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REQUEST FOR PROPOSALS (RFP)

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DOWNTOWN WIFI

REQUEST FOR PROPOSALS

Request for Proposals

Downtown Wi-Fi

Kwame Reed
Acting City Manager

Alan Barton
Information System Director

Monday August 12, 2024

For more information concerning this opportunity contact:
Alan Barton, Information Systems Director, abarton@antiochca.gov

INTRODUCTION

The City of Antioch, herein after referred to as the "City," is requesting proposals from firms or individuals, herein after referred to as "Proponent" to provide PUBLIC WI-FI ACCESS to a distinct geographical area of the City (depicted in ATTACHMENT A). The City seeks a program that will provide free, outdoor accessible, Wi-Fi in the downtown core business district.

The City reserves the right to reject any/or all proposals received and re-advertise.

Antioch, California is a large urban center, rich in heritage and diversity. With Antioch's continued growth comes new residents, new businesses, new opportunities, and new construction projects. Today's urban redevelopment is helping to advance the City of Antioch well into the 21st century in exciting and dynamic ways. The City seeks to install a system that will provide free, outdoor accessible, Wi-Fi in the downtown core business district. The goal of this program is to enhance the economic landscape, as well as enable commerce, education and access to information in general. The Public Wi-Fi Program will promote a better-connected community and more agile interactions between residents, visitors and businesses.

The American Rescue Plan Act (ARPA), which became effective in 2021, provides funds to eligible state, local, territorial, and tribal governments. Eligible projects include efforts to address critical community needs made apparent by the COVID-19 public health emergency. The City of Antioch identified public wifi as a resource to address accessibility challenges in specified areas of the City disproportionately impacted by the pandemic, such as the downtown core business district, and allocated funds for this purpose. The intent of the project is to focus efforts on enhancing the quality of life in the project area and thereby improve the overall health and connectivity of the City as a whole.

SCOPE OF WORK

The City seeks an all-inclusive, turnkey, fully serviced and managed public Wi-Fi program for the downtown core business district. The primary area of coverage will be from W 3rd St. north to the river front, and span between I St and E St, as shown in yellow on the included map. The City would also like to include as options the Monica Riverview pier, Marina and Boat launch areas, and extend down G St one block to W 4th St, as shown in white on the included map. The City reserves the right to add locations as needed to the Contract, as mutually agreed by the parties, provided they are similar in scope and costs are in line with the original locations. Any added locations must be completed by the end of the original contract and exercised extensions. The system shall include all equipment, installation, configuration, testing, and ongoing maintenance and support. Services are expected to include but are not limited to the following:

- A. The Wi-Fi service should be accessible only in the target areas, as much as feasible.
- B. Identify suitable publicly owned locations to mount equipment.
- C. Provide a project plan and project schedule of the wireless system design plan to the City and obtain approval to move forward prior to installation.

- D. Any necessary site preparations shall be identified and reported to the City.
- E. Install all necessary equipment including access points, antennas, power supplies, and all appurtenances.
- F. Installation of equipment includes testing, ensuring quality compliance, adjusting, and all necessary work to activate service.
- Construction and installation should be completed by date determined after award of contract.
- G. Conduct testing to ensure the desired location is provided with sufficient coverage.
- System testing should be completed by date determined after award of contract.
- H. Provide all necessary equipment, firmware, software, upgrades, testing, and system support to maintain continuous Wi-Fi coverage throughout the life of the contract.
- I. Provide and administer the manufacturer's warranty.
- J. Full go-live shall be completed by date determined after award of contract.
- K. Wi-fi service including full system management and support for software and hardware shall be provided for the initial period of 36 months (Year 1 + Year 2 + Year 3). Year 1 begins on full go-live date.
- In the event the City is able to obtain funding for this project beyond the final contract period, the City reserves the right to negotiate pricing with the Contractor to extend the Contract for up to two (2) additional years, totaling five (5) years if executed in this manner.
- L. Provider to supply internet uplink to support required network speed. The Wi-Fi configuration and network shall be separate from the City's internal physical and logical networks.
- M. Coordinate with the City's Public Works Department and other Departments to mount equipment on City owned infrastructure.
- N. Secure any necessary permits as necessary.
- O. All work shall comply with the State of California and Federal regulations including but not limited to Federal Trade Commission (FTC), Federal Communication Commission (FCC), and California Public Utilities Commission (CPUC).
- P. Upon conclusion of the awarded Contract and any extensions, all installed equipment shall become property of the City.

