STAFF REPORT
CITY OF SOLANA BEACH

TO:	Honorable Mayor and City Councilmembers
FROM:	Alyssa Muto, City Manager
MEETING DATE:	September 3, 2025
ORIGINATING DEPT:	Community Development Department – Joseph Lim, Community Development Director
SUBJECT:	**Professional Service Agreement with VDLA Landscape Architects for Landscape Plan Review and Inspection Services**

BACKGROUND:

The Community Development Department utilizes third-party services to review and inspect water efficient landscape plans for private development projects in the City. These third-party services are paid for by project applicants through developer deposit accounts.

This item is before City Council to consider authorizing a Professional Services Agreement (PSA) with VDLA Landscape Architects for professional landscape plan review and inspection services.

DISCUSSION:

In June 2025, the City issued a Request for Proposals (RFP) seeking qualified consulting firms to provide landscape plan review and inspection services. The landscape consultants would be responsible for the review of conceptual level water efficient landscape plans, construction level plans and on-site inspections once the landscaping has been completed onsite. In addition, they would also be available to review City-initiated landscape projects on an as-needed basis. The landscape architectural team would work collaboratively with City Staff. The City received five (5) proposals from experienced professional landscape architecture firms. Staff reviewed the proposals and, after thorough consideration and interviews, determined that VDLA Landscape Architecture was the most responsive to the RFP and would be able to address the needs of the City.

COUNCIL ACTION:

_____

_____

Staff has prepared Resolution 2025-102 (Attachment 1) requesting City Council to authorize the City Manager to enter into a PSA with VDLA Landscape Architecture for landscape plan review and inspection services.

CEQA COMPLIANCE STATEMENT:

This is not a project under the California Environmental Quality Act (CEQA).

FISCAL IMPACT:

Third-party landscape plan review and inspection services for development projects are cost neutral in that project applicants pay for these services at cost plus a 15% administrative fee for Staff oversight and management of the project.

WORK PLAN: N/A

OPTIONS:

- Authorize Staff recommendation.
- Do not authorize Staff recommendation.
- Provide alternative direction to Staff.

CITY STAFF RECOMMENDATION:

Staff recommends that the City Council:

1. Adopt Resolution 2025-102 authorizing the City Manager to execute a Professional Services Agreement with VDLA Landscape Architecture.

Alyssa Muto, City Manager

Attachments:
1. Resolution 2025-102
2. VDLA Scope of Services
3. PSA Template

RESOLUTION 2025-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH VDLA LANDSCAPE ARCHITECTS FOR PROFESSIONAL LANDSCAPE PLAN REVIEW AND INSPECTION SERVICES

WHEREAS, the Community Development Department is in need of professional 3rd party landscape and plan review services for private development projects; and

WHEREAS, in June 2025, the City issued a Requests for Proposals to provide 3rd party professional landscape and plan review services; and

WHEREAS, the City received five responses to the City's RFP for 3rd Party landscape and plan review and inspection services; and

WHEREAS, after review of proposals and interviews of the top candidates, it was determined that VDLA Landscape Architects was the most qualified and responsive to provide professional landscape and plan review services; and

WHEREAS, the City wishes to enter a Professional Services Agreement with a highly qualified landscape architecture firm for as-needed landscape and plan review services.

NOW, THEREFORE, the City Council of the City of Solana Beach does resolve as follows:

1. That the foregoing recitations are true and correct.

2. That the City Council authorizes the City Manager to execute a Professional Services Agreement with VDLA Landscape Architects for an open-ended dollar amount of third-party pass-through payments for landscape plan review and inspection services for a three-year agreement.

3. That the City Council authorizes the City Manager to extend the agreement for two additional one-year terms, at the City's option.

PASSED AND ADOPTED this 3rd day of September, 2025, at a special meeting of the City Council of the City of Solana Beach, California by the following vote:

AYES: Councilmembers –
NOES: Councilmembers –
ABSTAIN: Councilmembers –
ABSENT: Councilmembers –

ATTACHMENT 1

_____
LESA HEEBNER, Mayor

APPROVED AS TO FORM:

_____
JOHANNA N. CANLAS, City Attorney

ATTEST:

_____
ANGELA IVEY, City Clerk

E. Work Plan

VLA LANDSCAPE ARCHITECTS



ATTACHMENT 2

Project Understanding

VDLA understands that the City of Solana Beach is seeking a qualified and responsive consultant to support its landscape plan review and inspection process for private residential and commercial development. The City's goal is to ensure that proposed and installed landscapes are consistent with Solana Beach Municipal Code Section 17.56, compliant with the Water Efficient Landscape Ordinance (MWELO), and reflective of the City's environmental values and coastal design context.

