



REQUEST FOR PROPOSAL

HAZARD MITIGATION PLAN PREPARATION

PROPOSAL NO. 918-0801-24

PROPOSAL DUE DATE: THURSDAY, August 1, 2024 @ 4:30 PM

**Antioch Police Department
300 L Street
Antioch, CA 94509
(925)779-6999**

CITY OF ANTIOCH
NOTICE INVITING PROPOSALS, RFP NO. 918-0801-24
HAZARD MITIGATION PLAN PREPARATION

PUBLIC NOTICE IS HEREBY GIVEN that proposals will be received until **4:30 pm, August 1, 2024** at 300 L St. Antioch, CA 94509, for the furnishing to the City of Antioch (“City”) of **Hazard Mitigation Plan Preparation**.

Interested parties may obtain copies of the above captioned Request for Proposals (“RFP”) at the City’s website accessible at the following web address: www.antiochca.gov/rfps/ . Proposals must be sent electronically to the Police Department no later than 4:30 p.m. on August 1, 2024, to dbittner@antiochca.gov . Any questions or requests regarding this RFP may be submitted electronically to Lieutenant Desmond Bittner at dbittner@antiochca.gov .

INTRODUCTION

The City of Antioch Police Department (“City”) is requesting proposals from qualified consultants for local **Hazard Mitigation Plan Preparation**, which shall be provided under the general direction of the Chief of Police or his or her designee.

The City of Antioch is dedicated to the development, establishment, and maintenance of programs and procedures which will provide for the protection of lives and property of City residents from the effects of natural or human caused disasters. Disasters to which the City is subject and for which we must make efforts to mitigate, train and properly respond to include, but may not be limited to floods, earthquakes, major fires, storms, radiological or hazardous material incidents, aircraft accidents, mass casualty incidents, civil unrest, severe drought, climate change, and extended utility outages.

Below is a tentative schedule for this RFP:

ACTION	DATE
Release of Request for Proposal	July 1, 2024
Last Day to Submit Questions for Clarification on or before 4:30 pm	July 18, 2024
Clarifications Issued by City on or before 4:30 pm	July 25, 2024
Deadline for Receipt of Proposals submitted on or before 4:30 pm	August 1, 2024
Notification of Finalist(s)	August 8, 2024
Notification of Intent to Award	August 15, 2024
Recommendation of Award to City Council	August 27, 2024

The above scheduled dates are tentative, and City retains the sole discretion to adjust the above schedule. Nothing set forth herein shall be deemed to bind City to award a contract for the above-described Services and City retains the sole discretion to cancel or modify any part of or all of this RFP at any time.

BACKGROUND

Antioch has a history that starts before California became a state. The area was originally settled in the late summer of 1850 and incorporated as a City in 1872. Located on the banks of the San Joaquin River and being the second largest City in Contra Costa County with a population of over 112,000; the City offers endless outdoor activities and is a thriving business hub.

Families with dreams of homeownership come to Antioch for its beautiful neighborhoods, parks, and natural beauty. Land remains plentiful and affordable, compared with other parts of the Bay Area. Antioch is one of the few Bay Area communities that offers naturally affordable housing. The pace of development in Antioch has spurred activity for the healthcare industry, financial and insurance institutions, contractors, and other types of businesses. Increased development has created increased employment in schools, hospitals and other local service sectors. Bringing quality jobs to Antioch is one of the City Council and Communities priorities.

The City of Antioch was incorporated in February 1872 as a General Law City and operates under a Council-Manager form of government. Policymaking and legislative authority is vested in a five-member City Council consisting of a Mayor and four Council Members. The four Council Members are elected to four-year overlapping terms. The Mayor is directly elected to a four-year term. The Council appoints the City Manager, City Attorney, and members of advisory committees.

Antioch is a community that is proud of its heritage; a community that provides an opportunity to live, learn, work, worship and play in a safe, stimulating, and diverse community; a community that is a responsible steward of its economic and natural resources; a community that recognizes its responsibility to the vast Delta Region, and will be a pro-active advocate and a leader in promoting regional cooperation.

PROJECT DESCRIPTION

The City of Antioch is preparing to develop a local Hazard Mitigation Plan. The Hazard Mitigation Plan will include the policies, strategies, and actions required for the City to satisfy the requirements of the Disaster Mitigation Act of 2000, as well as the Code of Federal Regulations Section 44 CFR 201.6, for a single jurisdiction Local Hazard Mitigation Plan (LHMP).

