



ANNOTATED AGENDA

Antioch City Council REGULAR MEETING

Date: Tuesday, March 9, 2021

Time: 5:30 P.M. – Closed Session

7:00 P.M. – Regular Meeting

Place: The City of Antioch, in response to the Executive Order of the Governor and the Order of the Health Officer of Contra Costa County concerning the Novel Coronavirus Disease, is making Antioch City Council meetings available via Comcast channel 24, AT&T U-verse channel 99, or live stream (at www.antiochca.gov).

If you wish to provide a written public comment, you may do so any of the following ways **by 5:00 p.m. the day of the Council Meeting**: (1) Fill out an online speaker card, located at https://www.antiochca.gov/speaker_card, or (2) Email the City Clerk's Department at cityclerk@ci.antioch.ca.us.

To provide oral public comments during the meeting, click the following link to register in advance to access the meeting via Zoom Webinar: <https://www.antiochca.gov/speakers>. You may also provide an oral public comment by dialing **(925) 776-3057**. Please see inside cover for detailed Speaker Rules.

*The City cannot guarantee that its network and/or the site will be uninterrupted. To ensure that the City Council receives your comments, you must submit your comments in writing **by 5:00 p.m. the day of the City Council Meeting**.*

Lamar Thorpe, Mayor

Monica E. Wilson, Mayor Pro Tem (Council Member District 4)

Tamisha Torres-Walker, Council Member District 1

Michael Barbanica, Council Member District 2

Lori Ogorchock, Council Member District 3

Ellie Householder, City Clerk

Lauren Posada, City Treasurer

Ron Bernal, City Manager

Thomas Lloyd Smith, City Attorney

Online Viewing: <https://www.antiochca.gov/government/city-council-meetings/>

Electronic Agenda Packet: <https://www.antiochca.gov/government/agendas-and-minutes/city-council/>

Project Plans: <https://www.antiochca.gov/fc/community-development/planning/Project-Pipeline.pdf>

SPEAKERS' RULES

IMPORTANT NOTICE REGARDING THIS MEETING: To protect our residents, officials, and staff, and aligned with the Governor's Executive Order N-29-20, certain teleconference requirements of the Brown Act have been suspended, including the requirement to provide a physical location for members of the public to participate in the meeting.

Members of the public seeking to observe the meeting may do so at https://www.antiochca.gov/live_stream, on Comcast Channel 24, or AT&T U-Verse Channel 99.

Members of the public wishing to provide public comment may do so in the following ways (#2 pertains to the Zoom Webinar):

1. Fill out an online speaker card **by 5:00 p.m. the day of the Council Meeting** located at: https://www.antiochca.gov/speaker_card.
2. Provide oral public comments during the meeting by clicking the following link to register in advance to access the meeting via Zoom Webinar: <https://www.antiochca.gov/speakers>
 - You will be asked to enter an email address and a name. Your email address will not be disclosed to the public. After registering, you will receive an email with instructions on how to connect to the meeting.
 - When the Mayor announces public comments, click the "raise hand" feature in Zoom. For instructions on using the "raise hand" feature in Zoom, visit: https://www.antiochca.gov/raise_hand. When calling into the meeting using the Zoom Webinar telephone number, press *9 on your telephone keypad to "raise your hand". Please ensure your Zoom client is updated so staff can enable your microphone when it is your turn to speak.
3. Email comments to cityclerk@ci.antioch.ca.us **by 5:00 p.m. the day of the Council Meeting**. The comment will be read into the record at the meeting (350 words maximum, up to 3 minutes, at the discretion of the Mayor). **IMPORTANT:** Identify the agenda item in the subject line of your email if the comment is for Announcement of Community Events, Public Comment, or a specific Agenda Item number. No one may speak more than once on an agenda item or during "Public Comments". All emails received **by 5:00 p.m. the day of the Council Meeting** will be entered into the record for the meeting.

Speakers will be notified shortly before they are called to speak.

- When called to speak, please limit your comments to the time allotted (350 words, up to 3 minutes, at the discretion of the Mayor).

After having heard from the public, the agenda item will be closed. Deliberations will then be limited to members of the City Council.

If the Council meeting appears to be going late, the City Council may decide to continue some items until a subsequent meeting. We will try to make this determination around 10:00 p.m. It is the goal of the City Council to stop discussing agenda items no later than 11:00 p.m.

In accordance with the Americans with Disabilities Act and California law, it is the policy of the City of Antioch to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including individuals with disabilities. If you are a person with a disability and require information or materials in an appropriate alternative format; or if you require any other accommodation, please contact the ADA Coordinator at the number or address below at least 72 hours prior to the meeting or when you desire to receive services. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility. The City's ADA Coordinator can be reached @ Phone: (925) 779-6950, and e-mail: publicworks@ci.antioch.ca.us.

Notice of Availability of Reports

This agenda is a summary of the actions proposed to be taken by the City Council. For almost every agenda item, materials have been prepared by the City staff for the Council's consideration. These materials include staff reports which explain in detail the item before the Council and the reason for the recommendation. The materials may also include resolutions or ordinances which are proposed to be adopted. Other materials, such as maps and diagrams, may also be included. City Council Agendas, including Staff Reports are posted onto our City's Website 72 hours before each Council Meeting. To be notified when the agenda packets are posted onto our City's Website, simply click on this link: <https://www.antiochca.gov/notifications/> and enter your e-mail address to subscribe. To view the agenda information, click on the following link: <https://www.antiochca.gov/government/agendas-and-minutes/city-council/>. Questions may be directed to the staff member who prepared the staff report, or to the City Clerk's Office, who will refer you to the appropriate person.

Notice of Opportunity to Address Council

The public has the opportunity to address the Council on each agenda item. To address the Council, fill out a Speaker Request form online **by 5:00 p.m. the day of the Council Meeting** at https://www.antiochca.gov/speaker_card. See the Speakers' Rules on the inside cover of this Agenda. The Council can only take action on items that are listed on the agenda. Comments regarding matters not on this Agenda, may be addressed during the "Public Comments" section.

5:32 P.M. ROLL CALL – CLOSED SESSION – for Council Members – ***Council Members District 1 Torres-Walker, District 2 Barbanica, District 3 Ogorchock and Mayor Pro Tem (District 4) Wilson (Mayor Thorpe Absent)***

PUBLIC COMMENTS for Closed Session – ***None***

CLOSED SESSION:

- 1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** pursuant to Government Code section 54956.9: Oak Hill Park Company v. The City of Antioch, et al. Contra Costa County Superior Court Case No. N21-0048.
No reportable action
- 2) CONFERENCE WITH LABOR NEGOTIATORS** – This Closed Session with the City's Labor Negotiators is authorized by California Government Code section 54957.6; City designated representatives: Nickie Mastay and Jeff Bailey; Employee organization: Treatment Plant Employees' Association (TPEA).
No reportable action
- 3) PUBLIC EMPLOYEE PERFORMANCE EVALUATION: CITY ATTORNEY.** This closed session is authorized pursuant to Government Code section 54957.
No reportable action

7:01 P.M. ROLL CALL – REGULAR MEETING – for Council Members – ***All Present***

PLEDGE OF ALLEGIANCE

1. INTRODUCTION OF NEW CITY EMPLOYEES

2. PROCLAMATIONS

- American Red Cross Month, March 2021
- Women's History Month, March 2021

Approved, 5/0

Recommended Action: It is recommended that the City Council approve the proclamations.

