



February 20, 2020

**REQUEST FOR QUALIFICATIONS
FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR THE
BRACKISH WATER
DESALINATION PROJECT**

PW 694

Request for Qualifications for
CONSTRUCTION MANAGEMENT SERVICES FOR THE
BRACKISH WATER DESALINATION PROJECT

REQUEST FOR QUALIFICATIONS

Your firm is invited to submit a Statement of Qualifications (SOQ) to provide constructability review and construction management (CM) support services for the City of Antioch's Brackish Water Desalination Project (Project). Interested firms should include relevant experience on like projects and detailed information on individuals who would be available to comprise the project team. A selection committee will review the qualifications and determine which consulting firms will be short listed to receive a subsequent Request for Proposal (RFP).

The SOQs will be evaluated based on related experience of the firm and individual team members, qualifications of the key project team staff, and the firm's performance on other similar projects. References provided may be contacted.

This solicitation does not commit the City to pay any costs incurred in the preparation and presentation of submittals or to select any interested firms that respond. All materials received will remain the property of the City whether or not a firm is selected. Brochures or other presentation materials, beyond those requested herein, are not desired and should not be submitted.

When the CM services agreement is approved for the Project by the City, the agreement will include language that requires compliance with the Project Stabilization Agreement included in Attachment 5. Furthermore, the City will receive State funding for the Project. The selected firm will be required to comply with all applicable State requirements associated with any grants or loans obtained by the City. The selected firm will also be required to oversee compliance with all permits, agreements, and environmental requirements related to the Project.

The firm selected under this solicitation will not be permitted to bid on the Project construction contract.

To be considered, six copies of your Statement of Qualifications must be received no later than **4:00 p.m. on Thursday, March 12, 2020** at:

If hand delivered:

Scott Buenting
City Hall – Basement Level
200 H Street
Antioch, CA 94509

If sent by mail:

Scott Buenting
City of Antioch
P.O. Box 5007
Antioch, CA 94531

Questions should be emailed to Scott Weddle at sweddle@carollo.com by 5:00 p.m. on Thursday, March 5, 2020.

The following attachments are provided in this Request for Qualifications:

Attachment 1 – Project Background

Attachment 2 – Anticipated Scope of Work

Attachment 3 – Project Schedule

Attachment 4 – SOQ Instructions

Attachment 5 – Project Stabilization Agreement

Attachment 6 – Consultant Services Agreement

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Buenting". The signature is stylized with a large, sweeping "S" and a prominent "B".

Scott Buenting, Project Manager

City of Antioch

ATTACHMENT 1
PROJECT BACKGROUND

The City of Antioch treats and distributes raw water from the San Joaquin River (SJR) utilizing its pre-1914 water rights and purchases raw water from the Contra Costa Water District (CCWD) when salinity at its intake is too high. The value of the City's water rights is being eroded, as increased salinity in the western Delta forces Antioch to curtail river pumping earlier in the year and buy more water from CCWD. It is anticipated that the San Joaquin River water quality will further decline in the future due to climate change and future cumulative impacts of other delta projects, including WaterFix.

The City of Antioch's Brackish Water Desalination Project (Project) is being implemented to improve the City's water supply reliability and provide operational flexibility while reducing costs, especially during droughts and with future proposed changes in Delta water management. The Project will allow the City to use water from the river year-round, even when the salinity is above levels normally treated at the existing conventional Water Treatment Plant.

The project consists of the following main components:

- New intake pump station and fish screen to replace existing river intake facilities consisting of three 8 mgd (million gallons per day) pumps (two duty, one standby), two intake pipelines and fish screens, and associated appurtenances.
- New raw water pipeline approximately 3,000 feet long that connects the City's existing raw water pipeline directly from the River to the WTP.
- A desalination plant with a finished water capacity of 6 mgd and related facilities, including reverse osmosis (RO); post-treatment systems; chemical feed and storage facilities; brine conveyance facilities; and other associated non-process facilities. The existing WTP (Plant A) will provide pre-treatment of the raw water prior to RO treatment.
- A new pipeline approximately 4.3 miles long that conveys brine from the desalination facility to the existing outfall of the Delta Diablo Wastewater Treatment Plant.

The estimated construction cost for the Brackish Water Desalination Project is \$60,000,000. Further information can be found on the City's website at <http://www.antiochbrackishdesal.com>.

ATTACHMENT 2
ANTICIPATED SCOPE OF WORK

The following sections describe the anticipated scope of services to be provided by the selected firm. Further details of the scope of services will be provided to the short-listed firms in the forthcoming Request for Proposals.

A. CONSTRUCTABILITY REVIEW SERVICES

The selected firm shall perform a review of the construction bid documents for bid ability, constructability, and identification of changes to the bid documents needed to mitigate potential conflicts or change orders during construction. The review shall be performed at the 90 percent design phase that is being prepared by the City's design consultant, Carollo Engineers.

The constructability review process includes checking the project documents (drawings and specifications) for completeness, compliance with specifications and related design criteria, and physical feature or system interface points. Potential coordination issues including compliance with work restrictions in the permits and agreements with other agencies, missed details, potential time delays, potential liabilities and inter-contractor coordination items should be identified for incorporation into the Project final design documents.

B. CONSTRUCTION MANAGEMENT SERVICES

The selected firm shall designate a manager of the Construction Management team who will be responsible for the following general tasks and services. The CM manager shall report to the City's Project Manager.

- Project Coordination Services
- Pre-construction Services
- Operation and Maintenance Manuals and Warranty Expiration
- Field Engineer Services
- Construction Inspection Services
- Project Administration Services
- Oversight of permit compliance

ATTACHMENT 3
PROJECT SCHEDULE

- City Award CM Services Contract – April 2020
- Constructability Review of 90 Percent Design Package – May 2020
- Constructability Review Workshops – June 2020
- Carollo complete 100 Percent Design – August 2020
- Bid Period – August/September 2020
- City Award Construction Contract – October 2020
- Construction NTP – November 2020
- Construction Complete – Fall 2022

ATTACHMENT 4
STATEMENT OF QUALIFICATION INSTRUCTIONS

CONSULTANT'S STATEMENT OF QUALIFICATIONS (SOQ) INSTRUCTIONS

Six copies of your Statement of Qualifications must be received no later than 4:00 p.m. on Thursday, March 12, 2020.

SOQs should be organized as described below with each section limited to the number of pages indicated, and minimum 11 point font.

Promotional or other unsolicited materials shall not be submitted.

Incomplete submittals or submittals not in compliance with these instructions or the solicitation may be rejected.

SOQ Contents and Page Limits

Transmittal Letter: (four-page maximum) Consulting firms shall submit a letter of transmittal highlighting their proposed team, key reasons to be selected, and key staff. The person to contact with regard to this submittal should be included in the letter of transmittal.