VDLA will provide thorough and timely reviews of conceptual and construction-level landscape plans, with attention to water use classification, irrigation design, plant palette appropriateness, and compatibility with sensitive coastal or ESHA-adjacent sites. Our role will also include verifying in-field compliance during on-site inspections, maintaining detailed records for deposit tracking, and supporting annual MWELO reporting efforts.

Our team is well-practiced in adapting to variable project volumes while maintaining responsive communication and consistency in review timelines. We work collaboratively with City staff, applicants, and design teams to clarify requirements, streamline approvals, and ensure each project reflects the City's standards and long-term sustainability goals.



VDLA's Approach to Service Delivery

Plan Review:

VDLA employs consistent and client-specific methods for plan review, which will ensure that all landscape and irrigation documents meet the City of Solana Beach's standards. Our methodology includes verifying maintenance entities, conditions of approval, approved concept or specific plans, relevant ordinances, and design guidelines. We also ensure coordination between landscape, irrigation, and other disciplines, such as civil and grading plans, to confirm alignment with utility locations, hardscape improvements, bioswales, or detention basin facilities.

Our review comments are comprehensive, combining customized checklists, written memos, and examples of standards as needed. Re-submittals are back-checked against prior comments, with color coding to indicate compliance. To keep projects on track, VDLA may initiate meetings or phone conferences with applicants and City staff, always mindful of project budgets and timelines.

We utilize advanced platforms like Bluebeam Revu, Adobe Acrobat, and Excel for plan checking, commenting, and record keeping. All submittals are tracked in detailed spreadsheets that log key project information such as applicant details, maintenance entities, tract numbers, submittal timelines, and Bluebeam session numbers for easy reference and follow-up. For electronic plan reviews, we conduct detailed markups using Bluebeam Sessions, which allow for real-time collaboration and efficient digital transmittal of plan check comments to both City staff and applicants. Comments are organized systematically for clarity and consistency, and we can easily export annotated plan sets and comment logs for submittal.

In addition, we have developed client-specific tools, including customized checklists for different project types and ordinances, an automated water budget calculation spreadsheet aligned with MWELO requirements, and sample graphics to further streamline and standardize the review process.



VDLA's Approach to Service Delivery

Inspection Process:

VDLA ensures timely and thorough landscape inspections, offering full availability Monday through Friday. We commit to conducting inspections within 48 hours of the request, ensuring coordination with City staff and contractors. Our project management approach for inspections includes tailored client-specific checklists, a color-coded Excel tracking system for monitoring inspection dates and progress, and the use of triplicate forms. These forms are signed by contractors on-site to document required corrections, with copies provided to all stakeholders immediately.

Inspections are organized by water meter or Point of Connection, so that compliant areas can be approved without delaying other sections. VDLA also coordinates pre-construction meetings to review project requirements and establish inspection milestones. Our inspectors are equipped with cell phones and laptops to ensure consistent availability and communication with the City and project stakeholders.

Timelines and Service Efficiency:

VDLA ensures that the first landscape plan check is completed within 10 business days of receiving the submittal, with subsequent reviews completed within 5 business days. Additionally, VDLA has a dedicated employee responsible for the efficient pickup and delivery of plans between our office and the City of Solana Beach, ensuring prompt handling of all documents.

VDLA is structured to maintain flexibility and responsiveness even during periods of high workload. Our team includes a pool of experienced plan checkers and inspectors who can be reassigned as needed to support priority projects and ensure deadlines are met. We monitor project timelines and review capacity weekly, allowing us to proactively adjust assignments when incoming submittals exceed typical volumes.



Enhancing Efficiency through Streamlined SOPs

At VDLA, we are continuously refining our Standard Operating Procedures (SOPs) to enhance efficiency for the City or County agencies we work with. Our goal is to ensure smooth coordination, clear communication, and prompt service delivery for all projects. To this end, we have implemented the following measures:

Comprehensive Guidelines: VDLA has developed thorough guidelines for processing landscape and irrigation plans. These guidelines include tailored plant and tree lists for various project types such as medians, right-of-ways, and commercial frontages. This ensures consistency and adherence to local standards across all projects. VDLA also develops and provides standard titleblocks, signature blocks, and other graphics as needed in multiple formats for customer use to facilitate projects.