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

3. ANNOUNCEMENTS OF BOARD AND COMMISSION OPENINGS

- ECONOMIC DEVELOPMENT COMMISSION

COUNCIL MEMBER BARBANICA REQUESTED A MOTION TO SUSPEND THE RULES AND MOVE PUBLIC COMMENTS FOR UNAGENDIZED ITEMS TO BE HEARD AFTER COUNCIL REGULAR AGENDA ITEM #9.

COUNCIL APPROVED, 4/1-(TORRES-WALKER)

CITY COUNCIL COMMITTEE REPORTS/COMMUNICATIONS

MAYOR'S COMMENTS

4. CONSENT CALENDAR

A. APPROVAL OF COUNCIL MINUTES FOR FEBRUARY 9, 2021

Approved, 5/0

Recommended Action: It is recommended that the City Council approve the Minutes.

B. APPROVAL OF COUNCIL SPECIAL MEETING MINUTES FOR FEBRUARY 12, 2021

Continued, 5/0

Recommended Action: It is recommended that the City Council continue the Special Meeting Minutes.

CONSENT CALENDAR – Continued

- C.** APPROVAL OF COUNCIL SPECIAL MEETING MINUTES FOR FEBRUARY 13, 2021
Continued, 5/0
Recommended Action: It is recommended that the City Council continue the Special Meeting Minutes.
- D.** APPROVAL OF COUNCIL SPECIAL MEETING MINUTES FOR FEBRUARY 16, 2021
Continued, 5/0
Recommended Action: It is recommended that the City Council continue the Special Meeting Minutes.
- E.** APPROVAL OF COUNCIL MINUTES FOR FEBRUARY 23, 2021
Continued, 5/0
Recommended Action: It is recommended that the City Council continue the Minutes.
- F.** APPROVAL OF COUNCIL SPECIAL MEETING MINUTES FOR FEBRUARY 26, 2021
Continued, 5/0
Recommended Action: It is recommended that the City Council continue the Special Meeting Minutes.
- G.** APPROVAL OF COUNCIL WARRANTS
Approved, 5/0
Recommended Action: It is recommended that the City Council approve the warrants.
- H.** FIRST AMENDMENT TO THE CONSULTING SERVICES AGREEMENT WITH KLEINFELDER, INC. FOR SERVICES RELATED TO THE ANTIOCH PAVEMENT REHABILITATION (P.W. 392-31) AND WATER TANK SLOPE MITIGATION PROJECTS
Reso. No 2021/28 adopted, 5/0
Recommended Action: It is recommended that the City Council adopt a resolution:
- 1) Approving the first amendment to the Consulting Services Agreement (“Agreement”) with Kleinfelder, Inc. (“Kleinfelder”) for services related to the Antioch Pavement Rehabilitation and Water Tank Slope Mitigation Projects in the amount of \$43,630 for a total contract amount of \$93,630; and
 - 2) Authorizing the City Manager to execute the Agreement.

CONSENT CALENDAR – Continued

I. FIFTH AMENDMENT TO THE CONSULTING SERVICES AGREEMENT WITH COASTLAND FOR ON-CALL CONSULTANT INSPECTION SERVICES

Reso. No 2021/29 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution:

- 1) Approving the fifth amendment to the Consulting Services Agreement (“Agreement”) with Coastland in an amount not to exceed \$250,000 for a total contract amount of \$1,012,500 for on-call consultant inspection services and extending the term of the contract through December 31, 2021; and
- 2) Authorizing and directing the City Manager or designee to execute the fifth amendment to the Agreement with Coastland in a form approved by the City Attorney.

J. CONSIDERATION OF BIDS FOR THE TRENCHLESS REHABILITATION OF SANITARY SEWER MAIN USING CURED IN PLACE PIPE AT VARIOUS LOCATIONS (P.W. 684-2)

Reso. No 2021/30 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution:

- 1) Approving an amendment to increase the Fiscal Year 2020/21 Capital Improvement Budget for the Trenchless Rehabilitation of Sanitary Sewer Main Using Cured in Place Pipe at Various Locations (“Project”) in the amount of \$700,000 from the Sewer System Improvement Fund;
- 2) Authorizing and directing the City Manager or designee to make the necessary Fiscal Year 2020/21 budget adjustments;
- 3) Awarding the construction agreement (“Agreement”) for the Project to the lowest, responsive, and responsible bidder, Southwest Pipeline and Trenchless Corp. (“Southwest”);
- 4) Approving an Agreement with Southwest in the amount of \$1,142,240; and
- 5) Authorizing the City Manager to execute the Agreement for the Project with Southwest for a total amount of \$1,142,240.

CONSENT CALENDAR – Continued

K. CONTRA LOMA ESTATES PARK RENOVATION (P.W. 298-P3)

Reso. No 2021/31 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution:

- 1) Approving a Consulting Services Agreement (“Agreement”) with RRM Design Group (“RRM”) for the Contra Loma Estates Park Renovation project (“Project”) in the amount of \$201,785; and
- 2) Authorizing the City Manager to execute the Agreement for the Project with RRM for a total amount of \$201,785.

L. UPDATE TO THE EMERGENCY DECLARATION FOR MITIGATION AND REPAIRS TO THE WATER TANK HILLSIDE EROSION AT THE WATER TREATMENT PLANT

Received, 5/0

Recommended Action: It is recommended that the City Council receive this update to the Declaration of Emergency for mitigation and repairs to the water tank hillside erosion at the Water Treatment Plant.

M. CONSIDERATION OF BIDS FOR MOWER ATTACHMENT FOR 5090M JOHN DEERE TRACTOR BID NO. 020-0222-21A

Reso. No 2021/32 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution:

- 1) Awarding Bid No. 020-0222-21A Mower Attachment for 5090M John Deere Tractor to Municipal Maintenance Equipment, Inc.; and
- 2) Authorizing the City Manager to execute the purchase with Municipal Maintenance Equipment, Inc. for the amount not to exceed \$89,243.37.

N. RESOLUTION ESTABLISHING THE RATE PER EQUIVALENT RUNOFF UNIT FOR FISCAL YEAR 2021-22 AND REQUESTING THE CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT TO ADOPT AN ANNUAL PARCEL ASSESSMENT FOR DRAINAGE MAINTENANCE AND THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PROGRAM

Reso. No 2021/33 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt the resolution establishing a rate of twenty-five dollars (\$25) per equivalent runoff unit (“ERU”) for Fiscal Year (“FY”) 2021-22. That rate will generate the funds used to maintain stormwater quality as mandated by the Clean Water Act.

