

**CITY OF SANTEE  
AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement for Professional Service ("Agreement") is made and entered into as of [date], by and between the City of Santee, a California charter city ("City") and [Full Legal Name of Entity], a [corporation, partnership, LLC or LLP, sole proprietor, etc.] ("Consultant), either or which may also be referred to as "Party" or, collectively, as "Parties".

**RECITALS**

A. Consultant has been selected to provide \_\_\_\_\_ (the "Services") to or on behalf of the City on the basis of demonstrated competence and qualifications at a fair and reasonable rate in accordance with Santee Municipal Code Chapter 3.24.

B. Consultant warrants that it is duly licensed and/or has the necessary qualifications to provide such Services.

C. The City wishes to retain Consultant as an independent contractor to provide, and Consultant wishes to provide, the Services on the terms stated in this Agreement.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. **Scope of Consultant's Services.** Consultant will perform the services described in the Scope of Services attached as **Exhibit A** and made a part of this Agreement. Services performed outside the Scope of Services will not be compensated for in the absence of the City's prior written authorization.

2. **Term and Renewal.** This Agreement will become effective on [date] and will remain in effect for a period of \_\_\_\_\_ year\_ unless terminated by either Party in accordance with the terms of this Agreement (the "Initial Term"). At the expiration of the Initial Term, the Agreement may be extended for up to \_\_\_\_ additional one-year terms upon the express written consent of the Parties.

3. **Compensation for Services.** Consultant will be compensated for Services as earned in accordance with the Fee Schedule attached as **Exhibit B** and made a part of this Agreement

3.1 **Not-to-Exceed Amount.** The costs of services payable to Consultant during the Initial Term of this Agreement shall not exceed \$\_\_\_\_\_. Any agreed upon extensions of the Agreement will be subject to and contingent on budget appropriations approved by the Santee City Council. If no appropriations are approved, the Agreement will immediately terminate without penalty to the City.

3.2 **Invoices.** Consultant will provide an invoice to the City Representative no later than the 10<sup>th</sup> day of each month for all work performed and expenses incurred during

the previous month with sufficient detail for the City to confirm compliance with the Scope of Services and Fee Schedule. The City reserves the right to require additional information to support payments to the Consultant.

3.3 **Payment.** The City will use its best efforts to pay all uncontested amount amounts set forth in Consultant's invoice within thirty (30) days of receipt. Payment will not be deemed to waive any defects in the work performed.

4. **Authorized Representatives.**

4.1 **Consultant Representative.** Consultant will assign \_\_\_\_\_ to serve as *Project Manager*. The Project Manager shall not be removed from the *Project* or reassigned without the prior written consent of the City. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement.

4.2 **City Representative.** The City will be represented by \_\_\_\_\_, (the "City Representative"), who is designated and authorized to act on behalf of the City for all purposes relating to budget, performance, administration, payment, and successful completion of this Agreement.

5. **Insurance.** Consultant will maintain insurance coverage sufficient to meet the requirements set forth in **Exhibit C**, which is incorporated by this reference. Consultant will provide evidence that such requirements have been met before incurring any charges for its Services, and must provide updated information to the City Representative in the event any changes are made during the term of this Agreement.

6. **Indemnification.** To the fullest extent permitted by law, Consultant will indemnify and hold harmless City and any and all of its elected or appointed officials, employees, agents, and/or volunteers ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs, and expenses, including attorney's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of services under this Agreement. Consultant's duty to indemnify and hold harmless City shall not extend to the City's sole or active negligence or willful misconduct.

6.1. **Duty to defend.** In the event the Indemnified Parties, individually or collectively, are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the Services encompassed by this Agreement, and upon demand by City, Consultant will defend the Indemnified Parties at Consultant's cost or, at City's option, to reimburse City for its costs of defense, including reasonable attorney's fees for the attorneys of City's choice, and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by Consultant's negligent acts, errors or omissions. Payment by City is not a condition precedent to enforcement of this provision. In the event of any dispute between Consultant and City as to whether liability arises from the sole or active 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 Indemnified Parties as solely or actively negligent or to have acted with willful misconduct. 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.

**6.1 Design Professionals.** If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

**7. No Conflict of Interest.** Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

**7.1 No City Interest.** The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this Agreement, the Consultant shall not offer to, encourage or accept any financial interest in the Consultant's business by any City employee or official.