Plan Checklists: We have created detailed plan checklists for different project types, including front yard residential typicals, City-maintained projects, and commercial developments. These checklists streamline the review process, ensuring all necessary components are addressed and documented, reducing review time and rework.

Inspection Checklists: VDLA utilizes comprehensive inspection checklists that cover all phases of construction, including commercial, private, and City-maintained projects. These checklists are shared with contractors upfront, so they are fully aware of the required inspections, minimizing delays and ensuring compliance throughout the project lifecycle.

Inspection Request Protocol: We have established a dedicated inspection request email with clear protocols, making it easy for contractors to schedule inspections. This system allows for efficient scheduling and timely coordination between all parties.

Tracking Systems: VDLA maintains tracking spreadsheets for all past inspection requests, allowing both our team and City/County officials to monitor project progress and ensure all inspections are completed in a timely manner. This tracking system provides transparency and accountability at every stage.

Triplicate Inspection Forms: For each inspection, VDLA uses triplicate forms to document findings. A copy is provided to the contractor, another to the site superintendent, and the final copy is emailed directly to the inspection coordinator for digital filing. This ensures that all records are easily accessible for future reference and compliance verification.



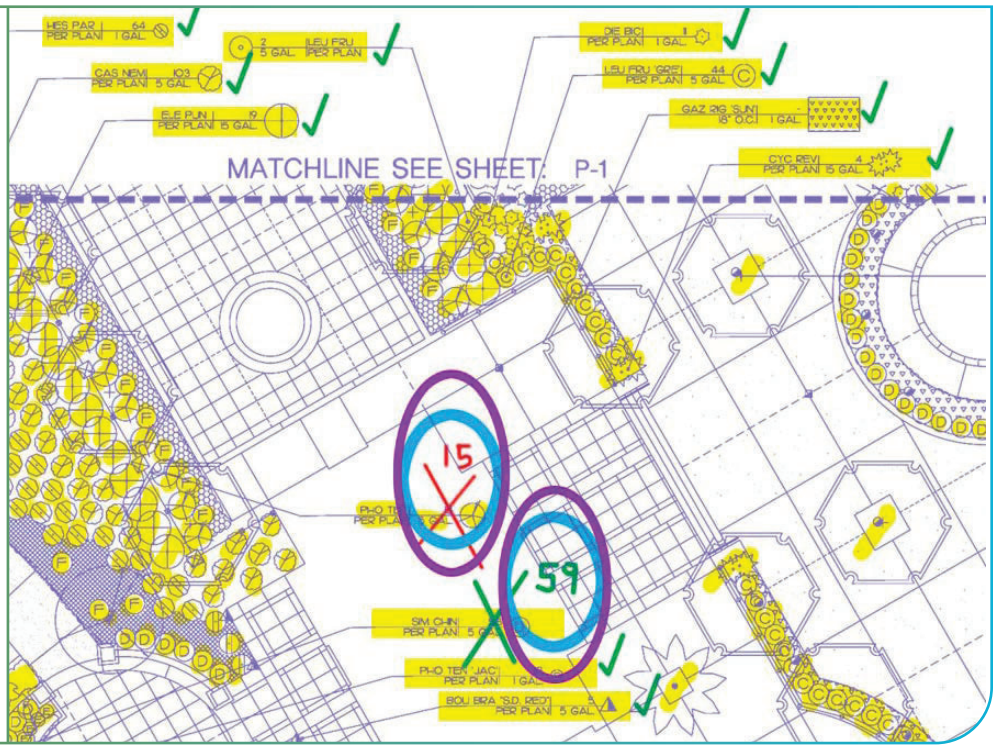
Quality Assurance

VDLA provides personalized, high quality services to our clients. Our creative design abilities and technically sound work products are supported by a proven track record and referrals from satisfied clients. We ensure quality consistently across all personnel by implementing and utilizing stringent quality control measures. As part of the firm's procedures to ensure well-coordinated and complete construction documents, our quality control system utilizes internal plan checking at all levels: conceptual, design development, final contract documents, and post construction evaluation. This program minimizes or eliminates conflicting information between disciplines and ensures that the highest quality documents possible are delivered to the client. The program is described below.

