

**CITY OF SANTEE**  
**REQUEST FOR PROPOSALS**



**REQUEST FOR PROPOSALS**  
**For**

**ADMINISTRATIVE HEARING OFFICER FOR CANNABIS  
BUSINESS PERMITTING PROCESS**

**RFP Issued | February 16, 2024**  
**RFP # | 23/24-40033**

**Proposals Due | March 18, 2024 at 5:00 pm**

City of Santee  
10601 Magnolia Avenue • Santee, CA 92071  
(619) 258-4100  
[www.CityofSanteeCA.gov](http://www.CityofSanteeCA.gov)



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REQUEST FOR PROPOSALS  
ADMINISTRATIVE HEARING OFFICER FOR  
CANNABIS BUSINESS PERMITTING PROCESS**

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Attachment 'A' – Professional Services Agreement

## 1. RFP Overview

### 1.1 Purpose of RFP

- The City of Santee, hereinafter referred to as “City”, is seeking proposals (“Proposals”) from qualified individuals to serve as a contract Administrative Hearing Officer for appeals to the cannabis business permitting process in the City. The successful applicant selected by the City will be awarded a two-year agreement.
- This Request for Proposals (“RFP”) describes the required qualifications, scope of services, the selection process, and the minimum information that must be included in the Proposal. Failure to submit information in accordance with the RFP requirements and procedures may be cause for disqualification.
- Proposers must meet the Minimum Qualifications to be considered for the RFP.
- Minimum Qualifications:
  - Be an attorney in good standing with the State Bar of California
  - Have at least 5 years of experience in municipal law
  - Have previous experience as an administrative hearing officer for appeals to a cannabis permitting process
  - Be able to conduct hearings virtually, or at Santee City Hall located at 10601 N. Magnolia Ave, Santee, CA 92071.
- Interested parties shall submit a Proposal Submittal (See Section 1.7) to display the capabilities in providing these services per the specifications outlined in this RFP. Based on this RFP, the City intends to select one individual for agreement negotiations. If the City is unable to reach an agreement with the selected individual, then the City has the option to negotiate with another. Award of the contract, if any, will be to the individual whose professional qualifications, experience, and proposed work plan demonstrates that the individual will competently satisfy the requirements

described in this RFP within the City's budget. Price will be a primary factor, but will not be the sole consideration for award. This RFP does not commit the City to award any contract, defray any costs incurred in the preparation of a Proposal pursuant to this RFP, or in any resulting negotiations, or to procure contracts for work.

- The successful proposer will be expected to execute the City's standard, template contract and will be required to meet specific insurance requirements and provide proof of Professional Liability insurance as specified in ATTACHMENT "A" - AGREEMENT FOR PROFESSIONAL SERVICES. Additionally, the selected proposers must have, or will be required to obtain, a business license to work in the City.
- Any changes to this RFP are invalid, unless specifically modified by the City and issued as a separate addendum document. Should there be any question as to changes to the content of this document, the City's copy shall prevail. All addenda and notices related to this solicitation will be posted by the City on the City's website at [www.cityofsanteeca.gov](http://www.cityofsanteeca.gov) under the "Bid Opportunities" of the main page. In the event this RFP is obtained through any means other than the City's website, the City will not be responsible for the completeness, accuracy or timeliness of the RFP document.

## 1.2 RFP Timeline

- Table 1, RFP Schedule of Events, identifies the RFP schedule that will be followed; note that dates are subject to change.

**Table 1 – RFP Schedule of Events**

RFP EVENT	DATE/TIME
<b>City Issues RFP</b>	<b>February 16, 2024</b>
Deadline for Proposer Questions	March 1, 2024
City Responses to All Questions	March 11, 2024
<b>Deadline for Proposal Submission (DELIVERED TO CLERK’S OFFICE)</b>	<b>March 18, 2024</b>
City Completes Evaluations	April 1, 2024
Interview of Top Proposals	<b>Week of April 15, 2024</b>
<b>City Council Approval (Tentative)</b>	<b>May 2024</b>
<b>Anticipated Award of Contract</b>	<b>May 2024</b>

1.3 RFP Coordination

- All communications concerning this RFP must be submitted via email to the RFP Coordinator identified below. The RFP Coordinator shall be the sole point of contact for this RFP.