CONSENT CALENDAR – Continued

- O.** RESOLUTION AUTHORIZING THE EXECUTION OF A PARK FEE CREDIT AGREEMENT, ROADWAY REIMBURSEMENT AGREEMENT, AND SANITARY SEWER REIMBURSEMENT AGREEMENT FOR AVIANO SUBDIVISION 9249 WITH CIVIC AVIANO, LLC

Reso. No 2021/34 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution authorizing the City Manager to execute a Park Fee Credit Agreement, Roadway Reimbursement Agreement, and Sanitary Sewer Reimbursement Agreement for Aviano Subdivision 9249 between the City of Antioch and Civic Aviano, LLC.

- P.** RESOLUTION APPROVING AMENDMENT NO. 3 TO THE CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF ANTIOCH AND VOLER STRATEGIC ADVISORS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

Reso. No 2021/35 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution to:

- 1) Approve Amendment No. 3 to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors, which extends the term of the Agreement for two months to May 15, 2021 and increases the value of the Agreement by \$16,000 for a total amount not to exceed \$160,000; and
- 2) Authorize the City Manager to execute Amendment No. 3 to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors.

- Q.** RESOLUTION AUTHORIZING THE EXECUTION OF A FINANCING AGREEMENT WITH THE STATE WATER RESOURCES CONTROL BOARD FOR A DRINKING WATER STATE REVOLVING FUND LOAN UP TO \$55,000,000 FOR THE BRACKISH WATER DESALINATION PROJECT (P.W. 694)

Reso. No 2021/27 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution:

- 1) Approving the State Water Resources Control Board (SWRCB) Financing Agreement (Agreement) for a Drinking Water State Revolving Fund Loan (DWSRF) up to \$55,000,000 for the Brackish Water Desalination Project ("Project"); and
- 2) Authorizing the City Manager or designee to execute the Agreement.

COUNCIL REGULAR AGENDA

5. SALES TAX CITIZENS' OVERSIGHT COMMITTEE APPOINTMENTS FOR ONE VACANCY EXPIRING MARCH 2022 AND ONE VACANCY EXPIRING MARCH 2024

Reso. No 2021/36 adopted,
Appointing Matthew Lemming to the term expiring March 2022,
5/0
And appointing Destiny Iwuoma to the term expiring March 2024,
5/0

Recommended Action: It is recommended that the Mayor nominate, and Council appoint by resolution:

- 1) One Member to the Sales Tax Citizens' Oversight Committee for the vacancy expiring March 2022; and
- 2) One Member to the Sales Tax Citizens' Oversight Committee for the vacancy expiring March 2024.

6. POLICE CRIME PREVENTION COMMISSION APPOINTMENT FOR ONE VACANCY EXPIRING OCTOBER 2021

Reso. No 2021/37 adopted,
Appointing Nichole Randolph to the term expiring October 2021
5/0

Recommended Action: It is recommended that the Mayor nominate, and Council appoint by resolution one Member to the Police Crime Prevention Commission for the vacancy expiring October 2021.

7. POLICE REFORM – MENTAL HEALTH CRISIS RESPONSE

Direction provided to staff

Recommended Action: It is recommended that the City Council receive a presentation from Contra Costa County Health Services and provide staff with direction.

9:06 P.M. ADJOURNED TO BREAK

9:13 P.M. RECONVENE. ROLL CALL for Council Members – All Present

8A. POLICE REFORM – BODY WORN AND IN-CAR CAMERAS

Reso. No 2021/38 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution:

- 1) Approving a five-year contract with Axon Enterprises Inc. to purchase body worn / in car camera hardware and operating system software from April 1, 2021 to March 31, 2026 and authorizing the City Manager to execute a purchasing agreement with Axon Enterprises not to exceed \$1,422,108.88 over a five-year period;
- 2) Authorizing the purchase of the Evidence.com/CAD/RMS interface computer software and authorizing the City Manager to execute a purchasing agreement with Mark 43 not to exceed \$15,000.00; and
- 3) Authorizing the City Manager to make the necessary Fiscal Year 2020/21 budget amendments.

8B. POLICE REFORM - STAFFING FOR BODY WORN AND IN-CAR CAMERAS

Reso. No 2021/39 adopted, 5/0

Recommended Action: It is recommended that the City Council adopt a resolution:

- 1) Authorizing the hiring of one Lead Police Records Technician and one Police Records Technician at a total initial annual cost of \$263,819.00; and
- 2) Authorizing the City Manager to make the necessary Fiscal Year 2020/21 budget amendments.

9. PURCHASE OF PEREGRINE TECHNOLOGIES SOFTWARE WITH SOLE SOURCE JUSTIFICATION REQUEST

Reso. No 2021/40 adopted, 4/1-(Torres-Walker)

Recommended Action: It is recommended that the City Council adopt a resolution approving the following actions:

- 1) Approve the sole source request for the purchase and deployment of a software platform from Peregrine Technologies;
- 2) Authorize and direct the City Manager to negotiate and execute a three-year purchase agreement, with Peregrine Technologies, for a software license in an amount of \$127,000 annually, not to exceed \$381,000; and
- 3) Authorize and direct the City Manager to amend the Fiscal Year 2020/21 General Fund budget in the amount of \$87,000.

PUBLIC COMMENTS – *Members of the public may comment only on unagendized items. The public may comment on agendized items when they come up on this Agenda.*

PUBLIC COMMENT

STAFF COMMUNICATIONS

COUNCIL COMMUNICATIONS AND FUTURE AGENDA ITEMS – *Council Members report out various activities and any Council Member may place an item for discussion and direction on a future agenda. Timing determined by Mayor and City Manager – no longer than 6 months.*


MOTION TO ADJOURN – *After Council Communications and Future Agenda Items, the Mayor will make a motion to adjourn the meeting. A second of the motion is required, and then a majority vote is required to adjourn the meeting.*
Motioned to adjourn meeting at 12:02 a.m., 4/0/1-(Mayor Thorpe Absent)



INTRODUCTION OF NEW CITY EMPLOYEES

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Nickie Mastay, Administrative Services Director 

- Community Development Director Forrest Ebbs would like to introduce:
 - Seana Field, Community Development Technician (Building Inspection Division).
-

- Public Works Director/City Engineer John Samuelson would like to introduce:
 - Martin Delgado, Landscape Maintenance Worker II
 - Gavin Johnson, Water Treatment Plant Trainee with Certificate.
-

- Police Chief Tammany Brooks would like to introduce:
 - Chad Ward, Community Services Officer.
-

- City Manager Ron Bernal would like to introduce:
 - Tasha Johnson, Youth Services Network Manager.