Project Team: (two-page maximum): Identify key project staff and their proposed roles.

Project References for Key Staff: (six-page maximum) Provide five project references for each key staff listed in the SOQ including the Project Manager that include the following information:

- Owner (or client firm if subconsultants), project description (including size), total construction cost, location, and completion date.
- Name, address and phone number of knowledgeable owner/client's representative.
- Roles of key staff on the project; services/functions directly performed by individual (not just job titles).

Firm Experience: (two-page maximum) Provide the following information for the prime consulting firm and any subconsultants:

- Office address(es) in which services are to be performed.
- Facilities, staffing levels, and production capabilities of office(s) in which work is to be performed.
- Dollar volume of construction work managed in last five years for public and private clients.

Resumes of Key Staff: (no page limit) Provide detailed resumes of proposed key staff.

ATTACHMENT 5

PROJECT STABILIZATION AGREEMENT

Prospective firms are directed to carefully review the attached Project Stabilization Agreement that will be incorporated into the Special Provisions of the construction contract documents and also into the CM services agreement for the Project. The selected firm and each of its subcontractors must comply with all requirements in the Project Stabilization Agreement and execute the "Agreement to Be Bound" (Attachment A to the Project Stabilization Agreement). An executed "Agreement to Be Bound" for the selected firm and each of its subcontractors must be submitted following execution of the CM services agreement. In proposing on this Project, it shall be the firm's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under the Project Stabilization Agreement.

ATTACHMENT 5

PROJECT STABILIZATION AGREEMENT

for the

**CITY OF ANTIOCH
BRACKISH WATER DESALINATION PLANT PROJECT**

Between the

CITY OF ANTIOCH

and

**CONTRA COSTA COUNTY BUILDING &
CONSTRUCTION TRADES COUNCIL
AND ITS AFFILIATED LOCAL UNIONS**

PREAMBLE

This Agreement is made and entered into the 6th day of MARCH, 2019, by and between the City of Antioch ("Owner"), together with other contractors and/or subcontractors ("Contractor(s)"), who shall become signatory to this Agreement by signing the "Agreement To Be Bound" (Attachment A), and the Contra Costa County Building & Construction Trades Council ("Council") and its affiliated local unions who have executed this Agreement (referred to individually as "Union" and collectively as "Unions"). The parties further agree that the provisions of this Agreement shall apply to the construction of the Brackish Water Desalination Plant Project ("Project") by the City of Antioch ("Owner").

Recitals

WHEREAS, the Contractors will be engaged in construction of the Project; and

WHEREAS, a skilled labor pool represented by Building Trades Unions will be required to complete the work involved; and

WHEREAS, the Building Trades Unions agree to cooperate in every way possible with employees of the Contractors; and

WHEREAS, the parties desire to provide employment opportunities on the Project to residents of the City of Antioch and immediately surrounding communities; and

WHEREAS, the parties desire to provide employment opportunities on the Project to military veterans returning from overseas conflicts; and

WHEREAS, the parties to this Agreement mutually agree that safety, quality, productivity and labor harmony are primary goals; and

WHEREAS, the parties recognize the need for safe, efficient and speedy construction in order to reduce unnecessary delays and to shorten construction schedules, thereby further reducing costs, resulting in timely completion of the Project; and

WHEREAS, the parties desire to mutually establish and stabilize wages, hours and working conditions for the employees employed on the Project by the Contractors, and further to encourage close cooperation to achieve a satisfactory, continuous and harmonious relationship between the parties to this Agreement;

NOW THEREFORE, the parties, in consideration of the mutual promises and covenants herein contained, mutually agree as follows:

ARTICLE 1

PURPOSE

- 1.1 The purposes of this Agreement are to promote efficient construction operations on the Project, to insure an adequate supply of skilled craftspeople and to provide for peaceful, efficient and binding procedure for settling labor disputes. In so doing, the parties to this Agreement establish the foundation to promote the public interest, to provide a safe work place, to assure high quality construction and to secure optimum productivity, on-schedule performance and Owner satisfaction.
- 1.2 It is the intent of the parties to set out uniform and fair working conditions for the efficient completion of the Project, maintain harmonious labor/management relations and eliminate strikes, lockouts and other delays.
- 1.3 It is in the interest of the parties to this Agreement to employ local residents and to utilize resources available in the local area.

- 1.4 The Council, Unions and all Contractors agree to abide by the terms and conditions of this Agreement and agree that this Agreement represents the complete understanding of the Parties. No Contractor is or will be required to sign or otherwise become a party to any other collective bargaining agreement with a signatory Union as a condition of performing work within the scope of this Agreement.
- 1.5 The Parties agree that this Agreement will be made available to, and will fully apply to, any successful bidder for Project Work, without regard to whether that successful bidder performs work at other sites on either a union or non-union basis. This Agreement shall not apply to any work of any Contractor other than that on Project work specifically covered by this Agreement.

ARTICLE 2

SCOPE OF AGREEMENT

- 2.1 The provisions of this Agreement, including the local master labor agreements ("Master Labor Agreement(s)") of the Union(s) signatory to this Agreement incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement, except as provided in Section 2.4. To the extent a provision of this Agreement is inconsistent with a Master Labor Agreement, the provisions of this Agreement shall prevail. Where a provision of a Master Labor Agreement is not inconsistent with this Agreement, the provisions of the Master Labor Agreement shall apply.
- 2.2 The Project covered by this Agreement consists of the construction of a new desalination plant capable of processing of up to six million gallons per day of finished water in the City of Antioch, California. The new desalination plant will include reverse osmosis and post-treatment systems, chemical feed and storage facilities, and other associated non-process facilities and will be constructed within the fence line of the existing Antioch water treatment plant. Also included within the scope of this Project are the following component projects: demolition of the existing and construction of a new intake pump facility and fish screen; construction of a new raw water pipeline from the intake pump facility to the water treatment plant; construction of a new pipeline from the current water treatment plant to the desalination plant; and construction of a new brine disposal pipeline from the desalination plant to the Delta Diablo Wastewater Treatment Plant outfall.
- 2.3 This Agreement covers, without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures and other works, and related activities for the Project that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation to the following examples, geotechnical and

exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the project), pumps, pump stations, and modular furniture installation. On-site work includes work done solely for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.3.1 This Agreement covers work typically performed by craft labor in California that is part of supporting startup, calibration and commissioning, including, but not limited to, loop checks, rework and modifications, functional and operational testing up to and including the final running test. Nothing in Section 2.3 shall be construed as prohibiting or limiting facility operating personnel, Owner's, or Contractor's and manufacturing representative's personnel from operating or testing systems and/or being trained prior to covered work being completed. It is understood that the Owner's, or Contractor's, manufacturer's and vendor's representatives, and facility operating and maintenance personnel may provide technical assistance for, supervise, direct and otherwise directly participate in such operating, testing or training, and that craft work is typically performed as part of a joint effort with these representatives and personnel.