All plans are checked by an experienced plan checker. Required revisions are indicated in red, and all correct information is highlighted in yellow. This ensures each item on the plan is checked. Plans are then returned to the applicant, and corrected by the designer or draftsperson, with revisions are circled in blue. This ensures each required revision is corrected. Corrections are then verified by an experience plan checker by comparing the marked plan set with a final print. After the correction has been verified, it is circled in purple. This three step process ensures each revision was made correctly.

VDLA's In-Depth Quality Control Process

LANDSCAPE ARCHITECTS



F. Pricing

VDLA
LANDSCAPE
ARCHITECTS



VDLA 2025 Hourly Rates

Landscape Architectural Services	
Principal	$ 205
Associate/Design Director	$ 155
Project Manager	$ 150
Landscape Designer/Project Administrator	$ 125
Agency Plan Checker	$ 135
Agency Landscape/Irrigation Inspector	$ 135
GPS Surveyor	$ 135
GPS Survey Crew (2) Team Members	$ 245
Admin	$ 105

VDLA LANDSCAPE ARCHITECTS

Our Services

- Planning
- Master Planning
- Concept Design
- Construction Documentation
- Irrigation Master Planning
- Irrigation Design
- Irrigation Audits
- Water Management Services
- Construction Administration
- Graphic Communication
- Community Outreach
- Landscape Plan Checking
- Site Inspections
- Technical Writing

VDLA is a Certified Small Business (Micro) #1188980

CA.GOV DGS CALIFORNIA DEPARTMENT OF GENERAL SERVICES

Contact Us

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vdla.us

City of Solana Beach

PROFESSIONAL SERVICES AGREEMENT

FOR LANDSCAPE PLAN REIVEW AND INSPECTION SERVICES

This Professional Services Agreement ("AGREEMENT") is made and entered into this 1st day of September, 2025 by and between the CITY OF SOLANA BEACH, a municipal corporation ("CITY"), and, VDLA Landscape Architecture a California Corporation ("CONTRACTOR") (collectively "PARTIES").

WHEREAS, the CITY desires to employ a CONTRACTOR to furnish LANDSCAPE PLAN REVIEW AND INSPECTION SERVICES ("PROFESSIONAL SERVICES") for PRIVATE DEVELOPMENT PROJECTS ("PROJECT"); and

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

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

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

1. PROFESSIONAL SERVICES.

1.1. Scope of Services. The CONTRACTOR shall perform the PROFESSIONAL SERVICES as set forth in the written Scope of Services, attached as Exhibit "A" Scope of Services and Fee, at the direction of the CITY. CITY shall provide CONTRACTOR access to appropriate staff and resources for the coordination and completion of the projects under this AGREEMENT. For all work to be performed on site in the City, the CITY and CONTRACTOR agree that the CONTRACTOR's work on the Scope of Services begins when the CONTRACTOR arrives on site and terminates when the CONTRACTOR leaves the site. Travel time to and from project site shall not be considered time on the job or compensated by the CITY.

1.2. Project Coordinator. The COMMUNITY DEVELOPMENT DIRECTOR] is hereby designated as the Project Coordinator for CITY and will monitor the progress and execution of this AGREEMENT. CONTRACTOR shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this AGREEMENT for CONTRACTOR. Yale Hooper, Principal In Charge, is hereby designated as the Project Director for CONTRACTOR.

1.3. City Modification of Scope of Services. CITY may order changes to the Scope of Services within the general scope of this AGREEMENT consisting of additions, deletions, or other revisions. If such changes cause a change in the CONTRACTOR's cost of, or time required for, completion of the Scope of Services, an equitable adjustment to CONTRACTOR's compensation and/or contract time shall be made, subject to the CITY's approval. All such changes shall be authorized in writing, executed by the PARTIES.

2. DURATION OF AGREEMENT.

2.1. Term. The term of this AGREEMENT shall be for a period of three (3) years beginning from the date of execution of the AGREEMENT. Time is of the essence in the performance of work under this AGREEMENT, unless otherwise specified.

ATTACHMENT 3

2.2. **Extensions.** ☒ If marked, the CITY shall have the option to extend the AGREEMENT for two (2) additional one (1) year periods or parts thereof for an open-ended amount, funded by pass-through fees collected from property owners at the time of project application submittal per AGREEMENT year. Extensions shall be in the sole discretion of the City Manager and shall be based upon CONTRACTOR's satisfactory past performance, CITY needs, and appropriation of funds by the City Council. The CITY shall give written notice to CONTRACTOR prior to exercising the option.