*IN HONOR OF
AMERICAN RED CROSS MONTH
MARCH 2021*

WHEREAS, every year the American Red Cross, the largest humanitarian organization in the world, responds to an average of more than 60,000 disasters across the country from small home fires to massive disasters;

WHEREAS, March is American Red Cross Month, a time when we recognize the humanitarian organization that eases people's suffering during life's emergencies in the City of Antioch, across the United States, and around the world;

WHEREAS, the Red Cross continues to work with its partners to prevent fire tragedies through its national Home Fire Campaign and has worked with local organizations across Contra Costa County to install free smoke alarms and made hundreds of households safer from the threat of home fires;

WHEREAS, American Red Cross worked tirelessly beside its Government and Community partners to coordinate preparedness efforts and develop response plans for the high fire danger by putting volunteers on stand-by to open evacuation centers, shelters and staff the Emergency Operations Center; and

WHEREAS, every day, people in our community depend on the American Red Cross, whose lifesaving mission is powered by the devotion of volunteers, generosity of donors and partnership of community organizations.

NOW, THEREFORE, I, LAMAR THORPE, Mayor of the City of Antioch, do hereby proclaim March 2021 as "American Red Cross Month" and encourage all Americans to support this organization and its noble humanitarian mission.

MARCH 9, 2021

LAMAR THORPE, Mayor



*IN HONOR OF
WOMEN'S HISTORY MONTH
MARCH 2021*

WHEREAS, American women of every race, class, and ethnic background have made historic contributions to the growth and strength of our Nation in countless recorded and unrecorded ways;

WHEREAS, American women have played and continue to play critical economic, cultural, and social role in every sphere of the life of the Nation by constituting a significant portion of the labor force working inside and outside of the home;

WHEREAS, American women of every race, class, and ethnic background served as early leaders in the forefront of every major progressive social change movement;

WHEREAS, American women have served our country courageously in the military;

WHEREAS, the Cannery Lady Statue located on West 1st Street demonstrates our pride in, and recognition of, the contributions made by our earlier residents, the workers of East County.

WHEREAS, American women have been leaders, not only in securing their own rights of suffrage and equal opportunity, but also in the abolitionist movement, the emancipation movement, the industrial labor movement, the civil rights movement, and other movements, especially the peace movement, which create a more fair and just society for all; and

WHEREAS, despite these contributions, the role of American women in history has been consistently overlooked and undervalued, in the literature, teaching and study of American history.

NOW, THEREFORE, I, LAMAR THORPE, Mayor of the City of Antioch, do hereby proclaim March 2021 as "Women's History Month" and encourage all Antioch Residents to observe March as Women's History Month with appropriate programs, ceremonies, and activities.

MARCH 9, 2021

LAMAR THORPE, Mayor

2.02
03-09-21

BOARDS / COMMISSION / COMMITTEE VACANCY ANNOUNCEMENTS

The City of Antioch encourages residents to become involved in their local community. One way to do so is to serve on various commissions, boards and committees. Any interested resident is encouraged to apply for the vacancy listed below. To be considered for this volunteer position, a completed application must be received in the Office of the City Clerk **by 5:00 p.m., Friday, March 26, 2021**. Applications are available at <https://www.antiochca.gov/#>.

➤ ECONOMIC DEVELOPMENT COMMISSION

Your interest and desire to serve our community is appreciated.

ECONOMIC DEVELOPMENT COMMISSION

(Deadline date: 03/26/2021)

One (1) Partial-term vacancy expiring June 2021

One (1) Partial-term vacancy expiring June 2023

- The EDC's function is to address economic development issues within the City and make recommendations to the City Council and staff regarding policies, regulations, marketing, development strategies and planning activities designed to enhance the City's economic base and create quality jobs.
- Seven-member board – 4 year terms.
- At least five members shall be Antioch residents/electors. Non-resident members shall own or operate a business in the City.
- Regular meetings are held at 6:00 p.m. on the first Tuesday in the months of February, April, June, October and December, the third Tuesday in July, and on the first Tuesday on an as-needed basis only during the months of March, May, and November. No meetings are held during January or August.
- Members of the Economic Development Commission are subject to The Brown Act open meeting law and are required to file an annual Statement of Economic Interest (FPPC Form 700).
- Commissioners must take the 2-hour AB1234 Ethics Training within one year of appointment and every two years thereafter. There is no cost to this online AB1234 Ethics Training provided by the Fair Political Practices Commission.
- Newly appointed and reappointed commissioners are required to take an Oath of Office administered by the City Clerk.

CITY COUNCIL MEETING

Regular Meeting
7:00 P.M.

February 9, 2021
Meeting Conducted Remotely

The City of Antioch, in response to the Executive Order of the Governor and the Order of the Health Officer of Contra Costa County concerning the Novel Coronavirus Disease (COVID-19), held Antioch City Council meetings via Comcast channel 24, AT&T U-verse channel 99, and live stream (at www.antiochca.gov). The City Council meeting was conducted utilizing Zoom Audio/Video Technology.

Written public comments were received by 5:00 p.m. the day of the Council Meeting in the following ways: (1) Filled out an online speaker card, located at https://www.antiochca.gov/speaker_card, or (2) Emailed the City Clerk's Department at cityclerk@ci.antioch.ca.us. Oral public comments received during the meeting were received by registering in advance to access the meeting via Zoom Webinar: https://www.antiochca.gov/speakers_or_by dialing (925) 776-3057.

6:00 P.M. - CLOSED SESSION

1. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** pursuant to Government Code section 54956.9: Monika Helgemo v. City of Antioch, Contra Costa County Superior Court Case No. C20-00767.
2. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS** pursuant to California Government Code section 54956.8: Property – 4527 Deerfield Drive, Antioch, CA; City Negotiator: City Manager Ron Bernal. Discuss the terms and conditions outlined in the Letter of Intent submitted to the City of Antioch.
3. **CONFERENCE WITH LABOR NEGOTIATORS** – This Closed Session with the City's Labor Negotiators is authorized by California Government Code section 54957.6; City designated representatives: Nickie Mastay and Jeff Bailey; Employee organization: Treatment Plant Employees' Association (TPEA).

Mayor Thorpe called the meeting to order at 7:00 P.M., and City Clerk Householder called the roll.

Present: Council Members District 1 Torres-Walker (arrived at 7:01 P.M.), District 2 Barbanica, District 3 Ogorchock, Mayor Pro Tem (District 4) Wilson and Mayor Thorpe

PLEDGE OF ALLEGIANCE

Councilmember Wilson led the Pledge of Allegiance.

City Attorney Smith reported the City Council had been in Closed Session and gave the following report: **#1 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**, no reportable action, **#2 CONFERENCE WITH REAL PROPERTY NEGOTIATORS**, no reportable action; and **#3 CONFERENCE WITH LABOR NEGOTIATORS**, no reportable action.

1. INTRODUCTION OF NEW CITY EMPLOYEES

City Manager Bernal introduced Brad Helfenberger, Parks & Recreation Director who thanked City Manager Bernal for the introduction and stated he looked forward to working in Antioch.

Director of Parks and Recreation Helfenberger introduced Bree Pires, and Recreation Programs Coordinator who thanked Director of Parks and Recreation Helfenberger for the introduction and stated she looked forward to working in Antioch.