2.3.2 All on-site fabrication work over which the Owner or the Contractor(s) possesses the right of control (including work done for the Project in any temporary yard or area established for the Project), and which is traditionally claimed as on-site fabrication, shall be performed on-site. For the convenience of the Contractor(s), such work may be performed off-site. In that event, such fabrication work shall be performed in accordance with the union standards established by this Agreement for the appropriate craft Union or a fabrication agreement approved by the craft's International Union. Additionally, this Agreement covers any off-site work, including fabrication, necessary for the Project and traditionally performed by any of the Unions that is covered by a current Master Labor Agreement or local addenda to a National Agreement of the applicable Union(s).

2.3.3 The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be covered by this Agreement. However, construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand, or other fill or material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill, material and/or mud, shall be covered by the terms and conditions of this Agreement to the fullest extent allowed by law and by the prevailing wage determinations of the California Department of Industrial Relations. Contractor, including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) calendar days of written request or as required by bid specifications.

- 2.4 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles 5, 6 and 12 of this Agreement shall apply to such work.
- 2.5 Except as provided by Section 2.3.2, there shall be no limitation or restriction upon the choice of materials or upon the full use of equipment, machinery, package units, factory pre-cast, prefabricated or preassembled materials, tools or other labor-saving devices. Fabrication provisions contained in existing appropriate national or local agreements shall be applicable.
- 2.6 It is recognized by the parties to this Agreement that the signatory Contractor(s) and Coordinator (as defined in Article 7 of this Agreement) are acting only on behalf of said Contractor(s) and Coordinator, and said Contractor(s) and Coordinator have no authority, either expressed, implied, actual, apparent or ostensible, to speak for or bind the Owner.
- 2.7 The working conditions and hours of employment herein provided have been negotiated by the Unions exclusively with the representatives of the Contractor(s).
- 2.8 It is expressly agreed and understood by the parties hereto that the Owner shall have the right to purchase material and equipment from any source, consistent with Section 2.5, and the craftspersons will handle and install such material and equipment.
- 2.9 Without limiting the foregoing, the parties recognize and agree that the following work shall be excluded from the scope of this Agreement:
- (a) Work performed by Contractors' supervisors, technical or non-manual employees including, but not limited to, executives, engineers, office and clerical employees, drafters, supervisors, timekeepers, messengers, guards, or any other employees above the classification of senior general foreman or inspectors, material testers, and/or x-ray technicians, *except* to the extent that such drafters, detailers, inspectors, material testers, and/or x-ray technicians are customarily covered by the Master Labor Agreement and as to which classification a prevailing wage determination has been published;

- (b) Work relating to the installation of the Owner's furniture, fixtures and equipment that do not have a permanent connection to a building or facility, but are needed for post-construction occupancy and operations; however, the installation of office modular furniture, as set forth in the applicable Prevailing Wage Determination, shall be covered by this Agreement;
- (c) Work of employees of any Contractor, design team or any other consultant of the Owner not performing construction craft labor covered by a Master Labor Agreement;
- (d) Work performed on or near, or leading to or into the Project site by state, county, or other governmental bodies, including the Owner, or their contractor(s); or by utilities or their contractor(s); that is not part of the Project, including, but not limited to, maintenance and operations;
- (e) Off-site maintenance of leased equipment and on-site supervision of such work;
- (f) Emergency work necessary to maintain existing facility operations; and
- (g) Work performed by employees of a manufacturer or vendor on the or vendor's equipment if required by the warranty agreement the manufacturer or vendor and the Owner or Contractor(s) in order to maintain the warranty or guarantee on such equipment, and provided that the warranty agreement is the manufacturer's or vendor's usual and customary warranty agreement for such equipment and is consistent with industry practice.

ARTICLE 3

SUBCONTRACTS

- 3.1 Each Contractor(s) agrees that neither it nor any of its subcontractors will subcontract any work to be done on the Project except to a person, firm, or corporation who is or becomes party to this Agreement. Any Contractor(s) or subcontractor working on the Project shall, as a condition to working on the Project, become signatory to and perform all work under the terms of this Agreement.
- 3.2 A subcontractor is defined as any person, firm or corporation who agrees under contract with the Owner, the Contractor(s), or a subcontractor of the Contractor, to perform work on the Project, or any part or portion of the construction work covered by the prime contract, including the operating of construction equipment, performance of labor and/or installation of materials.

- 3.3 The Contractor(s) has the primary obligation for performance of all conditions of this Agreement. This obligation cannot be relieved, evaded or diminished by subcontracting. Should the Contractor(s) elect to subcontract, the Contractor(s) shall continue to have such primary obligation.
- 3.4 A Contractor(s) who provides in the subcontract that the subcontractor will pay the wages and benefits and will observe the hours and all other terms and conditions of this Agreement, shall not be liable for any delinquency by such subcontractor in the payment of any wages or fringe benefits provided herein, including payments to Health & Welfare, Pension, Vacation/Holiday Dues Supplement and Training & Retraining Funds, except as provided in the California Labor Code or the applicable Master Labor Agreement.
- 3.4.1 The Contractor(s) will give written notice to the Union(s) of any subcontract involving the performance of work covered by this Agreement within either five (5) days of entering such subcontract or before the subcontractor commences work on the Project, whichever occurs first, and shall specify the name and address of the subcontractor. Written notice of a subcontract provided to the Union at a Pre-Job Conference shall be deemed written notice under this provision for those subcontractors listed at the Pre-Job only.
- 3.4.2 Thereafter, if such subcontractor should become delinquent in the payment of any wages or benefits as above specified, the Trust Fund shall immediately give written notice thereof to the Contractor(s) and to the subcontractor specifying the nature and amount of such delinquency.
- 3.4.3 In the event the Contractor(s) fails to give written notice of a subcontract as required herein, such Contractor(s) shall be liable for all delinquencies of the subcontractor on this Project only without limitation.
- 3.4.4 The provisions of this Section 3.4 shall be applied only to the extent permitted by law and, notwithstanding any other provision of this Agreement, no aspect of this subcontracting provision, including its enforcement, may be enforced by or subject to strike action.
- 3.4.5 Nothing in this Agreement is meant to interfere with the normal enforcement or collection rights of the fringe benefit Trust Funds.

