

ATTACHMENT 'A' - SAMPLE AGREEMENT

This Design Build Contract ("Contract") is made and entered into this ____ day of _____, 2021, by and between the City of Santee ("City"), a charter city organized and operating under the laws of the State of California and _____, a [*corporation, partnership, LLC or LLP, individual, etc.*] (the "Design Build Entity").

RECITALS

- A. City is a charter city and is in need of services for the Town Center Community Park West, Field 1 Improvements, CIP 2022-40 ("Project").
- B. The City desires to contract with a single entity for design and construction of the Project, as set forth in this Contract.
- C. Design Build Entity submitted a Proposal for the Project, which was selected as providing the best value for the Project, and is prepared to enter into this Contract.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. INCORPORATION OF DOCUMENTS.

This Contract includes and hereby incorporates in full by reference the following Contract Documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- a) Request for Proposals ("RFP") and all addenda
- b) Design Build Entity's Proposal
- c) Plans/Specifications Portions of Design- Build Entity Proposal in response to RFP as reviewed and approved in writing by City, if any
- d) Contract
- e) General Conditions
- f) Special Conditions
- g) All approved Change Orders
- h) Performance Bond
- i) Payment Bond
- j) Workers Compensation Certification
- k) Non-Collusion Declaration
- l) Construction Documents prepared by the Design Build Entity and approved in writing by the City

The above documents constitute and may hereinafter be referred to as the "Contract Documents." The Design Build Entity by executing the Contract where indicated below expressly acknowledges that he or she has read, understood and agrees with all of the terms of the Contract Documents, including, but not limited to, provisions of the General Conditions relating to insurance, standards of performance, termination, compensation and time of the essence of performance. The Design

Build Entity shall not disclaim knowledge of the meaning and effect of any term or provision of the Contract Documents, and agrees to strictly abide by their meaning and intent.

2. THE DESIGN BUILD ENTITY'S BASIC OBLIGATION.

- a. The Design Build Entity shall, at its own cost and expense, furnish all labor, materials, tools, equipment, services (including professional services), and incidental and customary work necessary to complete the Project, and all portions thereof, as described in more detail in the described in the Scope of Services attached hereto as **Attachment 'A'** the Contract Documents (hereinafter the " Work").
- b. The City shall pay Design Build Entity in accordance with the Schedule of Charges set forth in **Attachment 'B'** attached hereto.
- c. In no event shall the total amount paid for services rendered by Design Build Entity pursuant to this Agreement exceed the sum of \$_____.
- d. Extra Work shall have the meaning given to it in the General Conditions. Extra Work shall be compensated at the rates set forth in **Attachment B** to this Contract, and shall be initiated only upon written approval by the City as described in the General Conditions
- e. Standard of Performance. The Design Build Entity's performance shall be in accordance with the standards set forth in the Contract Documents.

3. TIME FOR COMPLETION

Design Build Entity shall perform and complete all work necessary for Final Completion of the Project, as defined in the General Conditions, in accordance with the Activity Schedule shown in **Attachment 'C'** attached hereto. Work shall commence upon receipt of a written Notice to Proceed and be completed within 140 working days. By its signature hereunder, the Design Build Entity agrees that the Contract Time set forth above is adequate and reasonable to complete the work.

4. LIQUIDATED DAMAGES

It is agreed that the Design Build Entity will pay the City the sum of One Thousand Dollars (\$1,000.00) per calendar day for each and every day of delay beyond the time prescribed in the Contract Documents for finishing all work, as Liquidated Damages and not as a penalty or forfeiture. In the event the same is not paid the Design Build Entity further agrees that the City may deduct that amount thereof from any money due or that may become due to the Design Build Entity under the Contract. This does not exclude recovery of damages under provisions of the Contract Documents.