2.3. **Delay.** Any delay occasioned by causes beyond the CONTRACTOR's control may merit an extension of time for the completion of the Scope of Services. When such delay occurs, CONTRACTOR shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the PROFESSIONAL SERVICES when justified by the circumstances.

2.4. **City's Right to Terminate for Default.** Should CONTRACTOR be in default of any covenant or condition hereof, CITY may immediately terminate this AGREEMENT for cause if CONTRACTOR fails to cure the default within ten (10) calendar days of receiving written notice of the default.

2.5. **City's Right to Terminate without Cause.** Without limiting its rights in the event of CONTRACTOR's default, CITY may terminate this AGREEMENT, without cause, by giving written notice to CONTRACTOR. Such termination is effective upon receipt of the written notice. CONTRACTOR shall be compensated for all effort and material expended on behalf of CITY under the terms of this AGREEMENT, up to the effective date of termination. All personal property remaining in CITY facilities or on CITY property thirty (30) days after the expiration or termination of this AGREEMENT shall be, at CITY's election, considered the property of CITY.

2.6. Consultant's Right to Terminate. CONSULTANT may terminate this AGREEMENT without cause by giving thirty (30) days' notice to CITY. CONSULTANT may, at its election, terminate or suspend performance under this AGREEMENT should CITY be in default of any covenant or condition hereof if CITY fails to cure the default within ten (10) calendar days of receiving written notice of default. The time to perform services under this AGREEMENT shall be extended for any period of suspension.

3. COMPENSATION.

3.1. **Total Amount.** The total cost for all work described in the Scope of Services and Fee (Exhibit "A") shall be for an open-ended amount, funded by pass-through fees collected from property owners at the time of application submittal. CONTRACTOR shall bill the CITY for work provided and shall present a written request for such payment monthly.

3.2. **Additional Services.** CITY may, as the need arises or in the event of an emergency, request additional services of CONTRACTOR. Should such additional services be required, CITY and CONTRACTOR shall agree to the cost prior to commencement of these services in writing, executed by CITY and CONSULTANT and CITY.

3.3. **Costs.** Any costs billed to the CITY shall be approved in writing in advance and in accordance with any terms negotiated and incorporated herein as part of Exhibit "A" Scope of Services and Fee.

4. INDEPENDENT CONTRACTOR.

4.1. CONTRACTOR is, for all purposes arising out of this AGREEMENT, an independent contractor. The CONTRACTOR has and shall retain the right to exercise full control and supervision of all persons assisting the CONTRACTOR in the performance of said services hereunder, the CITY only being concerned with the finished results of the work being performed. Neither CONTRACTOR nor CONTRACTOR's employees shall in any event be entitled to any benefits to which CITY employees are entitled, including, but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave or other leave benefits. CONTRACTOR is solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

4.2 **PERS Eligibility Indemnification**. In the event that CONTRACTOR's employee providing services under this AGREEMENT claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS of the CITY, CONTRACTOR shall indemnify, defend, and hold harmless CITY from such claims and for the payment of any employer and employee contributions for PERS benefits on behalf of the employee as well as for payment of any costs (including attorney fees and costs), and penalties and interest on such contributions which would otherwise be the responsibility of the CITY. Notwithstanding any other agency, state, or federal policy, rule, regulation, law or ordinance to the contrary, CONTRACTOR's employees providing service under this AGREEMENT shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation and benefit including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contributions to be paid by CITY for employer contributions and/or employee contributions for PERS benefits.

4.3 **Limitation of CITY Liability**. The payment made to CONTRACTOR pursuant to this AGREEMENT shall be the full and complete compensation to which CONTRACTOR and CONTRACTOR's officers, employees, agents and subcontractors are entitled for performance of any work under this AGREEMENT. Neither CONTRACTOR nor CONTRACTOR's officers or employees are entitled to any salary or wages, or retirement, health, leave, or other fringe benefits applicable to employees of the CITY. The CITY will not make any federal or state tax withholdings on behalf of CONTRACTOR. The CITY shall not be required to pay any workers' compensation insurance on behalf of CONTRACTOR.