ARTICLE 4

RELATIONSHIP BETWEEN PARTIES

- 4.1 This Agreement shall only be binding on the signatory parties hereto, and shall not apply to parents, affiliates, subsidiaries, or other divisions of the Coordinator and signatory Contractor(s) unless signed by such parent, affiliate, subsidiary, or other division of such company.

- 4.2 Unless specifically provided otherwise in this Agreement, each Contractor(s) shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any alleged breach of this Agreement by a Contractor(s) or any dispute between the signatory Union(s) and the Contractor(s) respecting compliance with the terms of this Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and each other Contractor(s) party to this Agreement.
- 4.3 It is mutually agreed by the parties that any liability by a signatory Union(s) to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union(s) shall not affect the rights, liabilities, obligations and duties between the signatory Contractors and the other Unions party to this Agreement.

ARTICLE 5

NO STRIKES - NO LOCKOUTS

- 5.1 During the life of this Agreement, the Union(s) and its members, agents, representatives and employees shall not incite, encourage, condone or participate in any strike, walkout, slowdown, sit-down, stay-in, boycott, sympathy strike, picketing or other work stoppage or hand-billing of any nature whatsoever, for any cause whatsoever, or any other type of interference of any kind at the Project site, coercive or otherwise, and it is expressly agreed that any such action is a violation of this Agreement.
- 5.1.1 Withholding employees for failure of a Contractor(s) to tender trust fund contributions as required in accordance with Article 17 or for failure to meet its weekly payroll is not a violation of this Article 5; however, the Union shall give the affected Contractor and the Coordinator written notice forty-eight (48) hours prior to the withholding of employees.
- 5.2 Upon written facsimile or telegraphic notice of a violation to the Local and International Union(s) offices, the Union(s) and its officers shall take immediate action and will use its (their) best efforts to prevent, end or avert any such aforementioned activity or the threat thereof by any of its officers, members, representatives or employees, either individually or collectively, including but not limited to, ordering all such officers, representatives, employees or members who participate in such unauthorized activity to cease and desist from same immediately and to return to work and comply with its orders. The Contractor(s) shall have the right, in the event of a work stoppage by the Union(s) to replace the employees represented by the Union(s) in violation of this Agreement in any way the Contractor(s) chooses, until the Union(s) effects the return to work of such employees. Nothing in this Agreement shall be construed to limit or restrict the right of any of the parties to this Agreement to pursue fully any and all remedies available under law in the event of a violation of this Article 5.

- 5.3 In consideration of the foregoing, the Contractor(s) shall not incite, encourage or participate in any lockout or cause to be locked out any employee covered under the provisions of this Agreement. The term "lockout" does not refer to the discharge, termination or layoff of employees by the Contractor(s) for any reasons in the exercise of its rights as set forth in any provision of this Agreement, nor does "lockout" include the Owner's or Contractors' decision to terminate or suspend work on the site or any portion thereof for any reason.
- 5.4 Any employee or employees inciting, encouraging or participating in any strike, slowdown, picketing, sympathy strike or other activity in violation of this Agreement is subject to immediate discharge and the procedure per Article 12, if invoked.
- 5.5 Any party to this Agreement may institute the following binding arbitration procedure when such a breach is alleged. In the event a party institutes this procedure, arbitration shall be mandatory.
- 5.5.1 The party invoking this procedure shall immediately notify Robert Hirsch, who the parties agree shall be the permanent Arbitrator under this procedure. In the event that the permanent Arbitrator is unavailable at any time, William Riker shall serve as the Alternate Arbitrator. Notice to the Arbitrator shall be by the most expeditious means available, with notice by facsimile, electronic mail or similar means to the party alleged to be in violation and the involved Union General President.
- 5.5.2 Upon receipt of said notice the Arbitrator named above or the alternate shall designate a place for, schedule and hold a hearing within twenty-four (24) hours.
- 5.5.3 The Arbitrator shall notify the parties by facsimile, electronic mail or similar means of the place and time chosen for the session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Arbitrator.
- 5.5.4 The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred, and the Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation. The award shall be issued in writing within three (3) hours after the close of the hearing and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The Arbitrator shall order cessation of the violation of this Article and other appropriate relief, and such award shall be served on all parties by hand or registered mail upon issuance.
- 5.5.5 The award shall be final, binding and non-reviewable as to the merits. A judgment of any court of competent jurisdiction shall be entered upon the award, which may be enforced by any such court, upon the filing of this Agreement and all other relevant documents referred

to hereinabove in the following manner. Facsimile, electronic mail or similar notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section 5.5.4 of the Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's award shall be served on all parties by hand or by delivery to their last known address or by registered mail.

- 5.5.6 **Liquidated Damages.** A party found to have violated the provisions of this Article 5 No Strike-No Lockout section shall cease such violation within eight (8) hours of the award of the Arbitrator. Should the violation continue past eight (8) hours, the party in violation shall pay to the affected party as liquidated damages the actual damages or the sum of ten thousand dollars (\$10,000.00) per shift, or portion thereof, whichever is greater, until such violation is ceased. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.
- 5.5.7 Any rights created by statute or law governing arbitration or injunction proceedings inconsistent with the above procedure, or which interfere with compliance therewith, are hereby waived by the parties to whom they accrued.
- 5.5.8 The fees and expenses of the Arbitrator shall be borne by the party or parties found to be in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.
- 5.5.9 The procedures contained in this Article shall be applicable only to alleged violations of this Article. Discharge or discipline of employees for violation of this Article shall be subject to the grievance and arbitration procedures per Article 12.

ARTICLE 6

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES—NORTHERN CALIFORNIA PLAN

- 6.1 The assignment of work will be solely the responsibility of the Contractor performing the work involved and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.
- 6.2 All jurisdictional disputes between or among Building and Construction Trades Unions, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction

Trades Department. Decisions rendered shall be final, binding, and conclusive on the Contractors and Unions parties to this Agreement.

- 6.2.1 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies an Arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the Council within fourteen (14) calendar days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.
- 6.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slowdown of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.
- 6.4 As provided in Article 8, below, the prime Contractor will conduct pre-job conferences for all Contractors with the Unions prior to commencement of work by the Contractors. At these conferences all jurisdictional assignments will be announced. The Council and representatives of the Owner shall be advised in advance of all such conferences.

ARTICLE 7 **COORDINATOR**

- 7.1 The Owner shall appoint a Coordinator who is responsible for the administration and application of this Agreement.
- 7.2 The Coordinator shall endeavor to facilitate harmonious relations between the Contractors and Unions signatory hereto and will conduct the monthly joint Labor/Management meeting referred to in Article 9 below. The Coordinator shall not be responsible for the acts of the Contractors or Unions signatory hereto, and will not be a party to any arbitration or litigation arising out of this Agreement.