**7.2 No Developer Representation.** If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

**8. Termination.** Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party 30 days written notice of such termination and the effective date thereof.

**8.1 For Cause.** If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the terms of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work

satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

**8.2 Return of Property.** Within 30 days of the date of termination, Consultant will return all property belonging to the City.

**8.2 Final Invoice.** Upon termination, Consultant will submit a final invoice for all unbilled work performed through the date of termination. The City will have no obligation to pay Consultant for work performed after termination of this Agreement.

**9. Notice.** Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed as shown below and shall be effective upon receipt thereof.

City:  
Name  
Title:  
Santee of Santee  
10601 Magnolia Avenue  
Santee, CA 92071

Consultant:  
Attn:  
Title  
Company  
Address  
Address

## **10. General Terms**

**10.1 Time of Performance.** Consultant will perform its services hereunder in a prompt and timely manner,

**10.2 Independent Contractor.** Consultant is retained as an independent contractor and is not an agent or employee of the City. No employee or agent of Consultant will by this Agreement become an agent or employee of the City. The work to be performed shall be in accordance with the work described in Exhibit A, subject to such directions and amendments from the City as may be provided. Consultant will have no authority, express or implied, pursuant to this Agreement to bind the City to any obligation whatsoever. Consultant enters into this Agreement as, and shall continue to be, an independent Consultant. All services shall be performed only by Consultant and Consultant's employees, if applicable. Under no circumstances shall Consultant, or any of Consultant's employees, look to the City as his or her employer, or as a partner, agent or principal. Neither Consultant, nor any of Consultant's employees, shall be entitled to any benefits accorded to City employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Consultant shall be responsible for providing, at Consultant's expense, and in Consultant's name, unemployment, disability, worker's compensation and other insurance, as well as licenses and permits usual or necessary for conducting the services.

**10.3 Maintenance of Records.** Books, documents, papers, accounting records, and other evidence pertaining to work done and costs incurred pursuant to this Agreement shall be maintained by Consultant and made available for inspection, audit and copying by the Santee at all reasonable times during the term of this Agreement and for four (4) years from the date of final payment under the Agreement.

**10.4 Ownership and Use of Work.** All documents and materials prepared pursuant to this Agreement will be considered the property of the City, and will be turned over to the City upon demand, but in any event upon completion of the work. The City reserves the right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other documents and materials prepared under this Agreement without the permission of Consultant. All documents and materials shall be delivered in a reproducible form. As used herein, “documents and materials” include, but are not limited to, any original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, and computer files prepared or developed pursuant to this Agreement.

**10.5 Findings Confidential.** Any reports, information, data or materials given to or prepared or assembled by Consultant under this Agreement are confidential and shall not be made available to any individual or organization by Consultant without prior written approval of Santee.

**10.6 Delays in Performance.** Neither the City nor Consultant will be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; pandemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint. Should such circumstances occur, the non-performing party will, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

**10.7 Compliance with Law.** Consultant will comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government. If Consultant’s failure to comply with applicable laws, ordinances, codes and regulations results in a claim for damage or liability to Santee, Consultant will be responsible for indemnifying and holding the Santee harmless as provided in this Agreement.

**10.8 Permits.** Consultant will assist the City when necessary to obtain and maintain any and all permits required of Consultant by federal, state and local regulatory agencies.

**10.8 Standard of Care.** Consultant’s services will 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 the profession currently practicing under similar conditions.

**10.9 Assignment and Subcontractors.** Consultant may not assign, delegate, sublet, or transfer this Agreement or any rights or interest under this Agreement without the City's written consent, which may be withheld for any reason. A consent to one assignment will not be deemed to be consent to any subsequent assignment. Nothing contained herein will prevent Consultant from employing independent associates and subcontractors as Consultant may deem appropriate to assist in the performance of services hereunder.

**10.10 Scope of Contract and Hierarchy of Terms.** This Agreement includes all terms and conditions specified in any request for proposals issued by the City ("RFP") and Contractor's successful proposal or offer ("Proposal") upon which this Agreement was awarded, which are incorporated for all purposes. To the extent there is any conflict among the documents, the following order of priority shall control: (a) this Agreement; (b) Attachment A, Scope of Services; (c) Attachment B, Contractor's Schedule of Fees; (d) Attachment C, Insurance Requirements; (e) RFP; and (f) Proposal.

