



*The Danish Capital of America*

# **REQUEST FOR PROPOSALS Professional Services**

## **TOURISM MARKETING MANAGED SERVICES**



RFP Issued.....	April 1, 2022
All questions must be received by 5:00 p.m.....	April 15, 2022
Proposal Due by 5:00 p.m.....	May 6, 2022
Evaluation Period Concludes.....	May 18, 2022
Award Contract.....	June 2022
Contract Period Commences.....	June / July 2022

PUBLIC NOTICE  
**REQUEST FOR PROPOSALS**  
PROFESSIONAL SERVICES

CITY OF SOLVANG  
**TOURISM MARKETING  
MANAGED SERVICES**

The City of Solvang (“City”) is inviting qualified firms to submit proposals for Professional Services to provide Tourism Marketing Managed Services to the City. We are seeking a full-service experienced tourism marketing / public relations consultants who can provide professional guidance and oversight, implementation and analysis regarding marketing and communications programs designed to attract tourists to our city. It is desired that the proposal be thorough with examples of work. The proposal contents, goals, and objectives should be clear in the attachments.

The current Marketing/Media Plan for the Solvang marketing tourism contract ends July 31, 2022. The upcoming budget plan is for two years, with the opportunity to extend the contract another two years if desired by both parties. A contract will be provided by the City attached to the RFP.

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 seven (7) hard copies and one (1) electronic copy of your Proposal on or before **May 6, 2022**, by **5:00 p.m.** to:

City of Solvang  
Attn: Xenia Bradford,  
City Manager  
1644 Oak St.  
Solvang, CA 93463  
[CityHall@CityofSolvang.com](mailto:CityHall@CityofSolvang.com)

Proposal shall be clearly labeled “Proposal for Professional Services–Tourism Marketing 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 SAMPLE City of Solvang Professional Services Agreement**
- B 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 interested in providing comprehensive tourism marketing managed services for the City. The goal is to find an experienced tourism marketing firm that can provide professional guidance, oversight, and implement marketing and communications programs designed to attract tourists to the City of Solvang.

### *Overview:*

Under Direction of the City Manager and Marketing Tourism & Events Coordinator, the Tourism Marketing/ Media Proposal (TMMP) administers the City's efforts to promote tourism to Solvang, thereby enhancing the City's General Fund revenue through Transient Occupancy Tax receipts and, to a lesser but significant extent, through Sales Tax receipts. The mission is to increase overnight visitorship, and visitor expenditures, with emphasis on mid-week and off-season tourism.

The TMMP is responsible for traditional and electronic media advertising in core market regions and new market areas, participation in consumer and industry trade shows, and development and maintenance of ongoing relationships with travel writers and other media representatives.

*Accounting.* The Marketing Agency agrees to account for all funding provided and to keep complete books and records thereof and to make available and to submit to audit by the City of Solvang all the Marketing Agency books (in regard to this contract), records, and financial statements upon the city of Solvang's request with 30-day reasonable prior notice. The books with receipt of all paid vendors will be shown on request with 1099 IRS forms attached for all monies spent on this contract not to exceed 10% overhead to the marketing firms and sub-contractors with marketing responsibilities to the City of Solvang.

### 3) SCOPE OF WORK

The Marketing Agency team manages a number of responsibilities including (but not limited to):

- Setting marketing strategy that supports strategic imperatives and goals
- Managing budgets
- Integrating all aspects of marketing communication including advertising, digital, PR, branded content, social media, group sales, sponsorships, etc.
- Liaising with Solvang TMMP tourism stakeholders including board leadership, committees, and other stakeholders
- Guiding marketing activities designed to showcase Solvang city wide range of tourism experiences
- Targeting local, regional, national, niche and industry market segments
- Tracking and reporting out on measurable outcomes from marketing communication activities

Agency teams will be required to collaborate to form strategic recommendations and efficiently execute the Solvang marketing program, including research and information sharing, planning, optimization, analytics, and reporting. Solvang is seeking not simply an “ad agency,” but a long-term partner that will be integral in these efforts and share a dedication to success.

#### **The General Scope of Work includes the following:**

**Strategy:** Working closely with our team, collaborate on strategy to develop, execute, and track results against an annual marketing plan that supports the strategies set forth by the Solvang Tourism Advisory Committee (TAC). This includes strategic direction, creative strategy, brand development, media plan, and cooperative plan.