ARTICLE 8 **PRE-JOB CONFERENCE / MARK UP MEETING**

- 8.1 Timing/Attendees:
 - 8.1.1 The Prime Contractor shall hold and the Council and Owner staff representative or designee shall chair a mandatory Pre-Job Conference with representatives of all involved Contractors and the Unions at a location mutually agreeable to the Council, at least twenty-one (21) calendar days prior to:

- (a) The commencement of any Project work; and
 - (b) The commencement of Project work on each subsequently awarded Construction Contract.
- 8.1.2 The conference shall be attended by a representative of each participating Contractor, each affected Union, and the applicable Council. Representatives from the Owner may attend at their discretion.
- 8.2 Pre-Job Conference / Mark Up Meeting. The information presented at the pre-job conference will include but not be limited to:
 - (a) A listing of each Contractor's scope of work;
 - (b) The craft work assignments;
 - (c) The estimated number of craft workers required to perform the work;
 - (d) Any transportation arrangements;
 - (e) The estimated start and completion dates of the work;
 - (f) Discussion of pre-fabricated materials;
 - (g) Discussion of any trucking work regarding the on-haul and/or off-haul of materials, including applicable rates of pay;
 - (h) All workforce requirements for the Project; and
 - (i) A listing of any warranty work to be performed by the employees of an equipment manufacturer or vendor to protect the warranty on such equipment as described in Section 2.10(g), above, if any, for which the Contractor using the vendor or manufacturer shall demonstrate by reference to the specific manufacturer or vendor warranty provisions requiring that the work be performed by the manufacturer's or vendor's employees.
- 8.3 In addition to the Pre-Job Conference required by Section 8.1, a Pre-Job Conference and/or Mark-Up Meeting shall be required upon request of any Union(s), Contractor(s) or the Coordinator.
- 8.4 The Contractor performing the work shall have the responsibility for making work assignments in accordance with Section 6.1 of this Agreement. The work assignments shall be made in writing. Any craft objecting to the Contractor's proposed assignment of work shall have ten (10) working days from the date of the Pre-Job Conference or Mark-Up meeting to submit written objections to the Contractor before the Contractor makes the work assignments final.

- 8.5 The Coordinator will schedule and attend all Pre-Job and Mark-Up Meetings and participate in discussions as they pertain to the terms and conditions of this Agreement.
- 8.6 Project work shall not commence for any Contractor until an **Agreement to be Bound** has been signed and submitted by a duly authorized representative of the Contractor to the applicable Union(s) and the Council.

ARTICLE 9
JOINT LABOR/MANAGEMENT MEETINGS

- 9.1 A joint Labor/Management meeting will be held on a periodic basis between the Coordinator, the Contractors and the signatory Unions. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the craftspersons and the Contractors on the Project. These periodic meetings will also include discussion of the scheduling and productivity on work performed on the Project.

ARTICLE 10
MANAGEMENT RIGHTS

- 10.1 Consistent with the Master Labor Agreements, the Contractor(s) retains full and exclusive authority for the management of their work forces for all work performed under this Agreement. This authority includes, but is not limited to the right to:
- A. Plan, direct and control the operation of all the work.
 - B. Decide the number and types of employees required to perform the work safely and efficiently.
 - C. Hire, promote and layoff employees as deemed appropriate to meet work requirements and/or skills required.
 - D. Require all employees to observe the Contractors' reasonable Project Rules, Security and Safety Regulations, consistent with the provisions of this Agreement. These Project Rules and Regulations shall be reviewed and mutually agreed upon at the Pre-Job meeting and supplied to all employees and/or posted on the jobsite.

- E. Discharge or discipline employees for just cause.
- F. Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by a craft to perform work assigned, including overtime work that is authorized by the craft's local collective bargaining agreement, however, individual craftspeople shall not be required to work overtime unless specifically dispatched for overtime work. Any cases of a craft's refusal to work overtime shall be subject to the grievance procedure.
- G. No local rules, customs or practices, other than those specifically enumerated in this Agreement or the Master Labor Agreement, are applicable.
- H. Utilize any work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designator (in accordance with Article 2).
- I. The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Contractors, therefore, retain all legal rights not specifically enumerated in this Agreement.

ARTICLE 11

WORK RULES

- 11.1 The selection of craft foremen and general foremen shall be entirely the responsibility of the Contractor(s), it being understood that in the selection of such foremen and/or general foremen the Contractor(s) will give primary consideration to the qualified individuals referred to the Contractor(s) who are available in the Local Area. After giving such consideration, the Employer may select such individuals from other areas. The number of foremen and general foremen required shall be in accordance with the respective local craft Master Agreements. Craft foremen and general foremen shall take orders from the designated Contractor(s) representatives. Craft foremen shall be designated as working foremen at the request of the Contractor(s), in accordance with the Master Agreement.

- 11.2 There shall be no limit on production by employees nor restrictions on the full use of tools or equipment. Craftspersons using tools shall perform any of the work of the trade and shall work under the supervision of the craft foremen.
- 11.3 Security procedures for control of tools, equipment and materials are solely the responsibility of Contractor(s).
- 11.4 Employees shall be at their place of work (as designated by the Contractor at the pre-job meeting) and ready to work at the starting time and shall remain at their place of work performing their assigned functions until quitting time. A reasonable time will be allowed for employees to put company and personal tools in secured storage and return to the parking lot by quitting time. The parties reaffirm their policy of a fair day's work for a fair day's wage.
- 11.5 Slowdowns, standby crews and featherbedding practices will not be tolerated.
- 11.6 It is understood by the Contractor(s) and agreed to by the Union(s), that the employees of the Contractor(s) will perform the work requested by the Contractor(s) without having any concern or interference with any other work performed by any employees of the Owner or others who are not covered by this Agreement including, but not limited to, maintenance and operations.
- 11.7 Contractors shall provide rest and meal periods in accordance with Industrial Welfare Commission Order No. 16-2001. Any dispute regarding rest and meal periods provided in this section shall be resolved exclusively under the provisions of Article 12 of this Agreement.
- 11.8 There shall be no interference with a manufacturer's or vendor's deliveries of equipment, apparatus, or machinery to the jobsite since such deliveries shall not fall under this Agreement, except as set forth in Section 2.5. Unloading and moving of the above will be performed by the applicable craft employees pursuant to the terms of this Agreement.
- 11.9 The Contractor(s) will furnish facilities for storage of tools, adequate sanitary facilities and clean and dry change rooms. However, Contractor(s) will incur no liability for loss, theft, or damage to personal tools left in tool storage not provided by the Contractor(s). The Contractor(s) has the right to take any reasonable action deemed necessary to control tool losses. Personal tools when brought onto the jobsite at time of employment may be inventoried as to type and number of tools and condition. Tool provision and losses will be handled according to the individual craft local agreements.
- 11.10 The Contractor(s) and the Unions recognize the necessity for promoting efficiency and agree that no rules, customs or practices shall be permitted that cause overmanning, limit

production or increase the time required to do the work, and no limitation shall be placed upon the amount of work which an employee shall perform, nor shall there be any restrictions against the use of any kind of machinery, tools or labor-saving devices. However, the lawful manning provisions of the applicable craft's local collective bargaining agreement shall be recognized.