Director of Parks and Recreation Helfenberger announced that Monica Bugacan-Abakan, Recreation Programs Coordinator was unable to attend the meeting this evening and he hoped to introduce her at a future meeting.

Mayor Thorpe welcomed the new employees to the City of Antioch.

2. PROCLAMATIONS

Celebrating Thomas Gaines Day in Antioch, February 9, 2021
In Honor of Daisy Pierson's 90th Birthday, February 15, 2021

On motion by Councilmember Ogorchock, seconded by Councilmember Wilson, the Council unanimously approved the Proclamations.

Victoria R. Adams, President East County Branch of the NAACP, stated it was an honor to accept the *Celebrating Thomas Gaines Day in Antioch* proclamation and thanked Thomas Gaines for being a visionary.

Mayor Thorpe thanked Ms. Adams for the work she does through the NAACP and accepting the proclamation.

On motion by Councilmember Ogorchock, seconded by Councilmember Wilson, the City Council unanimously postponed the *In Honor of Daisy Pierson's 90th Birthday*, proclamation to February 23, 2021.

3. ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

Assistant City Manager Bayon Moore announced the *Virtual Vision and Strategic Planning Workshop* would be held February 12, 2021 at 6:00 P.M. and February 13, 2021 at 9:00 A.M. She noted these meetings would be available to the public in the virtual meeting format. She also announced the *Bridging the Gap Roundtable Discussion* on Police – Community Engagement

would be held Feb 18, 2021 from 10:00 A.M. - 11:30 A.M. She noted the registration deadline was February 15, 2021 at 12:00 P.M.

4. ANNOUNCEMENTS OF BOARD AND COMMISSION OPENINGS

City Clerk Householder announced the following Board and Commission openings:

- Planning Commission: deadline date is February 17, 2021

She noted additional information was available on the City's website.

PUBLIC COMMENTS

The following public comments were read into the record by Administrative Services Director Mastay.

Sal Sbranti, Antioch resident, provided written comment requesting the City Council agendaize a discussion regarding comments made by Councilmember Torres-Walker on social media.

Mark Long, Antioch resident, provided written comment discussing independent investigations.

Melissa Daniels, Antioch resident – District 3, provided written comment encouraging everyone respect the US flag.

Olivia and Brian McCully, Antioch resident – District 3, provided written comment expressing concern regarding Mayor Thorpe's response to Councilmember Ogorchock at a previous Council meeting.

Mike M., Antioch resident – District 2, provided written comment in support of Councilmember Barbanica.

Daniel W., Antioch resident, provided written comment calling for the removal of Mayor Thorpe and Councilmember Torres-Walker from the City Council.

Laura Young, Antioch resident, Roy Ledford, Michelle Kuslits, Antioch resident, Anonymous and Donna Allen, Antioch resident, provided written comment in support of City funding body-worn and dashboard cameras for the Antioch Police Department.

Bill Goldsby and Pauline van Nispen, Antioch residents, provided written comment in support of the City Council funding body-worn cameras for Antioch Police Department.

Margaret Frise, Antioch resident, provided written comment in support of the City Council funding body-worn cameras for the Antioch Police Department. She encouraged Councilmember Torres-Walker to remove herself from the City Council for comments made on social media.

Lyndsey Amezcua provided written comment in support of the City Council funding body-worn and dash cameras for the Antioch Police Department. She also asked for the release of the investigation into an incident involving the Antioch Police Department and a Councilmember's children. She expressed concern regarding Mayor Thorpe's response to Councilmember Ogorchock at a previous Council meeting.

Kelly Teal, Antioch resident, provided written comment in support of the City Council funding body-worn cameras for the Antioch Police Department. She expressed concern that a request for an agenda item from Councilmember Ogorchock had not been acknowledged and she believed Mayor Thorpe's response to Councilmember Ogorchock at a previous Council meeting was unprofessional.

Rebecca Hernandez provided written comment in support of the City Council funding body-worn and dashboard cameras for the Antioch Police Department. She encouraged Mayor Thorpe to represent all citizens of Antioch.

COUNCIL SUBCOMMITTEE REPORTS/COMMUNICATIONS

Councilmember Ogorchock announced the County would be providing a mobile no-cost COVID-19 testing site at the Antioch Community Center from 7:00 A.M. – 7:00 P.M., Thursday through Sunday. She added that more information was available on the City's website.

Councilmember Barbanica reported on his attendance at the Transitional Housing Committee meeting and announced there would be two additional meetings on February 12 and 19, 2021.

Councilmember Wilson reported on her attendance at the Tri Delta Transit meeting and announced a Shred It event would take place at the Tri Delta Transit Office on Wilbur Avenue from 9:00 A.M.– 1:00 P.M. on April 29, 2021.

Mayor Thorpe reported on his attendance at the Tri Delta Transit and Transitional Housing Committee meeting. He announced community conversations related to the feasibility study for the conceptual plan on bridge housing would take place at 3:00 P.M. on February 12, 2021 and 1:00 P.M. on February 19, 2021.

MAYOR'S COMMENTS

Mayor Thorpe announced Council would be discussing Police Reform in March and clarified that Council had never been presented with option to vote on body-worn cameras. He explained that a Council Code of Conduct item requested by Councilmember Ogorchock would be discussed at a City Council special meeting on February 16, 2021.

5. PRESENTATION

City Treasurer Posada introduced Sarah Meacham, Managing Director of PFM Asset Management who presented a PowerPoint presentation on City Investments.

Mayor Thorpe thanked City Treasurer Posada and Ms. Meacham for the presentation.

6. CONSENT CALENDAR

- A. APPROVAL OF COUNCIL MINUTES FOR JANUARY 12, 2021**
- B. APPROVAL OF COUNCIL MINUTES FOR JANUARY 26, 2021**
- C. APPROVAL OF COUNCIL WARRANTS**
- D. REJECTION OF CLAIM: LENORA MCCALL**
- E. RESOLUTION NO. 2021/16 EIGHTH AMENDMENT TO THE CONSULTANT SERVICE AGREEMENT FOR PROFESSIONAL SERVICES WITH WALTER BISHOP CONSULTING**
- F. RESOLUTION NO. 2021/17 INITIATE PREPARATION OF THE STREET LIGHTING AND LANDSCAPE MAINTENANCE DISTRICT CITY ENGINEER'S REPORT FOR FISCAL YEAR 2021/2022**
- G. UPDATE TO THE EMERGENCY DECLARATION FOR MITIGATION AND REPAIRS TO THE WATER TANK HILLSIDE EROSION AT THE WATER TREATMENT PLANT**

On motion by Councilmember Ogorchock, seconded by Councilmember Barbanica, the City Council unanimously approved the Council Consent Calendar.