Sandi Sawa, Director of Planning & Building  
City of Santee

- Email: [ssawa@CityofSanteeCa.gov](mailto:ssawa@CityofSanteeCa.gov)
- Proposer’s contact with anyone else in the City is expressly forbidden and may result in disqualification of the Proposer’s bid.

1.4 Proposal Preparation Costs

- The City will not pay any costs associated with the preparation, submittal, or presentation of any Proposal.

1.5 RFP Amendment and Cancellation

- The City reserves the unilateral right to amend this RFP in writing at any time. The City also reserves the right to cancel or reissue the RFP at its sole discretion. If an amendment is issued, it will be posted to the City’s procurement website, under the section titled “Bid Opportunities.” Proposers bear responsibility for monitoring the City’s procurement website for any related procurement updates and will need to respond to the final written RFP and any exhibits, attachments, and amendments.

## 1.6 Questions Pertaining to the RFP

- Specific questions concerning the RFP should be submitted via e-mail to the RFP Coordinator (See RFP Section 1.3 RFP Coordinator) no later than the “Deadline for Proposer Questions” as identified in Table 1, RFP Schedule of Events. Proposer questions should clearly identify the relevant section of the RFP and page number(s) related to the question being asked.
- Copies of all questions and the City’s responses will be posted to the City’s procurement website.

## 1.7 Proposal Submittal

- Proposals must be submitted no later than the “Deadline for Proposal Submission” as identified in Table 1, RFP Schedule of Events. Proposers assume the risk of the method of delivery chosen. The City assumes no responsibility for delays caused by any delivery service. A Proposer's failure to submit a Proposal as required before the deadline may cause the Proposal to be disqualified.
- Proposers must submit in a sealed package:
  - ◆ One (1) original, signed master RFP Response.
  - ◆ Three (3) printed copies of the RFP Response.
  - ◆ One (1) USB drive containing electronic copies of all files submitted, including complete set of documents covering the RFP response.
    - Proposals must be clearly identified “RFP – Administrative Hearing Officer for Cannabis Business Permitting Process” and submitted to:
      - City of Santee
      - Office of the City Clerk
      - 10601 Magnolia Avenue – Building 3
      - Santee, CA 92071-1222
    - All Proposals must be received before the Deadline for Proposal Submission date as indicated in Table 1, RFP Schedule of Events. Proposals received after this time and date may be returned unopened. Postmarks will ***not*** be accepted as proof of receipt. If any portion of this RFP is excluded, the proposer must clearly indicate such exclusions with their Proposal.



## 1.8 Public Records Law

- Pursuant to California Government Code Sections 7921.000-7921.010, public records may be inspected and examined by anyone desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. All submitted Proposals are subject to this code section. See RFP Section 6.18 Proprietary Information regarding proprietary response content.

## 2. Scope of Services

The Administrative Hearing Officer shall preside over hearings on appeals to the cannabis business permitting process in accordance with the Santee Cannabis Business Permit Appeals Process adopted by the City Council (“Appeals Process”). Please review the City’s Cannabis Business Permit Ordinance (Santee Municipal Code Chapter 7.04), the Appeals Process, and all other related documents pertaining to the City’s cannabis business permitting process. See all documents on the City’s website:

<https://www.cityofsanteeca.gov/business/cannabis-business>

Hearings will occur as requested by the City Manager, or designee, and responsibilities will include:

- Working with the City Clerk to schedule hearings;
- Reviewing case documentation;
- Conducting hearings;
- Preparing a written determination; and
- Performing all other services as outlined in the agreement for services, including all work necessary for the effective handling of the City’s cannabis business permitting process appeal hearings.

The City will provide administrative support in scheduling hearings and providing hearing rooms, documents, materials and equipment necessary for carrying out hearings.

Timeframe to hold hearings: At close of each phase of the process leading to (but not including) the final selection phase by the City Council, hearings shall be conducted within 30 days of notice to hearing officer that an appeal has been filed.

## 3. Proposal Submission Requirements

### 3.1 General Instructions

- The City discourages lengthy and costly Proposals. Proposal should be prepared simply and economically and provide a straightforward, concise description of the Proposer’s qualifications

and capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content. Glossy sales and marketing brochures are not necessary or desired.