Technical Specifications

1. Provide all necessary equipment, firmware, software, upgrades, testing, and system support to maintain continuous Wi-Fi coverage throughout the life of the contract.
2. List the quantity, make, and model of equipment proposed.
3. Provide the technical specifications for the proposed equipment, including physical dimensions and power requirements.
4. Provide the network configurations and wireless heat maps.
5. Discuss how the Contractor plans to test and prove the specifications listed in the technical proposal upon system implementation.
6. Describe network management system capabilities, configurations, and how these will be used to provide reliable service and support.
7. Include a timeline defining key milestones, resources, and estimated time requirements. The awarded contractor shall be expected to adhere to the proposed timeline, which shall be mutually agreed upon, finalized, and stipulated as terms within an awarded contract.
8. The Contractor shall provide ongoing maintenance and technical support for the installed WLAN systems. This shall include ongoing, real-time status monitoring of the WLAN equipment, as well as remote or onsite technical support, as required to keep the systems fully operational with continuous Wi-Fi coverage. System monitoring shall encompass hardware failures detected by the WLAN management system, including for all managed wireless access points, as well as basic operational status of the Internet connection (i.e., via periodic ping tests to, or heartbeat signals from, the WLAN management system).
9. The Contractor shall alert City staff in the event of a detected outage and shall begin diagnostics within 2 hours.
 - a. The City prefers the outages last no more than 4 hours. We want to know how you resolve outages (and other issues) and how quickly you bring systems back online.
10. The Contractor is responsible for replacing and installing damaged equipment at no extra cost to the City.
11. The Contractor shall provide the City with a Service Level Agreement (SLA) when they are addressing issues.
12. The wireless access points should have a RJ-45 Gigabit Ethernet port that supports IEEE 802.3af power over Ethernet.
13. Speeds: 100Mb minimum download speed and 100Mb minimum upload speed at each access point.

Commented [BMR1]: Is there any value to tiering speed options so City can eval slowest vs. faster options from a cost point of view?

Commented [BMR2R1]: Also, might you also prompt a bid alternative for an expanded area since we know there's Council interest? If it's attainable, it may be an alternative that spares staff another solicitation effort.

14. The wireless system should prompt users to accept a City of Antioch terms and conditions splash page prior to using the Wi-Fi network.
15. The City should have the ability to restrict internet access for certain periods of time as required by the City.
16. Open to Smart City applications.

Other

1. The City has the right to inspect and test all services, equipment, and materials during the term of the contract. The City shall perform inspections and tests in a manner that will not excessively delay the work. If any of the services, equipment, or materials do not conform to contract specifications, the City may require the Contractor to perform the service again or provide a replacement product/service in conformity with contract specifications, at no increase in contract amount.
2. The Contractor is responsible for the timely replacement of damaged equipment. Damaged equipment should be replaced and installed within 5 business days to maintain full working order of the system.
3. City staff or its authorized representatives reserve the right to inspect the installed and operational Wi-Fi system to ensure that the network meets the technical specifications stated in this Proposal.
4. Testing will include successful login as a public user; obtaining access to the Internet; Wi-Fi coverage testing; and speed testing.

MANDATORY PRE-SUBMITTAL MEETING

A mandatory pre-submittal meeting will include guided surveys of the location represented in the scope of this RFP. During this survey, Proponents should evaluate the site to identify any attributes that could impact proposal pricing, prerequisite site preparations, and/or site conditions that may otherwise cause difficulties with the performance of the specified scope of work, to include but not limited to electrical power requirements; antenna and access point mounting locations; and cabling pathways.

The pre-submittal meeting will be held on 8/22/2024 at 8:00 am (PT). Attendees shall meet at this day and time at 212 H St, Antioch, CA 94509. Please send an email to abarton@antiochca.gov by 8/21/2024 with your intent on coming to the pre-submittal meeting.

Questions during the site survey are permitted and will be answered at the time as feasible. However, no responses to questions are final or official until all questions and answers are posted in writing on an addendum to this RFP.

Deadline for all questions is Monday 8/26/2024, questions after this date will not be responded to. Answers will be posted on City's website. Questions should be sent directly to Alan Barton, abarton@antiochca.gov.

Guided site surveys will not be accommodated at any other time prior to the proposal submission deadline. However, proponents may choose to survey the sites on their own as needed.

SUBMITTAL REQUIREMENTS

Please include the following information in the qualification submittal:

- Cover letter - Signed letter by an individual authorized to negotiate on behalf of the firm with the budget and scope of services binding for a term of 90 days from the date of submittal to the City.
- Introduction – Provide a brief project description conveying an understanding of the issues.
- Project Manager/Consultant Team – Detail key individuals to be assigned to the project, their qualifications and respective roles. Provide resumes of key individuals that would perform services under this contract, including all applicable education, experience, licenses and professional designations.
- Related Experience and References - Provide a complete list of references, including the scope of work performed and contact information. Place emphasis on projects prepared for cities and redevelopment agencies.
- Fee Schedule – Provide a schedule of fees for services, including current dollar/hour billing rates.
- Availability – Identify a window of time indicating availability to start the project. The selected firm will be required to enter into a written contract with the City of Antioch in a form approved by the City Attorney. It is expected that work will commence upon award of contract.
- City's Consulting Services Agreement – Identify any sections of the City's standard design Consulting Services agreement (Attachment "B") that pose significant concerns and would require negotiation/modification in order to be acceptable to consultant.

Each sealed proposal shall be marked "PROPOSAL" and shall indicate the project name, solicitation number, and proposal opening date, and shall be mailed or delivered to the address below at or before the time stated. Each Proponent must be licensed in accordance with applicable California State Law and the City of Antioch Municipal Code.