**Creative & Production:** Produce creative and provide strong yet attainable recommendations for consideration and manage the process of working with subcontractors as needed. Bring to final form the approved advertising materials to run/air on behalf of the city of Solvang.

Creative materials may include but are not limited to:

- print advertising
- website design
- broadcast (TV/CTV, radio, video) assets
- digital banners
- signage, collateral, sales materials, etc.

**Content Planning:** Work with Solvang Events & Marketing Coordinator to develop a comprehensive, marketing plan that uses market intelligence to shape strategy and includes goals specific to the agency’s scope; defined target markets, audiences, and opportunities; strategies/tactics to achieve success; specific action steps that guide and track workload; and measurable outcomes.

**Promotion:** *Promote the city of Solvang through targeted advertising and other promotional programs*

Contractor will promote the destination and tourism business of the city of Solvang through targeted media campaigns that focus on needed periods of tourism these include Danish days, Julefest, Fall harvest scarecrow campaign, music in the park series, contractor will also conduct additional campaigns that focus on lodging segments specifically contractor will measure add media campaigns effectively as well as any return-on-investment results. These campaigns will be a fully integrated strategy that will be used in many different advertisements including digital banners digital radio online mobile video, CTV video, in home video retargeted media, behavior targeting, as well as search engine marketing.

**Public Relations:** *Public relations outreach campaigns to promote Solvang*

Contractor will partner with credible news organizations and media experts and writers to execute multiple stories, media, both print and digital, output that focus on various parts of Solvang for both leisure and group travel. This may be conducted by in-house staff position or contracted relationship with public relations firm agencies/ staff. This may include hosting a media destination, hosting media events and working with local, regional, and national agencies for the promotion of Solvang.

**Social Media:** *Paid and organic social media postings and campaigns*

Through daily postings of organic content and media, contractor will provide a robust and continuing social media program that focuses and highlights the various parts of Solvang and the businesses within it. Additionally, paid campaigns will focus on promoting specific segments of Solvang to draw awareness and attraction to these areas. This may include lodging activities, events, restaurants dining, group meetings, outdoor shopping and more.

**SEO Marketing:** *Year-round digital advertisement search engine marketing campaigns*

Through the digital mediums of search engine advertising and search engine displays, contractor will study, analyze and execute complex keywords the top search inquiries to provide website traffic sponsorship results and awareness to SolvangUSA.com for many different parts of Solvang and its businesses.

**Media Planning & Buying:** Develop and prepare media plans for each target market, primarily leisure and group, possibly some international. Utilize research and market insights to develop strategic recommendations for budget allocation and market prioritization. Leverage paid media partnerships and placements as a means to effectively distribute and amplify owned and earned content. Provide Solvang with insights on emerging trends and new media to continually evolve and reach the target audience.

Work with the Solvang Event & Marketing Coordinator to develop cooperative marketing programs to amplify the efforts of our members and stakeholder businesses.

**Reporting & Analytics:** Regular monthly reporting on campaign and brand continuity program performance utilizing expertise, agency tools, data, partnerships, and other resources to manage program efficiency and performance. End of campaign wrap up reports, including screenshots of all assets, dashboard of goal performance and executive summary of key takeaways that include qualitative and quantitative results mapping to larger objectives. Annual strategic marketing and operation plan that outlines the proposed use of City marketing funds to accomplish promoting tourism and travel to Solvang.

**Research:** Using data platforms and additional research studies, contractor will perform and provide all partners data that relates to Solvang and travel intent. This can include targeted GPS data results and study points of interest as well as third party vendor studies Participate as needed in customer insight, creative testing, and segmentation research. Provide data, creative assets and/or insights as requested for Solvang Market Intelligence research and reporting. Connect with research partners including SMARI and SLOCAL as needed.

Firm will work with the TAC, City Manager, and the Events & Marketing Coordinator to provide guidance in all aspects of tourism marketing, including both paid and non-paid advertising.

### **Compensation**

Design and production of all advertising will be billed based on a compensation model proposed by the contractor. The compensation model proposed by the contractor may be considered if in the best interests of the city. Please state in your proposal your fees for performing the Scope of Work, i.e., production of print, broadcast, collateral project work, account service, media buying, public relations and attending monthly Board Meetings. Any additional projects (if any) outside the scope of work will be billed based on the agreed upon compensation model and will be determined by the City. The City Manager will authorize any additional scope of work and will obtain any necessary authorizations based on the City's policies and procedures. Please advise if you would be willing to work on a monthly retainer, and the proposed cost. The successful firm will be required to enter into a written agreement with the city in substantially the form attached to this RFP. Please specifically identify any contractual terms that your firm proposes to change in a final contract. Such proposals may or may not be accepted at the City's sole discretion. Failure to include such contractual changes shall be deemed to signify the firm's acceptance of the form of agreement.