- Proposal must be organized consistently with the outline provided in this section of the RFP. Proposer must follow all formats and address all portions of the RFP set forth herein providing all information requested. Proposer may retype or duplicate any portion of this RFP for use in responding to the RFP, provided that the Proposal clearly addresses all the City's information requirements.

### 3.2 Proposal Format

- Proposal must be structured, presented, and labeled in the following manner:
  - ◆ Cover Letter.
  - ◆ Table of Contents.
  - ◆ Section 1 – Executive Summary.
  - ◆ Section 2 – Qualifications and Experience.
  - ◆ Section 3 – Resume.
  - ◆ Section 4 – References.
  - ◆ Section 5 – Proposed Services.
  - ◆ Section 6 – Schedule of Rates and Fees.
- Failure to follow the specified format, to label the responses correctly, or to address all the subsections may, at the City's sole discretion, result in the rejection of the Proposal.
- Proposal should be prepared on standard 8-1/2" x 11" paper and printed on 2 sides. All Proposal pages should be numbered.

### 3.3 Cover Letter

- The Proposal must include a cover letter that provides the following:
  - ◆ Proposer's legal name and State Bar Number.
  - ◆ Proposer's primary contact to include name, address, phone, and email.
  - ◆ Identification of any pending litigation against the Proposer.
  - ◆ Disclosure of any bankruptcy or insolvency proceedings in last 10 years.

- ◆ Statement of the Proposer’s credentials to deliver the services sought under the RFP.
- ◆ Statement indicating that the Proposal remains valid for at least 120 days.
- ◆ Statement that the Proposer or any individual who will perform work for the Proposer is free of any conflict of interest (e.g., employment by the City).
- ◆ Statement of acknowledgement that the City’s legal documents have been reviewed and accepted with or without qualification. If qualifications are involved, those items requiring adjustment or modification must be identified and listed along with suggested modifications to the contract. If no modifications are noted, the City will assume that the proposer can perform all normal tasks and services without reservation or qualification to the contract.
- ◆ Signature of the Proposer
  - The Proposal Cover Letter should be concise and brief and not exceed two pages unless Proposer’s exceptions to the City’s legal documents require it.

### 3.4 Table of Contents

- All pages are to be numbered and figures, tables, charts, etc. must be assigned index numbers and identified in the Table of Contents.

### 3.5 Section 1 – Executive Summary

- This section should provide a brief and concise synopsis of Proposer’s Proposal and a description of the Proposer’s credentials to deliver the services sought under the RFP. The Executive Summary should not exceed three pages.

### 3.6 Section 2 – Qualifications and Experience

- In this section of the Proposal, the Proposer should identify the Proposer’s qualifications and experience in providing services similar to what the City is seeking for appeals to a cannabis permitting process. Proposer should submit evidence that Proposer meets the Minimum Qualifications described in Section 1 of this RFP. Proposer should describe relevant qualifications and experience as an administrative hearing officer and as an attorney in the public and/or private sector. Additionally, Proposer should describe experience with cannabis regulations, including municipal level permitting processes. Include the number of years of experience for each category.

- The Qualifications and Experience section should not exceed three pages.

### 3.7 Section 3 – Resume

Proposer must provide a copy of Proposer’s resume.

### 3.8 Section 4 – References

- The Proposer must provide at least three (3) public agency references that are comparable to the City for which the Proposer has provided similar services (identified references MUST be for cannabis business permit appeal hearings). Further, at least two (2) of the references must be for similar services that have been provided in the last five (5) years. Note that references from California agencies of similar size and complexity to the City are preferred.
- For each reference, Proposer must provide the following information:
  - ◆ Agency name and contact information (i.e. name, title, address, phone, and email).
  - ◆ Brief description of services provided and length of service.
  - ◆ Rate and total compensation amount.

### 3.9 Section 5 – Proposed Services

- In this section of the Proposal, the Proposer should describe how the Proposer will accomplish each task listed in the scope of services and Proposer’s specific experience with each of the tasks provided. Proposer may provide samples of reports or any deliverables for purposes of demonstrating formatting (samples must not include private data of any company/agency for which consultant services were provided).