5. CITY'S BASIC OBLIGATION

The City agrees to engage and does hereby engage the Design Build Entity as an independent contractor to furnish all materials and services and to perform all work described in the Contract Documents according to the terms and conditions herein. Except as otherwise provided in the Contract, the City shall pay to the Design Build Entity, as full consideration for the satisfactory performance by the Design Build Entity of all services and obligations required by the Contract Documents, the above-referenced compensation in accordance with compensation provisions set forth in the Contract.

6. DESIGN BUILD ENTITY'S LICENSING

The Design Build Entity shall be a duly licensed contractor in the classifications set forth in the RFP. The Design Build Entity's licensing information is as follows: (License No. _____). Design Build Entity shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California.

7. DESIGN BUILD ENTITY'S DESIGN PROFESSIONAL-OF-RECORD

The Design Build Entity shall have all design services for the Project performed by appropriately licensed architectural and/or engineering professionals and shall name a specific person to act as the Design Professional of Record, subject to the approval of the City. The Design Build Entity hereby designates *[INSERT NAME AND LICENSE NO.]* to act as the Design Professional of Record for the Project. Design Build Entity's Design Professional of Record shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline for public works of improvement in the State of California. Any change in the Design Professional-of-Record shall be subject to the City's prior written approval

8. INDEMNIFICATION.

Design Build Entity shall provide indemnification as set forth in the General Conditions.

9. THE DESIGN BUILD ENTITY'S LABOR CERTIFICATION

The Design Build Entity maintains that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of all work described in the Contract Documents. A certification form for this purpose is Attachment 6 to this Contract and incorporated herein by reference, and shall be executed simultaneously with this Contract.

10. LABOR CODE COMPLIANCE

The Design Build Entity shall comply with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. These rates are on file at MTS's office and copies will be provided to the Design Build Entity on request. A copy of these rates shall be posted at the job site. The Design Build Entity and all Subcontractors shall comply with all Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor, and debarment of the Design Build Entity's and subcontractor.

11. CONFLICT OF INTEREST

The Design Build Entity hereby expressly covenants that no interest presently exists, nor shall any interest, direct or indirect, be acquired which would conflict in any manner with the performance of services pursuant to this Agreement.

12. UNFORESEEN DIFFICULTIES

All loss or damage arising out of the nature of the Work to be done under this Contract, or from any unforeseen obstructions or difficulties which may be encountered during the progress of the Work and in the prosecution of the same, shall be sustained by the Design Build Entity, except as may be otherwise specifically provided by the Contract Documents.

13. NOTICE

Any notice or instrument required to be given or delivered by this Contract may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY: City of Santee
10601 Magnolia Avenue
Santee, CA 92071
Attn: Steven Miller
Senior Civil Engineer

DESIGN BUILD ENTITY:
Address
Address
Attn:

14. AUTHORITY OF SIGNATORIES

The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

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

CITY OF SANTEE

By: _____
Marlene Best, City Manager

(DESIGN BUILD ENTITY'S NAME)

By: _____

Print Name: _____

Title: _____

By signing above, I attest that I am an authorized representative / agent, that I am authorized by my signature to bind this company contractually and certify under penalty of perjury the accuracy of the representations made on the agreement and related documents.

APPROVED AS TO FORM:

By: _____
Shawn Hagerty, City Attorney

AGREEMENT
ATTACHMENT 'A' – SCOPE OF SERVICES

Proposal to City from [Design Build Entity] dated _____, 2021, pages _____, attached.

AGREEMENT

ATTACHMENT 'B' – SCHEDULE OF CHARGES

Proposal to City from (Design Build Entity) dated _____, 2021, pages _____, attached.

AGREEMENT
ATTACHMENT 'C' – ACTIVITY SCHEDULE

Proposal to City from (Design Build Entity) dated _____, 2021, pages _____, attached.

AGREEMENT

ATTACHMENT 'D' – GENERAL CONDITIONS

(General Conditions provided in RFP documents inserted here)

ATTACHMENT 'B' – GENERAL CONDITIONS

ATTACHMENT 'C' – APPROVED MATERIALS LIST

Attached as Separate Document

ATTACHMENT 'D' – AS BUILT DRAWINGS