**10.11 Integration.** This Agreement represents the entire understanding of the City and Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

**10.12 Confidentiality.** Consultant shall keep confidential all information, in whatever form, produced, prepared, observed or received by Consultant to the extent that such information is confidential by law or otherwise required by this Agreement.

**10.13 Laws, Venue, and Attorneys' Fees.** This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees.

**10.14. Third Party Rights.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Santee and the Consultant.

**10.15. Severability and Waiver.** The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal. Waiver by any party of any portion of this Agreement shall not constitute a waiver of any other portion thereof.

**10.16 Non-discrimination.** Consultant will comply with all applicable federal, state and local laws, ordinances, and regulations, including the Americans with Disabilities

Act (ADA), California Fair Employment and Housing Act (FEHA) and Title VII of the Civil Rights Act of 1964. Consultant will not discriminate in any way, against any person, on the ground of race, color, national origin, religion, religious creed, age (over 40), sex and gender (including pregnancy, childbirth, breastfeeding or related medical conditions), sexual orientation, gender identity, gender expression, disability (mental and physical), medical condition, genetic information, marital status, or military and veteran status, in connection with services under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SANTEE OF SANTEE:

Consultant:

By: \_\_\_\_\_  
Gary Halbert  
Interim City Manager

By: \_\_\_\_\_  
[Name]  
[Title]

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: \_\_\_\_\_  
Shawn Hagerty  
City Attorney

**EXHIBIT 'A'**  
**SCOPE OF SERVICES**



**EXHIBIT 'B'**  
**SCHEDULE OF FEES**

**EXHIBIT 'C'**  
**INSURANCE**

4. **Insurance**

a. **Commercial General Liability**

- (i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the Santee.
- (ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:
  - (1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
- (iii) Commercial General Liability Insurance must include coverage for the following:
  - (1) Bodily Injury (including death) and Property Damage
  - (2) Personal Injury/Advertising Injury
  - (3) Premises/Operations Liability
  - (4) Products/Completed Operations Liability
  - (5) Aggregate Limits that Apply per Project
  - (6) Explosion, Collapse and Underground (UCX) exclusion deleted
  - (7) Contractual Liability with respect to this Contract
  - (8) Broad Form Property Damage
  - (9) Independent Consultants Coverage
  - (10) Sexual Misconduct Coverage, with no applicable sublimit
- (iv) All such policies shall name the Santee of Santee, its Santee Council and each member thereof, its officers, employees, and agents as Additional Insureds under the policy.
- (v) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by

the Santee. All deductibles and self-insured retentions must be declared to the Santee prior to commencing work under this Agreement.

b. Automobile Liability

- (i) At all times during the performance of the work under this Agreement the Consultant shall maintain Automobile Liability Insurance for bodily injury (including death) and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the Santee.
- (ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).
- (iii) The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by the Santee.

c. Workers' Compensation/Employer's Liability

- (i) At all times during the performance of the work under this Agreement the Consultant shall maintain Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts indicated herein.
- (ii) Such insurance shall include an insurer's Waiver of Subrogation in favor of the Santee and will be in a form and with insurance companies acceptable to the Santee.
- (iii) If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the Santee.
- (iv) Before beginning work, the Consultant shall furnish to the Santee satisfactory proof that he/she has taken out for the period covered by the work under this Agreement, full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof. Consultant shall require all subConsultants to obtain and maintain, for the period covered by the work

under this Agreement, worker's compensation of the same type and limits as specified in this Section.

d. Professional Liability (Errors and Omissions)

- (i) At all times during the performance of the work under this Agreement and for 60 months following the date of Project completion and acceptance by the Santee, the Consultant shall maintain Professional Liability insurance, in a form and with insurance companies acceptance to the Santee and in an amount indicated herein; provided, however, that if the work under this Agreement involves teaching, coaching, or childcare, Consultant shall provide Educators Legal Liability ("ELL") insurance in lieu of Professional Liability insurance

e. Pollution/Asbestos Legal Liability

- (i) At all times during the performance of the work under this Agreement and for sixty (60) months following the date of Project completion, the Consultant shall maintain Pollution Legal Liability insurance and/or Asbestos Legal Liability insurance and/or Errors and Omissions (if the Project involves environmental hazards) in an amount indicated herein.
- (ii) The Consultant, along with all employees, agents and subConsultants who have a reasonable probability of coming into contact with hazardous materials, shall be adequately trained to comply with and shall comply with all laws and regulations relating to the care and protection of the environment in the performance of the work performed by the Consultant or any portion thereof.

