this contract unless such disclosure is specifically authorized in writing by the City.
- (c) Security plan. If requested by the City Manager, Consultant shall prepare a security plan to assure that information obtained from the City or as a consequence of the performance of work is not used for any unauthorized purpose or disclosed to

unauthorized persons. Consultant shall advise the City of any request for disclosure of information or of any actual or potential disclosure of information.

- (d) Survival. Consultant's obligations under this paragraph shall survive the termination of this contract.

6.0 MISCELLANEOUS

6.01 **Notices:** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this agreement or by law to be served on or given to any party to this agreement shall be in writing and delivered or, in lieu of such personal service, when deposited in the United States mail, first class postage prepaid, to the following address for each respective party:

PARTY	ADDRESS
TO: City OF SOLVANG	City of Solvang 1644 Oak Street Solvang, CA 93463 Attention: City Clerk

Copy to: Dave Fleishman
 City Attorney
 Richards, Watson & Gershon
 847 Monterey Street, Suite 206
 San Luis Obispo, CA 93401

TO CONSULTANT: _____

6.02 **Governing Law:** This agreement and all matters relating to this agreement shall be governed by the laws of the State of California in force at the time, should any need for interpretation of this agreement or any decision or holding concerning this agreement arise.

6.03 **Binding Effect:** This agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this Section shall be construed as consent by City to any assignment of this agreement or any interest in the agreement.

6.04 **Remedies:** The remedies set forth in this agreement shall not be exclusive, but shall be cumulative with, and in addition to, all remedies now or hereafter allowed by law or equity.

6.05 **Due Authority:** The parties hereby represent that the individuals executing this agreement are expressly authorized to do so on and in behalf of the parties.

6.06 **Ownership of Work Product:** Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this contract are the property of the City. Consultant agrees that all copyrights, which arise from creation of the work pursuant to this contract, shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

6.07. **Integration and Modification:** This contract represents the entire understanding and agreement of the City and Consultant as to those matters contained herein. This agreement correctly sets forth the obligations of the parties hereto to each other as of the date of this agreement. All agreements or representations respecting the subject matter of this agreement not expressly set forth or referred to in this agreement are null and void. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This contract may not be modified, amended, or altered except in writing signed by the City and Consultant.

6.08. **Advice of Counsel:** 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 contract, and that the decision of whether or not to seek the advice of counsel with respect to this contract is a decision which is the sole responsibility of each of the parties hereto. This contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of the contract.

6.09. **Independent Review:** Each party hereto declares and represents that in entering this contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

6.10. **Attorney Fees:** In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this agreement, or the breach hereof, the prevailing party shall be entitled, in addition to other such relief as may be granted, to a reasonable sum as and for attorney fees.

6.11. **No waiver:** The waiver of any breach by any party of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of this agreement.

6.12. **Assignment:** This agreement is specifically not assignable by Consultant to any person or entity. Any assignment or attempt to assign by Consultant whether it be voluntary or involuntary, by operation of law or otherwise, is void and is a material breach of this agreement, giving rise to a right to terminate as set forth in Section 4.03.

6.13. **Time for Performance:** Except as otherwise expressly provided for in this agreement, should the performance of any act required by this agreement to be performed by either party be prevented or delayed by reason by any act of God, strike, lockout, labor trouble, inability to secure materials, epidemics, pandemics, or any other cause, except financial inability, which is the fault of the party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of delay and performance of the act during the period of delay will be excused: provided, however, that nothing contained in this Section shall exclude the prompt payment by either party as required by this agreement of the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

6.14. **Severability:** Should any provision of this agreement be held by a court of competent jurisdiction or by a legislative or rulemaking act to be either invalid, void or unenforceable, the remaining provisions of this agreement shall remain in full force and effect, unimpaired by the holding, legislation or rule.

6.15. **Construction:** The parties agree that each has had an opportunity to have their counsel review this agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this agreement or any amendments or exhibits thereto. The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provision to which they relate.

6.16. **Amendments:** Amendments to this agreement shall be in writing and shall be made only with the mutual written consent of all the parties to this agreement.

6.17. **Signatures:** The individuals executing this contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this contract on the following date.

Consultant:

Date: _____

By: _____
President

City of Solvang:

Date: _____

By: _____
Xenia Bradford
City Manager

APPROVED AS TO FORM:

City Attorney:

Richards, Watson & Gershon

Date: _____

By: _____
Dave Fleishman
City Attorney

ATTEST:

Xenia Bradford, City Clerk

ATTACHMENT C:

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy form CG 00 01, or a City approved equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence and in the aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant’s employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits no less than \$1,000,000 per accident or disease.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and “Covered Professional Services” as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or a City approved equivalent. Consultant also agrees to require all contractors, and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
5. Consultant's general liability policy shall not contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, reasonable modification and reasonable additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.
8. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage by the carrier.
9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.
10. Consultant agrees to require that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.

11. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions. Consultant shall be responsible for paying any deductibles or self-insured retentions on its policies.
12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
15. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
21. Consultant agrees to be responsible for ensuring that no contract used between itself and its sub-consultants reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
22. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.