ARTICLE 12

GRIEVANCE PROCEDURE

- 12.1 It is mutually agreed that disputes involving the application or interpretation of a Master Labor Agreement to which a Contractor and Union are parties, and all disputes involving employee discipline or discharge, shall be resolved pursuant to the grievance and arbitration provisions of the applicable Master Labor Agreement. No employee working on the Project shall be disciplined or discharged without just cause. However, any question arising out of and during the term of this Agreement involving its interpretation and application (other than jurisdictional disputes or certain safety disputes as defined below) shall be considered a grievance hereunder and shall be resolved pursuant to the grievance procedure set forth below.
- 12.2 The Contractors, as well as the Unions, may bring forth grievances under this Article.
- 12.3 A grievance shall be considered null and void if not brought to the attention of the Contractor(s) within ten (10) working days after the incident which initiated the alleged grievance occurred, or within ten (10) working days after the grieving party became aware or should have become aware of the incident.
- 12.4 Grievances shall be settled according to the following procedure:

Step 1

The steward and the grievant shall attempt to resolve the grievance with the craft supervisor.

Step 2

In the event the matter remains unresolved in Step 1 above, within five (5) working days, within five (5) working days thereafter, the alleged grievance in writing may then be referred to the business manager of the Union involved and the labor relations representative of the Contractor for discussion and resolution.

Step 3

In the event the matter remains unresolved in Step 2 above

within five (5) working days, within five (5) working days thereafter, the grievance in writing may then be referred to the manager of labor relations of the Contractor or the manager's designated representative, and the Coordinator, for discussion and resolution with the business manager of the involved Union. The Union shall also notify its International Union representative prior to the Step 3 meeting, and the International Union representative shall advise if they intend to participate in the Step 3 meeting. The Council and the Owner shall have the right to participate in any efforts to resolve the dispute at Step 3.

Step 4

If the grievance is not settled in the preceding steps within five (5) working days, within five (5) working days thereafter, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the Coordinator. An Arbitrator selected from a permanent panel of Arbitrators consisting of William Riker, Thomas Angelo, Robert Hirsch, and Barry Winograd will hear grievances filed pursuant to this Article. Should the parties be unable to mutually agree on the selection of an Arbitrator from among those on the panel, selection for that given arbitration shall be made by alternately striking names from the list of names on the panel until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall be the party bringing forth the grievance. In the event the last remaining Arbitrator is not available in a reasonable time to hear the grievance and the parties have not mutually agreed to extend the time for arbitration, the last stricken Arbitrator will be selected. A reasonable time is defined as thirty (30) days.

- 12.5 The Arbitrator shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.
- 12.6 Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on the Coordinator. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement.

- 12.7 The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.
- 12.8 The Arbitrator's decision shall be confined to the issue(s) posed by the grievance and the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from, any provision of this Agreement.
- 12.9 Any party to a grievance may invite the Owner to participate in resolution of a grievance. The Owner may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.
- 12.10 In determining whether the time limits of Steps 2-4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, sent by overnight mail, electronic mail, faxed or postmarked within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance, and any written referral or request shall be considered timely if it is personally delivered, sent by overnight mail, electronic mail, faxed or postmarked during the extended time period.

ARTICLE 13

UNION RECOGNITION AND REPRESENTATION

13. All employees who are employed by the Contractor(s) shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on a construction contract subject to this Agreement, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the applicable local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non-union employees from joining the local union.
- 13.2 The Contractor(s) recognizes the Unions signatory hereto as the sole and exclusive collective bargaining representatives for its craft employees on the Project.
- 13.3 Authorized representatives of the Unions shall have access to the site during established working hours, provided they do not unduly interfere with the work of the employees, and further provided, that such representatives fully comply with the visitor safety and security rules established for the Project.
- 13.4 A steward shall be a working journeyman appointed by the authorized union representative of the local Union(s) who shall, in addition to work as a journeyman, be permitted to

perform during working hours such Union(s) duties as cannot be performed at other times which consists of those duties assigned by the business manager or business agent. The Union(s) agrees that such duties shall be performed as expeditiously as possible and the Contractor(s) agrees to allow the steward a reasonable amount of time for the performance of such duties. The steward shall not leave the work area without notifying the appropriate supervisor.

- 13.5 The steward will be paid at the journeyman wage for the job classification in which the steward is employed.
- 13.6 The working steward will be subject to discharge for just cause to the same extent as other employees provided, however, that the Union shall be notified twenty-four (24) hours prior to the discharge.
- 13.7 The steward shall remain on the job until its completion, or until no more than three (3) employees are left on the job, provided the steward is qualified to perform the work to be done; unless removed by the business manager.

ARTICLE 14 **REFERRAL**

- 14.1 Contractors performing construction work on the Project described in the Agreement shall, in filling craft job vacancies, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto when such procedures are not in violation of Federal law. The Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor. The Contractor(s) shall have the right to reject any applicant referred by the Union(s), in accordance with Article 12.
- 14.2 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Union(s).
- 14.3 In the event referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s) for employees within a forty-eight (48) hour period after such requisition is made by the Contractor(s) (Saturday, Sunday and holidays excepted), the Contractor(s) shall be free to obtain employees from any source. These employees shall be recognized as temporary employees. The Contractor(s) shall notify the Unions of such temporary gate hires. These temporary employees shall be replaced by qualified journeymen when available.
- 14.4 Employment of Local Area Residents. The parties to this Agreement support the development of increased numbers of skilled construction workers from the "Local Area",

which is defined as: Tier 1—the City of Antioch; Tier 2—the other communities in east Contra Costa County; and Tier 3—the remainder of Contra Costa County. To the extent allowed by law, and consistent with the Local Union's hiring hall provisions, and, further, as long as they possess the requisite skills and qualifications, residents, including journeymen and apprentices, within the Local Area shall be referred in order according to Tier commencing with Tier 1 and continuing through Tier 3 and then to non-Local Area residents until all positions in the dispatch request have been filled for Project work covered by this Agreement.

ARTICLE 15

NON-DISCRIMINATION

- 15.1 The Unions and Contractors shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, age, religion, political affiliation, Vietnam veteran or Vietnam Era status, disability as identified in the Americans with Disabilities Act, membership or non-membership in a labor organization in hiring or dispatch of workers to the jobsite or any other basis recognized by law.