### 3.10 Section 6 - Schedule of Rates and Fees

The Proposer shall include the rate(s) of compensation for the requested services and description of any reimbursable charges, excluding mileage.

## 4. Proposal Evaluation

### 4.1 Proposal Review

- An Evaluation Committee shall review all Proposals to determine which Proposers are qualified for consideration. The evaluation will include both an

initial review and a detailed review. The review will evaluate all submissions for conformance to stated RFP requirements and specifications to eliminate all responses that deviate substantially from the RFP's intent and/or fail to satisfy the mandatory requirements. Only those Proposals that meet or exceed the mandatory requirements will be further evaluated. The Evaluation Committee will consider the following components, among other criteria:

- ◆ Proposal provides the requested information and meets the standards identified in Section 3, Proposal Submission Requirements of this RFP.
- ◆ Written Proposal quality, clarity, and completeness.
- ◆ Proposer conveys an understanding of the services required to complete this project in a professional and timely manner.
- ◆ Proposer's ability to meet the identified needs and functionality required by the City
- ◆ Proposer's professional qualifications and experience with engagements of similar scope and complexity and for similarly sized clients
- ◆ Proposer's availability to schedule and conduct hearings according to the City's preferred timeframe.
- ◆ Cost effectiveness of the Proposal compared to the requested scope of services.
- ◆ Perceived risk to the City arising from selection of a Proposal.

#### 4.2 Proposal Evaluation and Selection Process

The Submitted Proposals will be evaluated and scored in accordance to the evaluation items listed below:

- ◆ Qualifications  
The overall professional qualifications and technical expertise of the Proposer. Experience in providing similar services. Feedback from clients for which the Proposer provided similar services. Emphasis will be placed on a Proposer's experience in implementing the type of services required for the Project.
- ◆ Proposed Services  
The Proposer's understanding of the Appeals Process and the services expected of the hearing officer.
- ◆ Availability to Provide Services in a Timely Manner  
Total time required to schedule and conduct the hearings.
- ◆ Cost to Perform Services  
Reasonableness and competitiveness of the fee schedule. The lowest proposed cost is a significant factor, but is not the sole criteria for recommending contract award. Award will be based on the best value. Irrespective of cost, Proposals will be rejected if they do not meet the City's needs.

- Note: Cost, while a consideration, will not be the overriding factor for award. The decision by the City to award a contract will be based on a combination of factors determined to be in the best interest of the City. After evaluating the Proposals and discussing them further with the finalists or the tentatively selected vendor, the City reserves the right to further negotiate the proposed work and/or method and amount of compensation.
- The City reserves the right, at its sole discretion, to request clarifications of Proposals or to conduct discussions for the purpose of clarification with any or all Proposers. The purpose of any such discussions shall be to ensure full understanding of the Proposal. Discussions shall be limited to specific sections of the Proposal identified by the City and, if held, shall be after initial evaluation of Proposals is complete. If clarifications are made because of such discussion, the Proposer shall put such clarifications in writing.

## 5. General Conditions

- This RFP does not commit the City of Santee to award a contract, to defray any costs incurred in the preparation of a Proposal, or to procure or contract for services. The City reserves the right to accept or reject any or all Proposals received in response to this request, to negotiate with any qualified source, or cancel in whole or in part this RFP if it is in the best interest of the City to do so. The City reserves the right to retain all Proposals submitted and use any idea in a Proposal regardless of whether or not that Proposal was selected.
- Subsequent to contract negotiations, Proposers may be required to submit revisions to their Proposals. All Proposers should note that the execution of any contract pursuant to this RFP is dependent upon the recommendation of the City selection committee and the approval of the Santee City Council.

### 5.1 Public Records

- All Proposals submitted and information included therein shall become the property of the City and

public records, and as such may be subject to public review.

## 5.2 Addenda

- Any changes to this RFP are invalid unless specifically modified by the City and issued as a separate addendum document. Should there be any question as to changes to the content of this document; the City's copy shall prevail. In the event this RFP is obtained through any means other than the City's website, the City will not be responsible for the completeness, accuracy or timeliness of the RFP document.

## 5.3 Equal Opportunity

- The City endeavors to do business with Proposers sharing the City's commitment to equal opportunity and will not do business with any Proposer that discriminates on the basis of race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth.