4.4 **Indemnification for Employee Payments**. CONTRACTOR agrees to defend and indemnify the CITY for any obligation, claim, costs (including attorney fees and expert costs), suit, or demand for tax, retirement contribution including any contribution to the PERS, social security, salary or wages, overtime payment, or workers' compensation payment which the CITY may be required to make for work done under this AGREEMENT.

4.5 The provisions of this section 4 are continuing obligations that shall survive expiration or termination of this AGREEMENT.

5. STANDARD OF PERFORMANCE.

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

6. WARRANTY OF CONTRACTOR'S LICENSE.

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

7. AUDIT OF RECORDS.

7.1. At any time during normal business hours and as often as may be deemed necessary the CONTRACTOR shall make available to a representative of CITY for examination all of its records with respect to all matters covered by this AGREEMENT and shall permit CITY to audit, examine, and/or reproduce such records. CONTRACTOR shall retain such financial and program service records for at least four (4) years after termination or final payment under this AGREEMENT.

7.2. The CONTRACTOR shall include the CITY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY AND SECURITY.

8.1. **Confidential Work Product.** All professional services performed by CONTRACTOR, including but not limited to all drafts, data, correspondence, proposals, reports, research, and estimates compiled or composed by CONTRACTOR, pursuant to this AGREEMENT, are for the sole use of the CITY, its agents, and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the CITY. This provision does not apply to information that (a) was publicly known, or otherwise known to CONTRACTOR, at the time that it was disclosed to CONTRACTOR by the CITY, (b) subsequently becomes publicly known through no act or omission of CONTRACTOR or (c) otherwise becomes known to CONTRACTOR other than through disclosure by the CITY. Except for any CITY-approved subcontractors, neither the documents nor their contents shall be released to any third party without the prior written consent of the CITY. The sole purpose of this section is to prevent disclosure of CITY's confidential and proprietary information by CONTRACTOR or subcontractors.

8.2. **Confidentiality**. Both PARTIES recognize that their respective employees and agents, in the course of performance of this AGREEMENT, may be exposed to confidential information and that disclosure of such information could violate the rights of private individuals and entities, including the PARTIES and third parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (*e.g.*, social security numbers) and trade secrets, each as defined by applicable state law, and all other information protected by applicable law ("Confidential Information"). The party receiving Confidential Information ("Receiving Party") of the other ("Disclosing Party") shall not, and shall cause its employees and agents who are authorized to receive Confidential Information, not to, use Confidential Information for any purpose except as necessary to implement, perform or enforce this AGREEMENT or comply with its legal obligations. Receiving Party will use the same reasonable efforts to protect the Confidential Information of Disclosing Party as it uses to protect its own proprietary information and data. The Receiving Party will not disclose or release Confidential Information to any third person without the prior written consent of the Disclosing Party, except for where required by law or for authorized employees or agents of the Receiving Party. Prior to disclosing the Confidential Information to its authorized employees or agents, Receiving Party shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this AGREEMENT. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure. If Receiving Party believes the Confidential Information must be disclosed under applicable law, Receiving Party may do so provided that, to the extent permitted by law, the other party is given a reasonable notice and opportunity to contest such disclosure or obtain a protective order. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Receiving Party; (ii) the Disclosing Party regularly discloses to third parties without restriction on disclosure; or (iii) the Receiving Party obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation. Notwithstanding any provision to the contrary in this AGREEMENT, Confidential Information

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

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

9. CONFLICTS OF INTEREST.

9.1. CONTRACTOR shall at all times comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code Section 81000 *et seq*. (Political Reform Act) and Section 1090 *et seq*. CONTRACTOR shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONTRACTOR has a financial interest as defined in Government Code Section 87103. CONTRACTOR represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the CITY.

9.2. If, in performing the PROFESSIONAL SERVICES set forth in this AGREEMENT, the CONTRACTOR makes, or participates in, a "governmental decision" as described in Title 2, Section 18700.3(a) of the California Code of Regulations, or performs the same or substantially all the same duties for the CITY that would otherwise be performed by a CITY employee holding a position specified in the department's conflict of interest code, the CONTRACTOR shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the CONTRACTOR's relevant financial interests.

9.3. ☒ If checked, the CONTRACTOR shall comply with all of the reporting requirements of the Political Reform Act. Specifically, the CONTRACTOR shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the CITY's determination that the CONTRACTOR is subject to a conflict of interest code. The CONTRACTOR shall also file a Form 700 (Annual Statement) on or before April 1 of each year of the AGREEMENT, disclosing any financial interests held during the previous calendar year for which the CONTRACTOR was subject to a conflict of interest code.