The requirement of the consultant under this scope of work is to manage, coordinate, prepare, and administer the development of a single jurisdiction LHMP for the City. This scope and contract are intended to be inclusive of the entire LHMP process from initial planning through final approval by FEMA and adoption by the City. The consultant shall perform all necessary planning, administration, professional analysis, supporting documentation, and work required for the preparation and adoption of the LHMP in full conformance with the requirements of the Disaster Mitigation Act of 2000, 44 CFR 201.6 and the FEMA Local Mitigation Plan Guidelines.

SCOPE OF SERVICES

The Scope of Services to be provided by the consultant shall include, but not be limited to, the elements listed below:

The City intends to hire a qualified consultant to provide the services as outlined below. Best industry practices and/or best management practices may require additional services not explicitly enumerated. The consultant should identify any additional services required, price them, and explain them in their response.

Preparation of the plan will involve an inclusive citywide planning process and will include the following participants seeking FEMA approval of the Plan:

- City of Antioch
- Local special districts (water and school districts)
- Public and Private agencies, and
- Other stakeholders will be invited to participate in the plan development process as members of the planning committee

The Scope of work for this project is organized into four phases in accordance with the Disaster Mitigation Act planning process:

1. LHMP Planning/Development Process and Organize Resources;
2. Threat and Hazard Identification and Risk Assessment (Hazard Identification, Hazard Mapping, Vulnerability Assessment, and Capability Assessment);
3. Hazard Mitigation Strategy; and
4. Hazard Plan Implementation and Maintenance Process

1. Phase One: LHMP Planning/Development Process and Organize Resources

As part of the LHMP planning and development process, the City will organize a Hazard Mitigation Planning Committee (HMPC). Members of the HMPC will include representatives from each participating jurisdiction; staff with other local, state, and federal agencies; take the “whole community” approach including non-profits, religious institutions, disability access and functional needs groups, experts, or members of the public; and may also include a cross-section of the community, such as residents, community leaders, and business owners. The public will also be invited to participate on the HMPC. The HMPC will:

- Participate in the planning process, attend meetings, and provide data as requested
- Solicit input from citizens and professionals with knowledge of applicable hazards
- Provide input on how the risk differs across the planning area
- Identify new/proposed mitigation projects
- Review drafts of the plan
- Hold public meetings
- Coordinate the formal adoption of the plan by governing boards
- Manage the implementation of the proposed mitigation projects
- Prepare, publish, and distribute community and required public hearing notices

The Consultant shall facilitate public meetings. Each meeting will focus on educating the public on the LHMP development process and identifying community concerns. The Consultant shall provide content to post on the City’s webpage and social media platforms. When a final draft LHMP is developed, the public will be invited to review and provide comments on the current draft. Public comments will be incorporated as appropriate by the Consultant.

Note: For security reasons, all critical infrastructure protection information will need to be redacted from the plan prior to dissemination or presentation to the public.

The City of Antioch LHMP will thoroughly document the hazard mitigation planning process, including but not limited to:

- A narrative description of how the plan was prepared and the process followed
- An outline of plan development meeting dates, attendees, and agendas
- Identify agencies and organizations that participated in plan development
- Coordination with existing planning mechanisms
- Description of how the public was involved and strategy for public outreach/meetings

2. Phase Two: Threat and Hazard Identification Risk Assessment (Hazard Identification, Vulnerability Assessment, and Capability Assessment)

A detailed risk assessment will be developed for this LHMP. The purpose of this section is to understand the risk and vulnerability of identified natural, technological, and human-caused hazards and to provide a basis for hazard mitigation strategy development. The risk assessment will include:

a. Hazard Identification and Profiles: The Hazard Identification and Profiles will include a description and prioritization of the hazards that have occurred within the City. The hazard categories may include:

- Flood-related hazards
- Wildfire hazards
- Earthquake hazards
- Severe weather-related hazards (extreme temperatures, drought, fog, heavy rains/thunderstorms, wind/lightning, etc.)
- Nuclear hazards
- Climate change hazards
- Other man-made hazards
- Other geologic and soil hazards
- Other hazards as identified by the HMPC and other data sources

b. Hazard Mapping: Using the best available data, the risk assessment will include maps (hazard and infrastructure maps will be provided by the Consultant) that delineate areas affected by hazards and identify locations of local assets. The geographic information data will comprise a comprehensive inventory for use in developing map data layers (to the extent data is available), of the following items relative to the multiple hazard area:

- Public buildings
- Critical facilities and infrastructure
- Maps that depict the location of parcels, structures, land use, and populations
- Structures will be delineated by type of use (e.g., residential, commercial, industrial, etc.)