## 5.4 Right to Cancel

- The City reserves the right to cancel, for any or no reason, in part or in its entirety, this RFP including but not limited to: selection schedule, submittal date, and submittal requirements. If the City cancels or revises the RFP, all Proposers will be notified in writing by the City.

## 5.5 Conflict of Interest

- The City complies with all California statutes and regulations related to conflicts of interest.

## 5.6 Insurance Requirements

- The City requires consultants doing business with it to obtain insurance as shown in the standard Professional Services Agreement. The required insurance certificates must comply with all requirements of the standards as shown in attached APPENDIX A – CITY PROFESSIONAL SERVICES AGREEMENT, and must be provided (original copy) within fifteen (15) days of notice of selection and prior to the commencement of the services.

## 5.7 Business License

- The selected Proposer will be required to obtain a Santee business license upon award of the contract. Current cost: \$105.00 for initial license (valid for one year); \$41.00 for annual renewal.

## 6. General Requirements

### 6.1 Collusion

- By submitting a response to the RFP, each Proposer represents and warrants that its response is genuine and made in the interest of or on behalf of any person not named therein; that the Proposer has not directly induced or solicited any other person to submit a sham response or any other person to refrain from submitting a response; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a response.

### 6.2 Gratuities

- No person will offer, give, or agree to give any City employee or its representatives any gratuity, discount, or offer of employment in connection with the award of contract by the City. No City employee or its representatives will solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a City contract.

### 6.3 Required Review and Waiver of Objections by Proposers

- Proposers should carefully review this RFP and all attachments, including but not limited to the standard Professional Services Agreement, for comments, questions, defects, objections, or any other matter requiring clarification or correction. Comments concerning RFP objections must be made in writing and received by the City no later than the "Deadline for Written Questions and Comments" detailed in Table 1, RFP Schedule of Events. This will allow issuance of any necessary amendments and help prevent the opening of defective Proposals upon which contract award could not be made.



- Protests based on any objection will be considered waived and invalid if these faults have not been brought to the attention of the City, in writing, by the Deadline for Written Questions and Comments.

#### 6.4 Nondiscrimination

- No person will be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities on the grounds of disability, age, 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 , or any other classification protected by federal or California State Constitutional or statutory law; nor will they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's contractors. Accordingly, all Proposers entering into contracts with the City will, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

#### 6.5 Proposal Withdrawal

- To withdraw a Proposal, the Proposer must submit a written request, signed by an authorized representative, to the RFP Coordinator (Section 1.3) up until the RFP submission deadline, according to Section 1.2 RFP Timeline. After withdrawing a previously submitted Proposal, the Proposer may submit another Proposal at any time up to the deadline for submitting Proposals.

#### 6.6 Proposal Errors

- Proposer is liable for all errors or omissions contained in their Proposal. Proposer will not be allowed to alter Proposal documents after the deadline for submitting a Proposal.

#### 6.7 Incorrect Proposal Information

- If the City determines that a Proposer has provided, for consideration in the evaluation process or contract negotiations, incorrect information which the Proposer knew or should have known was materially incorrect, that Proposal will be determined non-responsive, and the Proposal may be rejected.

#### 6.8 Prohibition of Proposer Terms and Conditions

- A Proposer may not submit the Proposer's own contract terms and conditions in a response to this RFP. If a Proposal contains such terms and conditions, the City, at its sole discretion, may determine the Proposal to be a nonresponsive counteroffer, and the Proposal may be rejected.

#### 6.9 Assignment and Subcontracting

- The successful Proposer may not subcontract, transfer, or assign any portion of the contract without prior written approval from the City.

#### 6.10 Right to Refuse Personnel

- The City reserves the right to refuse, at its sole discretion, any subcontractors or any personnel provided by the Proposer or its subcontractors. The City reserves the right to interview and approve all Proposers' staff. Proposer's staff may be subject to the City's background and drug testing processes at any time.

#### 6.11 Proposal of Additional Services

- If a Proposer indicates an offer of services in addition to those required by and described in this RFP, these additional services may be added to the contract before contract signing at the sole discretion of the City.