COUNCIL REGULAR AGENDA

7. EXECUTE AGREEMENT WITH TERRACARE ASSOCIATES FOR PARK MAINTENANCE BID NO. 988-0312-19E

Director of Public Works/City Engineer Samuelson presented the staff report dated February 9, 2021 recommending the City Council adopt a resolution: 1) Approving a Maintenance Services Agreement ("Agreement") with Terracare Associates for Park Maintenance Services, for the contract amount not to exceed \$4,309,799.25 for the period of April 1, 2021 through June 30, 2024; and 2) Authorizing the City Manager to execute the Agreement with Terracare Associates for a total amount not to exceed \$4,309,799.25. He clarified that this action item was not related to the termination of the agreement with Del Conte's Landscaping because that decision was made previously by staff.

The following public comments were read into the record by Administrative Services Director Mastay.

Tom Del Conte representing Del Conte Landscaping, provided written comment refuting a poor performance claim against their company. He reported that they had met with staff regarding their concerns and had documentation proving their requests were completed on time.

Additionally, he noted they had surveyed random Antioch residents who believed there had been a notable improvement to park maintenance, esthetics and horticultural. He commented that they should not be terminated for cause for an out of state company that had lower quality ratings. He asked the City Council reject the recommendation and direct Public Works to improve their relationship with his company.

Sergio Garcia, Brentwood resident, Hugo Perez, Stockton resident and City of Antioch Employee, and Karen Papagni, Antioch resident, provided written comment in support of Del Conte Landscaping and the improvements made to Antioch parks.

Director of Public Works/City Engineer Samuelson clarified the official letter notifying Del Conte of the termination would be sent tomorrow after staff received direction regarding this agenda item; however, they had been notified verbally of the City's plan to terminate the agreement.

In response to Councilmember Barbanica, Director of Public Works/City Engineer Samuelson explained that there were currently 37 residents on Terracare's staff, and he believed they planned to hire an additional 16 individuals for this agreement. He noted they had a commitment to hire local.

City Clerk Householder commented that the Del Conte contract was set to terminate on February 10, 2021, if the resolution were approved.

In response to Mayor Thorpe, Director of Public Works/City Engineer Samuelson had regular meetings with the existing contractor, and he could provide dates if requested. He discussed Del Conte's differed maintenance items, assessed liquidated damages and performance standards.

Councilmember Torres-Walker stated she supported a requirement for local hire percentages on contracts.

Director of Public Works/City Engineer Samuelson explained that because the staff recommendation was to award the bid previously submitted they could not add a local hire requirement; however, he would be happy to work with City Attorney Smith to determine if a local hiring provision could be added to future agreements.

Mayor Thorpe clarified that if Council did not vote on the agreement this evening, they would go back to the RFP process and a local hiring provision could be added; however, there would then be a gap in service.

Councilmember Torres-Walker stated that if this item would have come to Council prior to the award of bid, the issues could have been mitigated. She supported moving forward with this item due to the negative experiences she had in parks that had not been maintained.

Councilmember Barbanica stated he had shared similar experiences in parks in his district and with the award of this contract, he hoped to see some vast improvements.

Mayor Thorpe suggested bringing back an item to Council to discuss high priority areas for park maintenance.

RESOLUTION NO. 2021/18

On motion by Councilmember Ogorchock, seconded by Councilmember Barbanica the City Council adopted a resolution: 1) Approving a Maintenance Services Agreement ("Agreement") with Terracare Associates for Park Maintenance Services, for the contract amount not to exceed \$4,309,799.25 for the period of April 1, 2021 through June 30, 2024; and 2) Authorized the City Manager to execute the Agreement with Terracare Associates for a total amount not to exceed \$4,309,799.25.

8. ESTABLISHMENT OF A HUMAN RIGHTS AND RACIAL EQUITY COMMISSION

Councilmember Torres-Walker stated she brought this item forward because she believed there was great disparity with regards to how people were treated in the community and there needed to be a means in which to protect human rights and racial equity. She requested City Council direct staff to bring back a proposal for establishing a Human Rights and Racial Equity Commission that covers their mission, objective and powers, within the next 60-days, for Council consideration.

The following public comment was read into the record by Administrative Services Director Mastay.

Sal Sbranti, Antioch resident, provided written comment expressing concern that agenda items requested by Councilmember Ogorchock had been ignored. He discussed the importance of addressing Economic Development in Antioch. He opposed prioritizing the formation of this Commission; however, if one should be established, he volunteered to serve to ensure proper data and interpretation of the data occurred.

Councilmember Wilson spoke in support of having a youth member added to all Commissions.

Victoria Adams concurred with Councilmember Torres-Walker and encouraged the Council to support the formation of the Commission. She volunteered to be involved in the process.

Discussion ensued and Council agreed that this item should be included as part of the Vision and Strategic Planning Process. They also agreed that staff and Council could research other models and bring guiding principles to a future discussion.

Mayor Thorpe added that he supported this item coming back to Council in April for consideration.

PUBLIC COMMENTS

Victoria Adams, representing East County Branch NAACP, announced they would be hosting a Black History Month Virtual Forum on COVID-19 from 10:00 A.M. – 12:00 P.M. on February 27, 2021. She invited Council to attend and contact information was provided.

STAFF COMMUNICATIONS – None

COUNCIL COMMUNICATIONS

Councilmember Ogorchock asked if tasers and community cameras would be included in the discussions on Police Reform.

Mayor Thorpe responded that the Police Reform agenda had not been prepared.

Councilmember Ogorchock clarified that she had asked for a Code of Conduct item to come back to Council because of information she had received from CalCities. She noted that she had also asked for a discussion on new norms for elected officials, which could occur during the Vision and Strategic Planning meetings.

Mayor Thorpe agreed that new norms for elected officials could be discussed at the Vision and Strategic Planning meeting.

Councilmember Barbanica requested Council body-worn, dashboard and prisoner cameras as well as tasers synced to body-worn cameras be included in discussions on Police Reforms.

Mayor Thorpe responded that he would take Councilmember Barbanica's requests under consideration.

Councilmember Torres-Walker discussed her personal/professional history and stated she would not be apologizing for comments made on social media. She expressed concern regarding offensive comments made about her on social media. She encouraged everyone to create deep relationships and have real conversations.

ADJOURNMENT

On motion by Councilmember Ogorchock, seconded by Councilmember Barbanica, the City Council unanimously adjourned the meeting at 8:37 P.M.

Respectfully submitted:

Kitty Eiden
KITTY EIDEN, Minutes Clerk



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Christina Garcia, CMC, Deputy City Clerk *Cg*

APPROVED BY: Nickie Mastay, Administrative Services Director *NM*

SUBJECT: City Council Special Meeting Minutes of February 12, 2021

RECOMMENDED ACTION

It is recommended that the City Council continue the Special Meeting Minutes of February 12, 2021.

FISCAL IMPACT

None

DISCUSSION

N/A

ATTACHMENT

None.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Christina Garcia, CMC, Deputy City Clerk *Cg*

APPROVED BY: Nickie Mastay, Administrative Services Director *NM*

SUBJECT: City Council Special Meeting Minutes of February 13, 2021

RECOMMENDED ACTION

It is recommended that the City Council continue the Special Meeting Minutes of February 13, 2021.