9.4. CITY represents that pursuant to California Government Code Section 1090 *et seq.*, none of its elected officials, officers, or employees has an interest in this AGREEMENT.

10. DISPOSITION AND OWNERSHIP OF DOCUMENTS.

10.1. All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONTRACTOR under this AGREEMENT, whether paper or electronic, shall become the property of CITY, and shall be turned over to the CITY upon completion of the PROJECT or any phase thereof, as contemplated by this AGREEMENT.

10.2. Contemporaneously with the transfer of documents, the CONTRACTOR hereby assigns to the CITY and CONTRACTOR thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications, or other work prepared under this AGREEMENT, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONTRACTOR shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

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

11. INSURANCE

11.1. CONTRACTOR shall procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, their agents, representatives, employees, or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" unless otherwise approved in writing by the CITY's Risk Manager.

11.2. CONTRACTOR's liabilities, including but not limited to CONTRACTOR's indemnity obligations, under this AGREEMENT, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the CITY is entitled to thirty (30) days prior written notice of cancellation or non-renewal of the policy or policies, or ten (10) days prior written notice for cancellation due to non-payment of premium. Maintenance of specified insurance coverage is a material element of this AGREEMENT.

11.3. **Types and Amounts Required.** CONTRACTOR shall maintain, at minimum, the following insurance coverage for the duration of this AGREEMENT. If CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown below, the CITY shall be entitled to the broader coverage and/or the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

11.3.1. ☒**Commercial General Liability (CGL).** If checked the CONTRACTOR shall maintain CGL Insurance written on an ISO Occurrence form or equivalent providing coverage at least as broad as CG 00 01 which shall cover liability arising from any and all personal injury or property damage, including ongoing and completed operations, in the amount no less than $1,000,000.00 per occurrence and subject to an annual aggregate of $2,000,000.00. If limits apply separately to this project (CG 25 03 or 25 04) the general aggregate limit shall not apply. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy. Any excess or umbrella policies being used to meet the required limits of insurance will be evaluated separately and must meet the same qualifications as the CONTRACTOR's primary policy.

11.3.2. ☒**Commercial Automobile Liability.** If checked the CONTRACTOR shall maintain Commercial Automobile Liability Insurance for all of the CONTRACTOR's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit no less than $1,000,000.00 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3. ☒**Workers' Compensation.** If checked the CONTRACTOR shall maintain Worker's Compensation insurance for all of the CONTRACTOR's employees who are subject to this AGREEMENT and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum $1,000,000.00 employers' liability coverage. The CONTRACTOR shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.

11.3.4. ☒**Professional Liability.** If checked the CONTRACTOR shall also maintain Professional Liability (errors and omissions) coverage with a limit no less than $1,000,000 per claim and $2,000,000 annual aggregate. The CONTRACTOR shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this AGREEMENT whichever occurs last. The CONTRACTOR agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the CITY's exposure to loss. All defense costs shall be outside the limits of the policy.

11.3.5. ☐**Fidelity and Crime Liability.** If checked, the CONTRACTOR shall also maintain Fidelity and Crime coverage for theft of CITY property for an amount no less than $1,000,000 per loss.

11.3.6. ☐**Sexual Abuse and Molestation ("SAM") Insurance.** If checked, the CONTRACTOR shall also maintain sexual abuse and molestation (SAM) insurance with limits not less than $1,000,000 per occurrence or claim with an aggregate of not less than $2,000,000. The policy shall provide coverage including but not limited to claims for improper sexual conduct, damages because of bodily injury, and negligent hiring and supervision. All defense costs shall be outside the limits of the policy.

11.3.7. ☐**Contractor's Pollution Legal Liability.** If checked, the CONTRACTOR shall procure and maintain contractors' pollution legal liability and/or errors and omissions with limits no less than $1,000,000 per occurrence or claim with an aggregate of not less than $2,000,000 to cover liability and legal expenses arising out of cleanup, removal, storage, or handling of hazardous or toxic chemicals, materials, substances, or any other pollutants by the CONTRACTOR or any subcontractor resulting from pollution conditions.