#### 6.12 Licensure

- Before a contract pursuant to this RFP is signed, the Proposer must hold all necessary, applicable business and professional licenses. The City may require any or all Proposers to submit evidence of proper licensure.

### 6.13 Conflict of Interest and Proposal Restrictions

- By submitting a response to the RFP, the Proposer certifies that no amount will be paid directly or indirectly to an employee or official of the City as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the procurement under this RFP.
- Notwithstanding this restriction, nothing in this RFP will be construed to prohibit another governmental entity from making a Proposal, being considered for award, or being awarded a contract under this RFP.
- Any individual, company, or other entity involved in assisting the City in the development, formulation, or drafting of this RFP or its scope of services will be considered to have been given information that would afford an unfair advantage over other Proposers, and said individual, company, or other entity may not submit a Proposal in response to this RFP.

### 6.14 Contract Negotiations

- After a review of the Proposals and completion of the evaluation session and additional due diligence, the City intends to enter into contract negotiations with the selected Proposer. These negotiations could include all aspects of services and fees. If a contract is not finalized in a reasonable period of time, the City will open negotiations with the next ranked Proposer.

### 6.15 Execution of Contract

- If the selected Proposer does not execute a contract with the City within thirty (30) business days after notification of selection, the City may give notice to that service provider of the City's intent to select from the remaining Proposers or to call for new Proposals, whichever the City deems appropriate.

### 6.16 Right of Rejection

- The City reserves the right, at its sole discretion, to reject any and all Proposals or to cancel this RFP in its entirety.

- Any Proposal received which does not meet the requirements of this RFP may be considered to be nonresponsive, and the Proposal may be rejected. Proposers must comply with all of the terms of this RFP and all applicable State laws and regulations. The City may reject any Proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP.
- Proposer may not restrict the rights of the City or otherwise qualify their Proposal. If a Proposer does so, the City may determine the Proposal to be a nonresponsive counteroffer, and the Proposal may be rejected.
- The City reserves the right, at its sole discretion, to waive variances in technical Proposals provided such action is in the best interest of the City. Where the City waives minor variances in Proposals, such waiver does not modify the RFP requirements or excuse the Proposer from full compliance with the RFP. Notwithstanding any minor variance, the City may hold any Proposer to strict compliance with the RFP.

#### 6.17 Disclosure of Proposal Contents

- All Proposals and other materials submitted in response to this RFP procurement process become the property of the City. Selection or rejection of a Proposal does not affect this right. All Proposal information, including detailed price and cost information, will be held in confidence during the evaluation process. Upon the completion of the evaluation of Proposals, the Proposals and associated materials will be open for review by the public to the extent allowed by the California Public Records Act, (Government Code Sections 7920.000-7930.215). By submitting a Proposal, the Proposer acknowledges and accepts that the contents of the Proposal and associated documents will become open to public inspection.

#### 6.18 Proprietary Information

- The master copy of each Proposal will be retained for official files and will become public record after the award of a contract unless the Proposal or specific parts of the Proposal can be shown to be

exempt by law (Government code §7930.005). Each Proposer may clearly label part of a Proposal as "CONFIDENTIAL" if the Proposer thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any information that is released by the City will constitute a complete waiver of all claims for damages caused by any release of the information. If a public records request for labeled information is received by the City, the City will notify the Proposer of the request and delay access to the material until seven working days after notification to the Proposer. Within that time delay, it will be the duty of the Proposer to act in protection of its labeled information. Failure to so act will constitute a complete waiver.

#### 6.19 Severability

- If any provision of this RFP is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the City and Proposer will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

#### 6.20 RFP and Proposal Incorporated into Final Contract

- This RFP and the successful Proposal will be incorporated into the final contract.

#### 6.21 Proposal Amendment

- The City will not accept any amendments, revisions, or alterations to Proposals after the deadline for Proposal submittal unless such is formally requested, in writing, by the City.

#### 6.22 Consultant Participation

- The City reserves the right to share with any consultant of its choosing this RFP and Proposal responses in order to secure a second opinion. The City may also invite said consultant to participate in the Proposal Evaluation process.