f. Cyber Liability

- (i) At all times during the performance of the work under this Agreement and for sixty (60) months following the date of Project completion, the Consultant shall carry and maintain, at its own expense, including any Santee-approved deductibles or retentions, Cyber Liability insurance in an amount stated herein. The Cyber Liability policy must include security and privacy liability, media liability, business interruption and extra expense, and cyber extortion liability, as specified by the Santee. Such coverage is required if Consultant provides products and/or services related to information technology and electronic data processing (including hardware and software) to the Santee or as otherwise required by the Santee.

g. Minimum Policy Limits Required

- (i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$2,000,000 per occurrence/\$4,000,000 aggregate for bodily injury (including death), personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury (including death) and property damage
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Professional Liability / ELL	\$1,000,000 per claim and aggregate (errors and omissions)
Pollution/Asbestos Liability	\$1,000,000 per occurrence or claim/\$2,000,000 aggregate (if Project involves environmental hazards)
Cyber Liability Insurance	\$1,000,000 per occurrence/\$2,000,000 aggregate (if Project involves electronic data processing or development of hardware or software)

If Consultant maintains higher limits than the minimums shown above, the Santee requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any

available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Santee.

h. Evidence of Insurance Required

- (i) Prior to execution of the Agreement, the Consultant shall file with the Santee evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative, Certificate of Insurance (most recent version of Acord 25 Form or equivalent), and Additional Insured Endorsement verifying compliance with the requirements. All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

i. Policy Provisions Required

- (i) The Santee of Santee, its Santee Council and each member thereof, its officers, employees, and agents shall be named as an additional insured on the Commercial General Liability policy, and, if the Project involves environmental hazards, on the Pollution/Asbestos Liability policy using form 2010 1185 or equivalent. Any subConsultant, subConsultant or similar entity performing work on the Project must add the Santee as an additional insured using CG form 20 38, or broader coverage. Blanket endorsements may be accepted at Santee's discretion. All policies shall contain or shall be endorsed to contain a provision that advanced written notice of any cancellation, including cancellation for non-payment of premium, shall be provided to the Santee. Statements that the carrier "will endeavor" and "that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," will not be acceptable on endorsements. At the Santee's sole discretion, the requirement to endorse policies to provide advanced written notice of cancellation to the Santee may be waived upon the Consultant's agreement that it shall provide the Santee with copies of any notices of cancellation immediately upon receipt.
- (ii) General Liability, Automobile Liability, and if required, Pollution Liability insurance policies shall contain a provision stating that the Consultant's

policies are primary insurance and that the insurance of the Santee or any named additional insureds shall not be called upon to contribute to any loss.

j. Qualifying Insurers

- (i) All policies required shall be issued by acceptable insurance companies, as determined by the Santee, which satisfy the following minimum requirements:

Insurance carriers shall be qualified to do business in California and maintain an agent for process within the State. Such insurance carrier shall have not less than an 'A' policyholder's rating and a financial rating of not less than "Class VII" according to the latest Best Key Rating Guide. Due to market fluctuations in the Workers Compensation sector, the Santee reserves the right and at its sole discretion to review and accept the Consultant's proposed Workers compensation insurance.

k. Additional Insurance Provisions

- (i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the Santee, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.
- (ii) If at any time during the life of the Agreement, the Consultant fails to maintain in full force any insurance required by the Agreement documents the Santee may terminate the Agreement or may elect to withhold compensation in an amount sufficient to purchase insurance to replace any expired or insufficient coverage.
- (iii) The Consultant shall include all subConsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subConsultant. All coverage for subConsultants shall be subject to all of the requirements stated herein.
- (iv) The Santee may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- (v) Neither the Santee, nor its Santee Council, nor any member of thereof, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Contract.