c. Vulnerability Assessment: Based on the previous information, the Consultant will develop an overview of the City's vulnerability to specific hazards. Digital maps and GIS data (provided by the consultant) will be developed to identify local assets that are located within known hazard areas. HAZUS will be used to model losses as appropriate. This vulnerability assessment will include (as the data allows):

- Types and numbers of buildings, infrastructure, and critical facilities located within the planning area and within identified hazard areas
- An inventory of all repetitive flood loss structures, as defined by FEMA, if applicable
- Potential dollar losses from identified hazards will be estimated through a process that utilizes HAZUS-MH or GIS analysis of County assessor's data with hazard locations
- Description of land uses and development trends to advise future land use decisions.

d. Capability Assessment: A capability assessment will be conducted that will inventory those existing plans, policies, and procedures that the City has in place to temper the effect of hazards. This will include protective measures under the National Flood Insurance Program (NFIP), building codes, zoning ordinances, completed or

ongoing mitigation projects, and mitigation polices established in the general or comprehensive plans of participating jurisdictions.

3. Phase Three: Hazard Mitigation Strategy

The LHMP will include a mitigation strategy to address its exposure to identified hazards. This will require meetings of the HMPC, facilitated by the consultant, and include:

- a. Developing mitigation goal statements that focus on reducing the risk and vulnerability from the identified hazards.
- b. Developing a comprehensive range of specific mitigation actions items being considered to reduce the effects of each hazard, based on the risk assessment. The range of potential action items will include emphasis on mitigating losses for new and existing buildings and infrastructure and for future development areas. This section will include a list of prioritized hazard mitigation action items that best meet the City's needs for hazard damage reduction. Prioritization factors will include an analysis of proposed mitigation projects focused on several key areas, including but not limited to economic (including benefits and cost), engineering, technical, legal, environmental, social, and political feasibility. Action items given the highest priority will meet most or all aspects of the feasibility analysis and will be the best fit for the City and all plan participants.
- c. Based on previous tasks, a draft plan will be prepared in accordance with state and federal requirements. The Consultant will ensure that each required component for each plan participant is included in the Plan. The draft plan will be made available to the HMPC for review and comment. The Consultant will incorporate HMPC comments and prepare a public review draft to be distributed to interested parties.

4. Phase Four: Hazard Mitigation Plan Maintenance Process

- a. **Monitoring, Evaluating, and Updating:** This chapter will detail how the City of Antioch HMPC will monitor, evaluate, implement, and update the Plan. For example, maintenance will occur at an annual meeting of the HMPC where the LHMP mitigation strategy and implementation progress will be evaluated and modified as appropriate. The Plan will be revised, updated, and readopted every five years in accordance with the requirements of the Disaster Mitigation Act of 2000.
- b. **Incorporation into Existing Planning Mechanisms:** The City will implement and incorporate hazard mitigation plan goals and actions into other local planning documents, such as the local emergency operations plan, community wildfire protection plans, storm water plans, etc. Incorporation of the LHMP into the Safety Element of the General Plan for the City will be emphasized.
- c. **Implementation Schedule:** The completed LHMP will include procedures for ensuring the Plan's implementation, including an implementation schedule for each action item.
- d. **Continued Public Involvement:** The City is committed to continued public involvement in the LHMP development, maintenance, and future updates. A description of public involvement activities for the Plan will be included.
- e. **Final Plan:** The Consultant will collect and incorporate public comments to the public review draft, make all necessary revisions, and will prepare a Final Plan for submittal to CalOES and FEMA for review and approval. The Consultant is responsible for all plan revisions from CalOES, FEMA, or the City until it is adopted by Antioch City Council.
- f. **LHMP Adoption and Approval:** The governing body of each participating jurisdiction will adopt the LHMP upon approval of the Plan from Cal OES and FEMA Region

SUBMISSION REQUIREMENTS

All proposals should be concise, to the point, and should include the following information organized as separate sections of the proposal.

1. Letter of Interest

All proposals shall be accompanied by a transmittal letter addressed to the Antioch Police Department, Lieutenant Desmond Bittner, signed by an officer authorized to commit firm resources. The letter shall include the following:

- a. The name of the proposing consultant, the primary contact, mailing and physical address, telephone number and email address.
- b. Cover letter stating interest in the work and whether the consultant provides services related to state government, federal government, or both.
- c. Certification that (1) all information submitted in the proposal is true and correct, (2) the person signing the proposal has the full authority to do so, (3) the fees proposed have not been knowingly disclosed, directly or indirectly, to any other consultant responding to this RFP, and (4) no attempt has been made by the proposing consultant to induce any other company to submit or not submit a response to this RFP for the purpose of restricting competition.

2. Previous Experience

Statement of previous experience and expertise, including a minimum of three other local governments for which Proposer has provided similar services.