#### 6.23 Rights of the City

- The City reserves the right to:

- ◆ Make the selection based on its sole discretion.
- ◆ Reject any and all Proposals.
- ◆ Issue subsequent RFPs.
- ◆ Postpone opening Proposals, if necessary, for any reason.
- ◆ Remedy errors in the RFP process.
- ◆ Approve or disapprove the use of particular subcontractors.
- ◆ Negotiate with any, all, or none of the Proposers.
- ◆ Accept other than the lowest offer.
- ◆ Waive informalities and irregularities in the Proposals.
- ◆ Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City.
  - An agreement will not be binding or valid with the City unless and until it is approved by the City Council and executed by authorized representatives of the City and of the Proposer.

ATTACHMENT "A"  
**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF SANTEE  
AND  
[CONSULTANT]**

This Agreement for Professional Services ("Agreement") is made and entered into this [DAY] day of [MONTH], [YEAR], by and between the City of Santee, a California charter city ("City") and [CONSULTANT], a [corporation, partnership, LLC or LLP, sole proprietor, etc.]("Consultant"). City and Consultant are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

**RECITALS**

City is in need of professional services for the following project:  
\_\_\_\_\_ ("the Project").

Consultant is duly licensed and/or has the necessary qualifications to provide such services for the Project.

The Parties desire to establish the terms for the City to retain the Consultant in order to provide the services described herein.

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

**1. Services**

Consultant shall provide the City with the services described in the Scope of Services attached hereto as [Exhibit 'A'](#) and hereby made a part of this Agreement; provided, however, that the contents of this Agreement shall supersede any provision in [Exhibit 'A'](#) that is inconsistent herewith.

**2. Compensation**

a. Subject to paragraphs 2(b) - (d) below, City shall pay for the services provided by Consultant in accordance with the Schedule of Charges set forth in [Exhibit 'B'](#) attached hereto and hereby made a part of this Agreement; provided, however that the contents of this Agreement shall supersede any provision in [Exhibit 'B'](#) that is inconsistent herewith.

b. In no event shall the total amount paid for services rendered by Consultant pursuant to this Agreement exceed the sum of \$\_\_\_\_\_. This Agreement is subject to and contingent on budgetary appropriations being approved by the City Council for each fiscal year during the term of this Agreement. If such appropriations are not approved, the Agreement will be immediately terminated without penalty to the City.

- c. Each month Consultant shall furnish City with an invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by categories, including labor, travel, materials, equipment, supplies, sub-consultant charges and miscellaneous expenses. City shall independently review each invoice submitted to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in paragraph 2(d). In the event any charges or expenses are disputed, the invoice shall be returned to the Consultant for correction and resubmission.
- d. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's invoice; provided however, that untimely invoices may be subject to nonpayment if funding has not been appropriated or budgeted for payment of the invoice due to Consultant's untimely submission. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in the work performed by Consultant.

### **3. Term of Agreement and Time of Performance**

Consultant shall perform its services hereunder in a prompt and timely manner, and in accordance with the Activity Schedule shown in [Exhibit 'C'](#) attached hereto and made a part hereof; provided, however, that the contents of this Agreement shall supersede any provisions in [Exhibit 'C'](#) that is inconsistent herewith. Work shall commence upon authorization from the City. Unless a different date is set forth in the Activity Schedule, the term of this Agreement shall be for a period of two (2) years from the date of execution of this Agreement unless terminated sooner pursuant to the provisions of this Agreement or when the services are complete. Such term may be extended upon written agreement of both City and Consultant.

### **4. Additional Work**

Consultant shall not be compensated for any services outside of the Scope of Services, except as provided in this paragraph. If changes in the work seem merited by Consultant or the City, a change in the scope of the work shall be processed by the City in the following manner: (1) a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule, (2) an amendment to this Agreement shall be prepared by the City and executed by both parties before performance of such services or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.



**5. 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 City at all reasonable times during the term of this Agreement and for four (4) years from the date of final payment under the Agreement.

**6. Ownership and Use of Work**

All documents and materials prepared pursuant to this Agreement shall be considered the property of City, and will be turned over to City upon demand, but in any event upon completion of the work. 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.

**7. 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 City.

**8. Conflict of Interest**

Consultant hereby expressly covenants that no interest presently exists, nor shall any interest, direct or indirect, be acquired during the term of this Agreement that would conflict in any manner with the performance of services pursuant to this Agreement.