11.4. Self-Insured Retentions. Any self-insured retentions are the responsibility of the CONTRACTOR and must be declared to and approved by the CITY. At the option of the CITY, either (1) the insurer shall reduce or eliminate such self-insured retentions as respects the CITY, its officers, officials, employees, and volunteers, or (2) the CONTRACTOR shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5. Waiver of Subrogation. CONTRACTOR hereby grants to CITY and its respective elected officials, officers, employees, agents and representatives a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

11.6. Additional Required Provisions. The commercial general liability, including any excess or umbrella policies being used to meet the required limits of insurance, and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.6.1. The CITY, its officers, officials, employees, and representatives shall be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. The CITY's additional insured status must be reflected on additional insured endorsement form (20 10 1185 or 20 10 1001 and 20 37 1001) which shall be submitted to the CITY.

11.6.2. The policies are primary and non-contributory to any insurance that may be carried by the CITY, as reflected in an endorsement at least as broad as CG 20 01 04 13 which shall be submitted to the CITY. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or representatives shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

11.7. Verification of Coverage. CONTRACTOR shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this Section 11, as well as a complete, certified copy of any general liability policy being used to meet the required limits of insurance, which shall include the declaration pages, a schedule of forms listing all policy endorsements, and all policy forms. The endorsements should be on forms approved by the CITY or on other than the CITY's forms provided those endorsements conform to CITY requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

11.8. Excess or Umbrella Policies. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this agreement, said policies shall meet all of the insurance requirements stated in this document, including, but not limited to, the additional insured, contractual liability, "insured contract" definition, occurrence definition, primary and non-contributory, indemnity, and defense requirements. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the CONTRACTOR's primary and excess liability policies are exhausted.

11.9. Special Risks or Circumstances. CITY reserves the right to modify these requirements, including limits, based on the nature of risk, prior experience, insurer, coverage, or other special circumstances.

12. INDEMNIFICATION.

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

13. SUBCONTRACTORS.

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

13.2. All contracts entered into between the CONTRACTOR and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this PROJECT and for the duration of this AGREEMENT. The CONTRACTOR shall require the subcontractor to obtain, all policies described in Section 11 in the amounts required by the CITY, which shall not be greater than the amounts required of the CONTRACTOR.

13.3. In any dispute between the CONTRACTOR and its subcontractor, the CITY shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONTRACTOR agrees to defend and indemnify the CITY as described in Section 12 of this AGREEMENT should the CITY be made a party to any judicial or administrative proceeding to resolve any such dispute.

14. NON-DISCRIMINATION.

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

15. NOTICES.

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

Joseph Lim, Community Development Director

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

Yale Hooper, President

VDLA Landscape Architects
462 Stevens Avenue, Suite 107
Solana Beach, CA 92075

16. ASSIGNABILITY.

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

17. RESPONSIBILITY FOR EQUIPMENT.

CITY shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONTRACTOR or any of CONTRACTOR's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONTRACTOR by CITY. The acceptance or use of any such equipment by CONTRACTOR, CONTRACTOR's employees, or

subcontractors shall be construed to mean that CONTRACTOR accepts full responsibility for and agrees to exonerate, defend, indemnify, and hold harmless CITY from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE.

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

19. COMPLIANCE WITH LAWS.

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

20. ENTIRE AGREEMENT.

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

21. NO WAIVER.

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

22. SEVERABILITY.

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

23. DRAFTING AMBIGUITIES.

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

24. CONFLICTS BETWEEN TERMS.

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

25. EXHIBITS INCORPORATED.

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

26. SIGNING AUTHORITY.

26.1. The representative for each Party signing on behalf of a corporation, partnership, joint venture, association, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, association, or entity and agrees to hold the other Party or PARTIES hereto harmless if it is later determined that such authority does not exist.

26.2. ☐ If checked, a proper notary acknowledgement of execution by CONTRACTOR must be attached.

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

CITY OF SOLANA BEACH, a municipal corporation

By:

City Manager, Alyssa Muto

VDLA Landscape Architects

By:

Signature

Yale Hooper, President

ATTEST:

City Clerk. Angela Ivey, CMC

APPROVED AS TO CONTENT:

Joseph Lim, Community Development Director

APPROVED AS TO FORM:

City Attorney, Johanna N. Canlas

EXHIBIT “A”

SCOPE OF SERVICES AND FEE

Scope of Services and Fees Defined