3. Staffing and Qualifications

Names and qualifications of key personnel assigned to this project, including resumes. Names of qualified subcontractors, if any, including resumes of key subcontractor personnel.

4. References

All proposals shall include a minimum of three client references, with at least one reference being a recent municipal client. References should include the client's name, contact person, mailing address, telephone number and email address.

5. Professional Services Agreement; Exceptions to the Specifications

Provide a statement that Proposer has reviewed the City's standard Professional Services Agreement (Attachment 1) and is able to meet the requirements in the Agreement with specific attention to the insurance requirements. Untimely exceptions to the proposal specifications or the Professional Services Agreement are waived.

6. Fee Proposal

All proposals shall include a detailed explanation of the fees and costs to be charged to the City for the services described in this RFP.

EVALUATION PROCESS

Proposals will be evaluated in accordance with the criteria outlined in the section entitled Submission Requirements. Proposals will be evaluated for specificity, completeness, personnel qualifications, and demonstrated knowledge and experience as described in the section entitled Scope of Services.

Phases of Evaluation. Proposals will be reviewed by committee in four general phases:

- a. All proposals will be evaluated based on the submission requirements and criteria.
- b. The Committee shall rate and compose a short list of Providers based on the submission requirements and criteria.
- c. Fee proposals will be reviewed and evaluated.
- d. The Committee may require an interview of Respondents (and key personnel).

The City will select the consultant based on demonstrated competence and on the possession of the professional qualifications necessary for the satisfactory performance of the services required. The agreement may not necessarily be awarded to the lowest responsible proposer.

When selecting the consultant, the skill and ability of the entity or personnel performing the services is a key component of the selection criteria.

1. Reservation of Rights.

The City reserves the right to cancel this RFP, or to reject, in whole or in part, any and all proposals received in response to this RFP. The City, upon its determination, further reserves the right to waive any minor informality in any proposals received, if it is in the public interest to do so. The determination of the criteria and process whereby proposals are evaluated, the decision as to who shall receive a contract award, or whether or not to award, shall be made as a result of the RFP and at the sole and absolute discretion of the City.

2. Payment Terms.

Providers will be required to submit invoices on a monthly basis. The invoice will include a breakdown of all services provided and the hourly rate for such services.

**CONSULTING SERVICES/PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ANTIOCH
AND _____ [NAME OF CONSULTANT]**

THIS AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____, 202__ (“**Effective Date**”) by and between the City of Antioch, a municipal Corporation with its principle place of business at 200 H Street, Antioch, CA 94509 (“**City**”) and _____ with its principle place of business at _____ (“**Consultant**”). City and Consultant individually are sometimes referred to herein as “**Party**” and collectively as “**Parties.**”

SECTION 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to provide to City the services described in the Scope of Work attached as Exhibit A attached hereto and incorporated herein at the time and place and in the manner specified therein (“**Services**”). In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on _____, the date of completion specified in Exhibit A, and Consultant shall complete the Services described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the Services required by this Agreement shall not affect the City’s right to terminate the Agreement, under Section 8.

1.2 Standard of Performance. Consultant represents that it is experienced in providing these services to public clients and is familiar with the plans and needs of City. Consultant shall perform all Services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession.

1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform Services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 Time. Consultant shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant’s obligations hereunder.

SECTION 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed _____, notwithstanding any contrary indications that may be contained in Consultant’s proposal, for Services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant’s proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for Services rendered pursuant to this Agreement at the time and in the manner set forth below. The payments specified below shall be the only payments from City to Consultant for Services rendered pursuant to this Agreement. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant’s estimated costs of providing the Services required hereunder, including

salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for Services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services; and,
- The Consultant's signature.

2.2 Payment Schedule.

2.2.1 City shall make incremental payments, based on invoices received, [according to the payment schedule attached as Exhibit B and incorporated herein], for Services satisfactorily performed, in accordance with the requirements of this Agreement, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements of Section 2.1 to pay Consultant.

2.2.2 City shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City a final invoice, if all services required have been satisfactorily performed.]

2.3 Total Payment. City shall pay for the Services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering Services pursuant to this Agreement, unless expressly provided for in Section 2.5.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.4 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the fee schedule in Exhibit B.

2.5 Reimbursable Expenses. Reimbursable expenses are specified below, and shall not exceed [redacted] (\$). Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

Reimbursable Expenses are: [redacted]

2.6 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.7 Authorization to Perform Services. The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until Consultant receives authorization to proceed from the Contract Administrator.