**9. Delays in Performance**

Neither the City nor Consultant shall 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 shall, 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. Compliance with Law**

- a. Consultant shall 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 City, Consultant shall be responsible for indemnifying and holding the City harmless as provided in this Agreement.
- b. Consultant shall assist the City, as requested, in obtaining and maintaining all permits, if any, required of Consultant by federal, state and local regulatory agencies.

**11. 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.

**12. Assignment and Subconsultants**

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

**13. Independent Consultant**

Consultant is retained as an independent Consultant and is not an agent or employee of the City. No employee or agent of Consultant shall 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 herein provided. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind 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.

**14. 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. To the extent that any provision or clause contained in an attachment to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

**15. 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 City.
- (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 City of Santee, its City 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 City. All deductibles and self-insured retentions must be declared to the City 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 City.
- (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 City.

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 City and will be in a form and with insurance companies acceptable to the City.
- (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 City.

- (iv) Before beginning work, the Consultant shall furnish to the City 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 City, the Consultant shall maintain Professional Liability insurance, in a form and with insurance companies acceptance to the City 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 City-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 City. 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 City or as otherwise required by the City.

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 City 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 City.

h. Evidence of Insurance Required

- (i) Prior to execution of the Agreement, the Consultant shall file with the City 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 City of Santee, its City 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, subcontractor or similar entity performing work on the Project must add the City as an additional insured using CG form 20 38, or broader coverage. Blanket endorsements may be accepted at City'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 City. 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 City's sole discretion, the requirement to endorse policies to provide advanced written notice of cancellation to the City may be waived upon the Consultant's agreement that it shall provide the City 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 City 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 City, 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 City 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 City, 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 City 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 City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- (v) Neither the City, nor its City 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.

**16. Indemnification**

To the fullest extent permitted by law, Consultant agrees to indemnify, defend (with independent counsel approved by the City) and hold harmless the City and its officers, employees and elected and appointed officials, and volunteers (each, an "Indemnified Party") from and against any and all liabilities (including without limitation all claims, losses, damages, penalties, fines, and judgments, associated



investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs and costs of alternative dispute resolution) regardless of nature or type, expressly including but not limited to those arising from bodily injury (including death) or property damage, arising out of or resulting from any act or omission to act of the Consultant, Consultant's agents, officers, employees, subconsultants, or independent consultants hired by Consultant under this Agreement. The Consultant's obligations apply regardless of whether or not a liability is caused or contributed to by the negligence (including passive negligence) or other act or omission of an Indemnified Party. The acceptance or approval of the Consultant's work by an Indemnified Party shall not relieve or reduce the Consultant's indemnification obligation. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, agents, employees or representatives. The provisions of this Section shall survive completion of the work under this Agreement or the termination of this Agreement and are not limited by the provisions relating to insurance.

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.

**17. 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.

**18. 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, as determined by the court.

**19. Termination or Abandonment**

- a. City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Consultant. In the event such notice is given, Consultant shall cease immediately all work in progress.
- b. Consultant may terminate this Agreement at any time upon thirty (30) days written notice of termination to City.
- c. If either Consultant or City fails to perform any material obligation under this Agreement, then, in addition to any other remedies, City or Consultant may terminate this Agreement immediately upon written notice.
- d. Upon termination of this Agreement, all property belonging to City which is in Consultant's possession shall be returned to City. Consultant shall furnish City with a final invoice for work performed by Consultant. City shall have no obligation to pay Consultant for work performed after termination of this Agreement.

**20. Organization**

Consultant shall assign \_\_\_\_\_ 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.

**21. 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:	CONSULTANT:
Marlene Best	Attn:
City Manager	Title
City of Santee	Company
10601 Magnolia Avenue	Address
Santee, CA 92071	City, State, Postal Code

**22. Third Party Rights**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

**23. 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.

**24. 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.

CITY OF SANTEE:

CONSULTANT:

By: \_\_\_\_\_  
Marlene D. Best  
City Manager

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

APPROVED AS TO FORM:

BEST & KRIEGER LLP

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

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

**EXHIBIT 'B'**  
**SCHEDULE OF CHARGES**

**EXHIBIT 'C'**  
**ACTIVITY SCHEDULE**

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