#### 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 Xenia Bradford at [CityHall@CityofSolvang.com](mailto: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 seven (7) 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 May 6, 2022**. Late Proposals will not be considered and will be returned, unopened.

Proposal shall be addressed to:

City of Solvang  
Attn: Xenia Bradford  
1644 Oak Street  
Solvang, CA 93463  
[CityHall@CityofSolvang.com](mailto: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.

### *Qualifications*

- Minimum of three years' experience in tourism advertising/marketing for a destination with extensive experience in local, regional, and national media placement as well as other tourism related applications. These applications include both traditional and non-traditional forms of advertising, promotion, and public relations
- Extensive knowledge and experience of all aspects of tourism marketing including digital, print, radio, television, email campaigns, and social media approaches
- Firm should be ready, able, and qualified to perform the public relations functions
- The ability to perform project management duties including, but not limited to, account services, client meetings, strategic planning, billing, tracking, and other account management duties
- Organize and attend special events that will market the destination
- Firm should have background working with other City and County organizations, particularly in tourism areas. Past management of coastal or major tourism destination if possible
- Knowledge of the City of Solvang and its target markets
- Firm should be able to offer excellent customer service

*Proposal Contents*

- The proposal must be concise, well organized, and demonstrate the consultant’s qualifications. The proposals shall also include the information listed below:
- Qualifications as it relates to those requested by the city
- Statement of objectives and general approach toward the marketing effort – your philosophy
- Specific breakdown of your hourly fees or other compensation models and costs to perform other projects outside the scope of work
- Résumé of tourism marketing experience and samples of previous work
- List three past campaigns and their success
- Example marketing plan and campaign for 2022-2023
- Identification of the account team assigned to the account in addition to sub- contractors on the account team. Statement of assurance of primary account manager. Include a detailed organizational chart for your entire organization, and an organizational chart for the management and personnel that will be assigned to this account, if applicable.
- Résumés of account team and team leader
- Contact information from three current clients
- Contact information from three current media references
- Proof of familiarity with Solvang, SYV, CAL and target markets
- Statement as to why you are a good fit for us
- Identify all proposed subcontractors for the scope of work and document which portions of service will be performed by subcontractors and their ability to perform the work. Additionally, proposer should submit signed letters of commitment for all such proposed subcontractors and resumes/biographies of proposed subcontractor’s key personnel, including those conducting day-to-day activities

## 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.

Proposals will be evaluated based on the following:

- Recent experience in successfully performing similar services
- Understanding of the work required by the city
- Quality, clarity, and responsiveness of the proposal
- Proposed approach in completing the work
- Programs that support the benefits of tourism to our local residents
- Approach to maximize visitors to stay off season, midweek, and multiple nights
- Campaign results measurement and monthly reporting to lodging, board members and city council
- Background and related experience of the specific individuals to be assigned to this project, with special emphasis placed on the team leader
- Proposed compensation for other project work (hourly fees for services) or other compensation models.

As reflected above, the contract award will not be based solely on price, but on a combination of factors as determined to be in the best interest of the City.

The contract award period is for two years, Aug 1, 2022, through June 30, 2024, with the option to extend the contract for two years after the two-year term if desired by both parties.

The City may decide to award the contract for services based on the written proposal but reserves the right to conduct interviews with finalists if necessary to determine the awarding firm.

All proposals submitted shall become the property of the City and shall not be returned to the proposer. The City reserves the right to:

- Reject any and all proposals
- Waive any or all mandatory requirements, if no proposers meet one (1) or more of those requirements
- Cancel this RFP
- Revise the amount of funds available under this RFP
- Amend this RFP as needed
- Not select a vendor or award a contract from this RFP

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:**

**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 effect 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 Manger 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:

<b>PARTY</b>	<b>ADDRESS</b>
<b>TO: City OF SOLVANG</b>	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
<b>TO CONSULTANT:</b>	_____ _____ _____ _____

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:**

\_\_\_\_\_

Annamarie Porter  
City Clerk

**ATTACHMENT B:**

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.