FISCAL IMPACT

None

DISCUSSION

N/A

ATTACHMENT

None.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Christina Garcia, CMC, Deputy City Clerk *Cg*

APPROVED BY: Nickie Mastay, Administrative Services Director *NM*

SUBJECT: City Council Special Meeting Minutes of February 16, 2021

RECOMMENDED ACTION

It is recommended that the City Council continue the Special Meeting Minutes of February 16, 2021.

FISCAL IMPACT

None

DISCUSSION

N/A

ATTACHMENT

None.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Christina Garcia, CMC, Deputy City Clerk *Cg*

APPROVED BY: Nickie Mastay, Administrative Services Director *NM*

SUBJECT: City Council Meeting Minutes of February 23, 2021

RECOMMENDED ACTION

It is recommended that the City Council continue the Meeting Minutes of February 23, 2021.

FISCAL IMPACT

None

DISCUSSION

N/A

ATTACHMENT

None.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Christina Garcia, CMC, Deputy City Clerk *Cg*

APPROVED BY: Nickie Mastay, Administrative Services Director *NM*

SUBJECT: City Council Special Meeting Minutes of February 26, 2021

RECOMMENDED ACTION

It is recommended that the City Council continue the Special Meeting Minutes of February 26, 2021.

FISCAL IMPACT

None

DISCUSSION

N/A

ATTACHMENT

None.

CITY OF
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CALIFORNIA

CLAIMS BY FUND REPORT
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100 General Fund
Non Departmental

00392618	ANYTIME FITNESS	PAYROLL DEDUCTIONS	39.00
00392624	BRIGHT PLANET SOLAR	SMIP FEE REFUND	36.08
00392631	CONTRA COSTA COUNTY	PAYROLL DEDUCTIONS	400.00
00392636	DEPT OF CONSERVATION	SMP FEE REMITTANCE	4,812.60
00392638	DIAMOND HILLS SPORT CLUB	PAYROLL DEDUCTIONS	73.00
00392650	GRACE BIBLE FELLOWSHIP OF ANTIOCH	ACCOUNT BALANCE REFUND	1,510.61
00392651	EMPLOYEE	CALPERS LOAN REFUND	39.15
00392653	EMPLOYEE	CALPERS LOAN REFUND	16.23
00392656	IN SHAPE HEALTH CLUBS	PAYROLL DEDUCTIONS	656.99
00392657	IPERMIT	CBSC FEE REFUND	1.90
00392662	LINA	PAYROLL DEDUCTIONS	3,925.06
00392664	MUNICIPAL POOLING AUTHORITY	PAYROLL DEDUCTIONS	2,225.66
00392665	MUNICIPAL POOLING AUTHORITY	PAYROLL DEDUCTIONS	2,899.60
00392669	OPERATING ENGINEERS LOCAL NO 3	PAYROLL DEDUCTIONS	4,158.00
00392675	PARS	PAYROLL DEDUCTIONS	3,106.07
00392676	PLANET FITNESS	PAYROLL DEDUCTIONS	21.99
00392688	STATE OF CALIFORNIA	PAYROLL DEDUCTIONS	100.00
00392689	STATE OF CALIFORNIA	PAYROLL DEDUCTIONS	200.00
00938996	ANTIOCH PD SWORN MGMT ASSOC	PAYROLL DEDUCTIONS	880.00
00938997	ANTIOCH POLICE OFFICERS ASSOCIATION	PAYROLL DEDUCTIONS	22,967.42
00938998	APWEA	PAYROLL DEDUCTIONS	3,990.81
00939005	NATIONWIDE RETIREMENT SOLUTIONS	PAYROLL DEDUCTIONS	39,440.04
00939008	VANTAGEPOINT TRANSFER AGENTS	PAYROLL DEDUCTIONS	7,671.66
00939010	NATIONWIDE RETIREMENT SOLUTION	PAYROLL DEDUCTIONS	27,949.88

City Council

00392622	BIG SKY LOGOS AND EMBROIDERY	APPAREL EMBROIDERY	15.00
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City Manager

00392609	AMBIUS	PLANT SERVICES	1,095.62
00392620	BANK OF AMERICA	VARIOUS BUSINESS EXPENSES	408.00
00392661	LEAGUE OF CALIF CITIES	MEMBERSHIP DUES	165.00
00392668	OFFICE DEPOT INC	OFFICE SUPPLIES	23.90

City Clerk

00392620	BANK OF AMERICA	VARIOUS BUSINESS EXPENSES	582.13
00392644	EIDEN, KITTY J	MINUTES CLERK	220.00
00939006	RAY MORGAN COMPANY	COPIER USAGE	409.03

Human Resources

00392620	BANK OF AMERICA	VARIOUS BUSINESS EXPENSES	1,400.07
00392627	RETIREE	RETIREMENT GIFT	350.00
00392655	IEDA INC	MEMBERSHIP DUES	5,056.33
00392668	OFFICE DEPOT INC	OFFICE SUPPLIES	64.46
00392697	RETIREE	RETIREMENT GIFT	250.00
00939003	RETIREE	RETIREMENT GIFT	250.00
00939006	RAY MORGAN COMPANY	COPIER USAGE	719.39

Economic Development

00392610	AMERICAN ALARM COMPANY INC	BL REBATE	100.00
00392637	DIABLO LIVE SCAN LLC	BL REBATE	100.00

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00392640	EARLINE M LA BUY CPA	BL REBATE	100.00
00392645	EMERALD HPC INTERNATIONAL LLC	BL REBATE	100.00
00392648	GIS PLANNING INC	GIS SERVICES	2,200.00
00392660	KING NAILS AND SPA	BL REBATE	100.00
00392686	SOLAR SWIM AND GYM	BL REBATE	100.00
Finance Administration			
00939006	RAY MORGAN COMPANY	COPIER USAGE	1,350.50
Finance Accounting			
00392668	OFFICE DEPOT INC	OFFICE SUPPLIES	392.81
Finance Operations			
00392668	OFFICE DEPOT INC	OFFICE SUPPLIES	62.35
Public Works Administration			
00939006	RAY MORGAN COMPANY	COPIER USAGE	247.94
Public Works-Signal/Street Lights			
00392611	AMERICAN GREENPOWER USA INC	INDUCTION LIGHTING MATERIALS	18,020.99
00392674	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	3,618.09
Public Works-Facilities Maintenance			
00392674	PACIFIC GAS AND ELECTRIC CO	GAS	1,511.65
Public Works-Parks Maint			
00392641	EAST BAY WORK WEAR	UNIFORMS	418.83
00392659	KAY PARK AND REC CORP	PARK BBQ GRILLS	2,675.00
00392674	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	391.51
00938999	DEL CONTES LANDSCAPING INC	PARK MAINTENANCE	76,300.00
Public Works-Median/General Land			
00392615	ANTIOCH ACE HARDWARE	SUPPLIES	43.18
00392674	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	181.24
Police Administration			
00392604	AGUILAR, SAUL	TRAINING PER DIEM	305.00
00392634	CORTEZ, ANA E	EXPENSE REIMBURSEMENT	35.90
00392635	CRYSTAL CLEAR LOGOS INC	CITY APPAREL	864.01
00392639	DUFFY, ADAM JAMES	TRAINING PER DIEM	305.00
00392647	GIOVANNUCCI, ALYSON SHEA	TRAINING PER DIEM	305.00
00392678	RAMIREZ, JOHN ANTHONY	TRAINING PER DIEM	305.00
00392683	RODRIGUEZ, ANDREA ALEJANDRA	TRAINING PER DIEM	305.00
00392687	STATE OF CALIFORNIA	FINGER PRINTING FEES	294.00
00939006	RAY MORGAN COMPANY	COPIER USAGE	379.65
Police Reserves			
00392630	CONCORD UNIFORMS LLC	UNIFORMS	169.49
Police Community Policing			
00392694	VIGILANT SOLUTIONS, LLC	ANNUAL CAMERA LICENSES	14,500.00
Police Investigations			
00392670	ORMAN, LEONARD A	FUEL REIMBURSEMENT	50.00
Police Communications			
00392603	AEROTEK INC	CAD/RMS MAINTENANCE	607.50
Office Of Emergency Management			
00392615	ANTIOCH ACE HARDWARE	SUPPLIES	10.18