ARTICLE 16

APPRENTICES

- 16.1 Recognizing the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry, the Contractor(s) will employ apprentices from a California state-approved Joint Apprenticeship Training Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.
- 16.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.
- 16.3 There shall be no restrictions on the utilization of apprentices in performing the work of their craft provided they are properly supervised.

ARTICLE 17

WAGE SCALES and FRINGE BENEFITS

- 17.1 All employees covered by this Agreement shall be classified and paid in accordance with the classification and wage scales and fringe benefit contributions contained in the appropriate local Master Labor Agreements which have been negotiated by the historically recognized bargaining agencies and in compliance with the applicable general prevailing wage determination made by the Director of Industrial Relations pursuant to the California Labor Code.

- 17.2 During the period of construction on this Project, the Contractors agree to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Unions and the historically recognized local bargaining unit on the effective date as set forth in the applicable local Master Labor Agreement. The Unions shall notify the Contractors in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.
- 17.3 The Contractors hereby adopt and agree to be bound by the written terms of the legally established local trust agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such appropriately qualified employee fringe benefit funds established by such appropriate local Master Labor Agreements. The Contractors authorize the parties to such local trust agreements to appoint Trustees and successor Trustees to administer the trust funds, and hereby ratify and accept the Trustees so appointed as if made by the Contractors.
- 17.4 Wages due shall be paid to all employees weekly, not later than on Friday, and not more than three (3) days' wages may be withheld and shall be paid before the end of the work shift. Payment shall be made by check with detachable stub, or by direct deposit with a wage statement.
- 17.5 When an employee is discharged, the employee shall be paid wages due immediately. An employee laid off or terminated shall be given a termination slip immediately upon termination of work. The termination slip shall be completed stating the reason for termination, and the employee's copy shall have, in addition to the firm's name, the firm's address. If an employee voluntarily terminates, wages due shall be paid in accordance with California State Law.

ARTICLE 18

HOURS OF WORK, OVERTIME and SHIFTS

- 18.1 Hours or Work: The work week will start on Monday and conclude on Sunday. Eight (8) hours per day shall constitute a standard work day between the hours of 6:00 a.m. and 5:30 p.m. with one-half (1/2) hour designated for lunch midway through the shift. Forty (40) hours per week, Monday through Friday, shall constitute a regular week's work. The foregoing provisions of this Article are applicable unless otherwise provided in the General Prevailing Wage Determinations made by the Director of Industrial Relations pursuant to the California Labor Code. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week.
- 18.2 Overtime: Overtime will be in compliance with the applicable General prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code.

- 18.3 Shifts: Shift work may be performed at the option of the Contractor(s) but, when performed, it must continue for a period of not less than five (5) consecutive working days, *except* at the request of the Owner for work involving tie in to existing distribution pipelines or facility operations to ensure continuous delivery of water where such five (5) day minimum shall be waived. Saturday and Sunday, if worked, can be used for establishing the five (5) day minimum shift work period. The straight time work week shall be considered to start with the day shift on Monday and end with the conclusion of the second or third shift on the fifth day. Shift premiums shall be paid in accordance with the applicable Master Labor Agreement. In the event the second or third shift of any regular work shall extend into a holiday, the employees shall be paid in accordance with the terms of the applicable Master Labor Agreement.

ARTICLE 19 **HOLIDAYS**

- 19.1 Holidays will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code.

ARTICLE 20 **REPORTING PAY**

- 20.1 Any employee reporting for work and for whom no work is provided, except when given notification not to report to work, shall receive two (2) hours pay at the regular straight time hourly rate. Any employee who starts work shall receive four (4) hours pay at the regular straight time hourly rate. Any employee who works beyond four (4) hours shall be paid for actual hours worked.
- 20.1.1 Whenever minimum reporting pay is provided for employees, they will be required to remain at the project site available for work for such time as they receive pay, unless released sooner by the principal supervisor of the Contractor(s) or its designated representative.
- 20.1.2 The provisions of this Section are not applicable where the employee voluntarily quits or is out by reason of a strike, in which case the employee shall be paid for the actual time worked.
- 20.2 It will not be a violation of this Agreement when the Owner or Contractor(s) consider it necessary to shut down because of an emergency situation that could endanger life or property. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Owner or Contractor(s) request

employees to wait in a designated area available for work, the employees will be compensated for the waiting time.

ARTICLE 21

TRAVEL, SUBSISTENCE and ZONE PAY

- 21.1 Travel, subsistence and zone pay will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code.

ARTICLE 22

HEALTH, SAFETY & SUBSTANCE POLICY

- 22.1 The employees covered by the terms of this Agreement shall at all times, while in the employ of the Contractor(s), be bound by the safety rules and regulations as established by the Owner and Contractor(s) and in accordance with OSHA/Cal-OSHA. These rules and regulations will be published and posted at conspicuous places throughout the Project.
- 22.2 In accordance with the requirements of OSHA/Cal-OSHA, it shall be the exclusive responsibility of each Contractor(s) on the Project to assure safe working conditions for its employees and compliance by them with any safety rules contained herein or established by the contractor(s). Nothing in this Agreement will make the Unions(s) liable to any employee or to other persons in the event that injury or accident occurs.
- 22.3 A convenient supply of cold and potable drinking water shall be provided by the Contractor(s).
- 22.4 This Project shall be a drug free workplace. Workers shall not possess, use, be under the influence of, provide, dispense, receive, sell, offer to sell alcohol and/or controlled substances as defined by law while on the Owner's property. Violation of this provision shall subject the worker to discipline up to and including termination.
- 22.5 The Parties agree to recognize and use the Substance Abuse Prevention Program contained in each applicable Union's Master Labor Agreement.

ARTICLE 23

SECURITY OF MATERIAL, EQUIPMENT and TOOLS

- 23.1 Security procedures for the control of tools, equipment and materials shall be solely the responsibility of the Contractor(s).
- 23.2 All employees will comply with the security procedures established by the Contractor(s) and the Owner.

ARTICLE 24
CALL-INS

- 24.1 When employees are called in to work at times other than their regularly established shift, they shall be paid not less than four (4) hours at the applicable overtime rate for that day.