CRITERIA FOR SELECTION

All proposals will be evaluated based on the criteria below.

- Qualifications and experience with similar projects - 30 points
- Understanding of the scope and potential challenges - 25 points
- References - 15 points
- Organization of proposal – 10 points
- Familiarity with applicable standards and procedures - 10 points
- Availability - 10 points

SUBMISSION INSTRUCTIONS

Three (3) bound, one (1) unbound and one (one) electronic copy of the proposal **must be submitted no later than 4:00 p.m. on Tuesday, September 10, 2024** to:

Alan Barton
Information Systems Director
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

Interviews will be conducted if there is not an outstanding response, and if two or three firms are very close in evaluation points. Any questions regarding the above should be directed to Alan Barton at (925) 779-6103; or abarton@antiochca.gov.

MBE/WBE/DBE PROGRAM

The City of Antioch is committed to equal opportunity for minority, woman-owned businesses and disadvantage business enterprises seeking to do business with the City and encourages the consideration and utilization of any such firms.

OTHER GOVERNMENT AGENCIES

If mutually agreeable to all parties, the use of any resultant contract/purchase order may be extended to other political subdivisions, municipalities, or tax supported agencies.

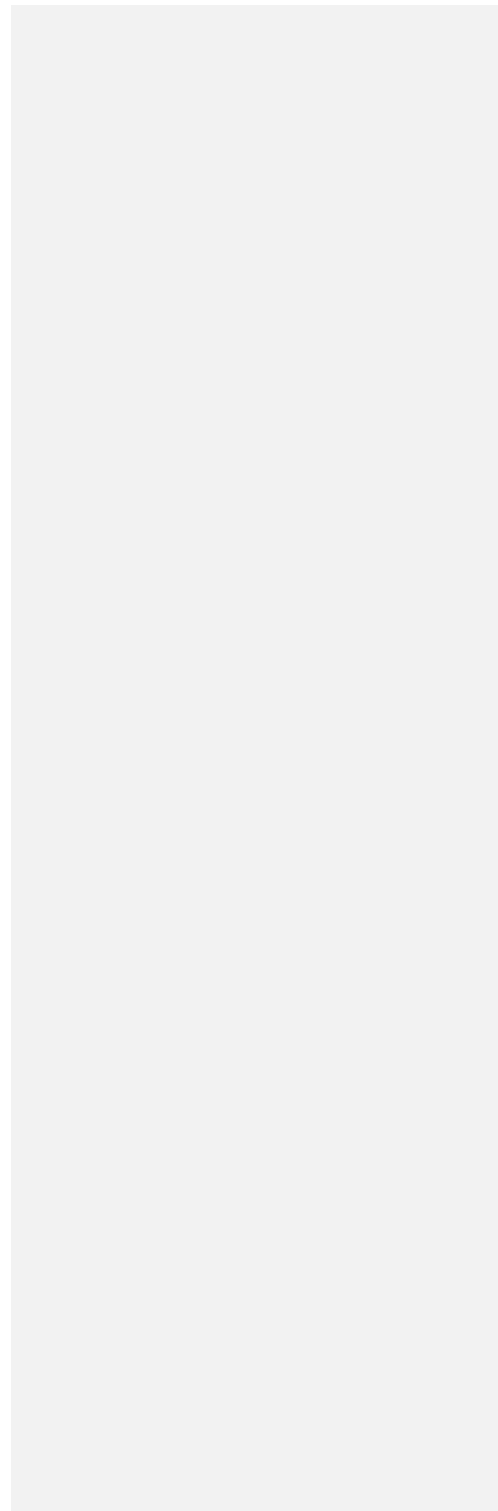
Such participating governmental bodies shall make purchases in their own name, make payment directly to successful Proponent and be liable directly to the successful Proponent, holding the City of Antioch harmless.

ATTACHMENTS

A: Area Map

B: City of Antioch Consulting Services Agreement

ATTACHMENT A



ATTACHMENT B

CONSULTING 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”) as of _____, 202__. 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

Commented [GR3]: Insert the account in writing and in numbers within parentheses e.g. ten thousand dollars (\$10,000).

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.

Commented [U4]: If there is a separate payment schedule include this language. Otherwise, if there is no Exhibit B, then the language in the parenthesis can be deleted.

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.]

Commented [U5]: Can decide if this is applicable as some projects include a retention paid with the final deliverable and sometimes payment is just made monthly as services provided

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 _____ (\$ _____). 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:

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.

Commented [U6]: List the items for which the City will reimburse the Consultant. For example, will the City reimburse the mileage for travel but not the time or both travel expenses and time. These are all business terms to negotiate.

Commented [GR7]: If there are no reimbursable expenses to list please insert in this space: "There are no reimbursable expenses under this agreement"

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:

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 [REDACTED] ("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:

[REDACTED]

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

Cornelius H. Johnson, City Manager

Attest:

Elizabeth Householder
City Clerk

Approved as to Form:

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]

CONSULTANT:

[NAME OF CONSULTANT]

By: _____

Name: _____

Title: _____