SECTION 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

SECTION 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Insurers shall have an AM Best rating of no less than A:VII unless otherwise accepted by the City in writing:

4.1 Commercial General Liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Consultant's services include work within 50 feet of a railroad right of way, the Consultant shall have removed any exclusion on their liability policy limiting coverage for work near a railroad, or shall provide a Railroad Protective Liability policy in favor of the City. Limits for such coverage shall be no less than \$5,000,000.

4.2 Automobile Liability Insurance. ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

4.3 Workers' Compensation Insurance. Workers' Compensation Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

4.4 Professional Liability (Errors and Omissions). Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

4.5 Other Insurance Provisions. Unless otherwise specified below, all insurance policies are to contain, or be endorsed to contain, the following provisions: Page 2 of 19 City of Antioch | City Manager's Office Request for Qualification and Proposals – Executive Recruiting Services

4.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. CGL coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used). This requirement shall only apply to the CGL and Automobile Liability Insurance policies specified above.

4.5.2 Primary Coverage. For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it. This requirement shall only apply to the CGL and Automobile Liability Insurance policies specified above.

4.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

4.5.4 Waiver of Subrogation. Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. This requirement shall only apply to the CGL, Automobile Liability and Workers' Compensation/Employer's Liability Insurance policies specified above.

4.5.5 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

4.5.6 Claims made policies. If any of the required policies provide claims-made coverage:

4.5.6.1 The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

4.5.6.2 Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**

4.5.6.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

4.6 Certificate of Insurance and Endorsements. Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to

provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

4.7 Subcontractors. Consultant shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds

4.8 Higher Limits. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

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

4.10 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise, any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due to Consultant under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or,
- Terminate this Agreement.

SECTION 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably acceptable to City), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

5.1.1 Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

5.2 By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

SECTION 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Section 1.3; however, otherwise City shall not have the right to control the manner or means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including, but not limited to, eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Consultant Not Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

SECTION 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws applicable to the performance of the Services.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

7.5 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, sexual orientation or any other legally protected status, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any Services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby. Consultant shall include the provisions of this Section in any subcontract approved by the Contract Administrator or this Agreement.

7.6 California Labor Code Requirements. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the

Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the full term of this Agreement and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

SECTION 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement only for cause upon thirty (30) days’ written notice to City and shall include in such notice the reasons for cancellation. In the event of termination, Consultant shall be entitled to compensation for Services performed satisfactorily to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Extension. City may, in their sole and exclusive discretion, extend the end date of the term of this Agreement beyond that provided for in Section 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the Parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant’s unique

personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement; and/or

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant in which case the City may charge Consultant the difference between the cost to have a different consultant complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

SECTION 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, drawings, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

9.2 Confidentiality. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be kept confidential by Consultant. Such materials shall not, without the prior written permission of City, be used by Consultant for any purpose other than the performance of this Agreement nor shall such materials be disclosed publicly. Nothing furnished to Consultant which is generally known, shall be deemed confidential. Consultant shall not use the City's name or logo or photographs pertaining to the Services under this Agreement in any publication without the prior written consent of the City.

9.3 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant.

9.4 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the

amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

9.5 Intellectual Property. The City shall have and retain all right, title and interest, including copyright, patent, trade secret or other proprietary rights in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents and any other works of authorship fixed in any tangible medium or expression, including but not limited to physical drawings or other data magnetically or otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Consultant under this Agreement. Consultant further grants to City a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional or supplemental work created under this Agreement.

SECTION 10. MISCELLANEOUS PROVISIONS.

10.1 Venue. In the event either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.

10.2 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.3 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.4 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

10.5 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.6 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 et seq. Consultant shall not employ any official of City in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 et seq. Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 et. seq., the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code Section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.7 Inconsistent Terms. If the terms or provisions of this Agreement conflict with or are inconsistent with any term or provision of any Exhibit attached hereto, then the terms and provisions of this Agreement shall prevail.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:

Any written notice to City shall be sent to:

[INSERT DEPARTMENT/NAME]

City of Antioch
P. O. Box 5007
Antioch, CA 94531-5007

City of Antioch
P. O. Box 5007
Antioch, CA 94531-5007
Attn: City Attorney

10.11 Integration. This Agreement, including all exhibits and other attachments, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

CITY: CITY OF ANTIOCH

CONSULTANT: **[NAME OF CONSULTANT]**

Kwame Reed, Acting City Manager

By: _____

Attest:

Elizabeth Householder
City Clerk

Name: _____

Title: _____

Approved as to Form

Name: _____

Title: _____

Thomas Lloyd Smith, City Attorney

[Two signatures are required for a corporation or one signature with the corporate bylaws indicating that one person can sign on behalf of the corporation]