ARTICLE 25
HELMETS TO HARDHATS

- 25.1 The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veteran's Employment (hereinafter "Center"), a joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.
- 25.2 The Unions and Contractor(s) agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 26
COUNTERPARTS/AUTHORITY

- 26.1 Any other agreement or modification of this Agreement must be reduced to writing and signed by the parties.
- 26.2 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages, and when bound together all necessary signatures shall constitute an original. Facsimile or scanned signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures.
- 26.3 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

ARTICLE 27
GENERAL SAVINGS CLAUSE

- 27.1 It is not the intention of either the Contractor(s) or the Union(s) parties to violate any laws governing the subject matter of this Agreement. If any Article or provision of this Agreement shall be declared invalid, inoperative, or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal, state or local government, the parties shall suspend the operation of each such article or provision during the period of invalidity. Such suspension shall not affect the operation of any provision covered in this Agreement to which the law or regulation is not applicable. Further, the Contractor(s) and Union(s) agree that if and when any or all provisions of this Agreement are finally held or determined to be illegal or void by Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

ARTICLE 28
DURATION OF AGREEMENT

- 28.1 This Agreement shall become effective on the day it is executed by the Owner and the Council and shall continue in full force and effect until completion of all component projects within the Scope of the Project.
- 28.2 This Agreement shall be included in the bid documents, requests for proposals, or other equivalent Project solicitations, which shall indicate that entering into this Agreement is a condition of the award of construction contracts for the Project.

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Signatures

City of Antioch


Ron Bernal,
City Manager

Date: 3/6/19

**Contra Costa County Building &
Construction Trades Council**


Bill Whitney,
Chief Executive Officer


Date: 3/6/19


Signatures


Signatory Unions:


Asbestos Workers Local #16



Boilermakers Local #549



Bricklayers Local #3


Northern California Regional
of Council of Carpenters for itself and on
behalf of its affiliated local unions


Sheet Metal Workers Local #104



Operating Engineers Local #3

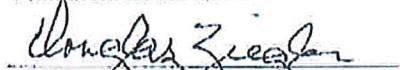

District Council #16,
Painters & Allied Trades

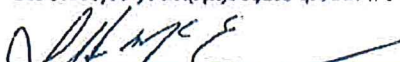

United Association Local #483,
Sprinkler Fitters

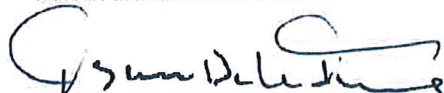

United Association Local #342


Elevator Constructors Local #8


Teamsters Local #815

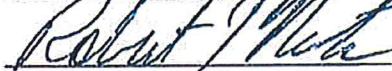

Roofers & Waterproofers Local #81


Iron Workers Local #378


Northern California District Council
of Laborers for itself and on behalf of
its affiliated local unions


Cement Masons Local #300


Electrical Workers Local #302


Plasterers Local #66


United Association Local #159


United Association Local #355

ATTACHMENT "A"

**PROJECT STABILIZATION AGREEMENT
FOR
FOR THE CITY OF ANTIOCH
BRACKISH WATER DESALINATION PLANT PROJECT
BETWEEN THE
CITY OF ANTIOCH
and
SIGNATORY CONTRA COSTA COUNTY BUILDING CONSTRUCTION TRADES UNIONS
AGREEMENT TO BE BOUND**

The undersigned, as a Contractor or Subcontractor (CONTRACTOR) on the City of Antioch Brackish Water Desalination Plant Project, (PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in this Project Stabilization Agreement (AGREEMENT), a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the AGREEMENT for this Project, together with any and all amendments and supplements now existing or which are later made thereto;
- (2) The CONTRACTOR agrees to be bound by the legally established local trust agreements as set forth in Article 16 of this AGREEMENT.
- (3) The CONTRACTOR authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR;
- (4) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.
- (5) Agrees to secure from any CONTRACTOR(S) (as defined in said AGREEMENT) which is or becomes a Subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.

Dated: _____

(Name of Contractor)

(Authorized Officer & Title)

(Name of Prime Contractor or
Higher Level Subcontractor)

CSLB #: _____

(Address)

Motor Carrier Permit No. _____

(Phone #)

(Fax #)

State Public Works Registration #: _____

City of Antioch Brackish Water Desalination Plant Project
Project Stabilization Agreement
Page 28 of 28

ATTACHMENT 6

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF ANTIOCH AND
[NAME OF CONSULTANT]

THIS AGREEMENT for consulting services is made by and between the City of Antioch ("City") and [REDACTED] ("Consultant") as of [REDACTED], 201[REDACTED].

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 at the time and place and in the manner specified therein. 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 date first noted above and shall end on [REDACTED], the date of completion specified in Exhibit A, and Consultant shall complete the work 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, as provided for in 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 agree to pay Consultant a sum not to exceed [REDACTED], 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' 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.
- 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], for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements of Section 2.1 to pay Consultant.

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.

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 following fee schedule: _____

- 2.5 **Reimbursable Expenses.** Reimbursable expenses are specified below, and shall not exceed [REDACTED] (\$ [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 receipt of authorization 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 A.M. Best's 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 **\$1,000,000** 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 Contractor 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 Contractor 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. 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 Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

4.5. Other Insurance Provisions. The 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 Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor'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).

4.5.2 *Primary Coverage.* For any claims related to this contract, the Contractor'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 Contractor's insurance and shall not contribute with it.

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.* Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor 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.

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 Contractor 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 Contractor must purchase "extended reporting" coverage for a minimum of **five (5)** years after completion of contract work.

4.6. Certificate of Insurance and Endorsements. Contractor 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 Contractor'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. Contractor 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 contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. 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 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. CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend (with counsel acceptable to the CITY) and hold harmless CITY, and its employees, officials, volunteers and agents ("Indemnified Parties") from and against any and all losses, claims, damages, costs and liability arising out of any personal injury, loss of life, damage to property, or any violation of any federal, state, or municipal law or ordinance, arising out of or resulting from the performance of this Agreement by CONSULTANT, its officers, employees, agents, volunteers, subcontractors or sub-consultants, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of CITY.

5.2. In the event that Consultant or any employee, agent, sub-consultant or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, sub-consultants or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

5.3. 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.

5.4. 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 Subparagraph 1.3; however, otherwise City shall not have the right to control the 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 No 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 work hereunder.
- 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 Subsection in any subcontract approved by the Contract Administrator or this Agreement.
- 7.6 **Prevailing Wages.** Should the scope of work fall under the requirements of the California Labor Code and implementing regulations for the payment of prevailing wages, then Consultant shall comply and pay prevailing wages.

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 upon 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 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 this Agreement beyond that provided for in Subsection 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' 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, 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 otherwise known to Consultant or 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 to this Agreement.
- 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 that 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 Sections 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 § 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 attachment or 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 Scott Buenting ("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:

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

- 10.11 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and all 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

Rowland E. Bernal, Jr., City Manager

Attest:

Arne Simonsen, City Clerk of City of Antioch

CONSULTANT:

[NAME OF CONSULTANT]

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Approved as to Form:

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]