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Police Facilities Maintenance

00392617	ANTIOCH GLASS	WINDOW REPAIR	226.48
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Community Development Land Planning Services

00392624	BRIGHT PLANET SOLAR	GP MAINT FEE REFUND	214.34
00392644	EIDEN, KITTY J	MINUTES CLERK	100.00
00392657	IPERMIT	GP MAINT FEE REFUND	10.96
00939006	RAY MORGAN COMPANY	COPIER USAGE	1,101.11

CD Code Enforcement

00392626	CACEO	WEBINAR	25.00
00392692	VACANT PROPERTY SECURITY LLC	EQUIPMENT RENTAL	488.35
00392699	WORK WORLD	UNIFORMS	266.35
00939006	RAY MORGAN COMPANY	COPIER USAGE	636.83

PW Engineer Land Development

00939006	RAY MORGAN COMPANY	COPIER USAGE	656.82
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Community Development Building Inspection

00392624	BRIGHT PLANET SOLAR	ENERGY INSP FEE REFUND	3,293.52
00392657	IPERMIT	BLDG PERMIT FEE REFUND	184.08

Capital Imp. Administration

00939006	RAY MORGAN COMPANY	COPIER USAGE	464.17
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209 RMRA Fund

Non Departmental

Streets

00939004	MCK SERVICES INC	PAVEMENT REHABILITATION	215,633.54
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212 CDBG Fund

CDBG

00392642	ECHO HOUSING	CDBG SERVICES	6,087.16
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213 Gas Tax Fund

Streets

00392674	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	1,778.61
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214 Animal Control Fund

Animal Control

00392605	AIRGAS USA LLC	OXYGEN	60.70
00392606	AIRGAS USA LLC	OXYGEN	199.00
00939002	IDEXX LABORATORIES INC	VETERINARY SUPPLIES	149.24

219 Recreation Fund

Non Departmental

00392649	GONZALEZ, MARIA	RENTAL DEPOSIT REFUND	500.00
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00392693	VENEGAS, JAIME	SECURITY DEPOSIT REFUND	1,923.00
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Nick Rodriguez Community Cent

00939006	RAY MORGAN COMPANY	COPIER USAGE	25.05
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Recreation Sports Programs

00392677	PONCE, LILLIAN	SPORTS PROGRAM REFUND	105.00
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Recreation-Comm Center

00392633	CONTRA COSTA HEALTH SERVICES	HEALTH PERMIT	1,052.00
00392663	MASSONE MECHANICAL INC	FREEZER REPAIR	1,068.92
00392667	NOVENTRI	ANNUAL MAINTENANCE CONTRACT	200.00
00392674	PACIFIC GAS AND ELECTRIC CO	GAS	15,688.37

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00392693	VENEGAS, JAIME	ROOM RENTAL REFUND	577.00
00392695	WAHIDI, ZHANUS	DEPOSIT REFUND	720.00
00392696	WALI, CANDACE	CLASS REFUND	13.20
00938999	DEL CONTES LANDSCAPING INC	PARK MAINTENANCE	2,682.50
00939006	RAY MORGAN COMPANY	COPIER USAGE	245.21
Recreation Water Park			
00392632	CONTRA COSTA HEALTH SERVICES	POOL HEALTH PERMITS	2,035.00
00392679	RED CROSS STORE	LIFEGUARD TRAINING	315.00
00392698	WILCOX, CHRISTINA	AQUATICS PROGRAM REFUND	235.00
00938999	DEL CONTES LANDSCAPING INC	PARK MAINTENANCE	4,639.17
00939006	RAY MORGAN COMPANY	COPIER USAGE	73.19
221	Asset Forfeiture Fund		
Non Departmental			
00392646	GILLARD, AMIRA	ASSET FORFEITURE	393.00
00392652	HALCROMBE, RORY	ASSET FORFEITURE	462.00
00392682	ROCHA, ARIANA	ASSET FORFEITURE	800.00
226	Solid Waste Reduction Fund		
Solid Waste			
00392623	BRETT MR ECO EDWARDS	EDUCATION PROFORMANCES	1,100.00
00392658	KATHY KRAMER CONSULTING	GARDEN TOUR SPONSORSHIP	1,000.00
00392681	REPUBLIC SERVICES INC	CURBSIDE OIL & FILTERS	1,680.57
229	Pollution Elimination Fund		
Channel Maintenance Operation			
00392666	NOMAD ECOLOGY LLC	CONSULTING SERVICES	2,224.20
238	PEG Franchise Fee Fund		
Non Departmental			
00392684	SABOO INC	RETENTION RELEASE	93,100.41
254	Hillcrest SLLMD Fund		
Hillcrest Maintenance Zone 4			
00939007	SITEONE LANDSCAPE SUPPLY HOLDING	IRRIGATION CONTROLLER PARTS	439.01
255	Park 1A Maintenance District Fund		
Park 1A Maintenance District			
00392674	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	194.85
256	Citywide 2A Maintenance District Fund		
Citywide 2A Maintenance Zone 5			
00392608	ALTA FENCE	FENCING SERVICES	689.00
569	Vehicle Replacement Fund		
Equipment Maintenance			
00392607	ALL STAR FORD	NEW VEHICLE	107,256.20
570	Equipment Maintenance Fund		
Equipment Maintenance			
00939006	RAY MORGAN COMPANY	COPIER USAGE	82.65
573	Information Services Fund		
Network Support & PCs			
00392612	AMERICAN MESSAGING	PAGING SERVICES	41.93
00392629	COMCAST	CONNECTION SERVICES	284.02
00938995	ALTURA COMMUNICATION SOLUTIONS LLC	NETWORK SERVICES	2,975.00

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00939006	RAY MORGAN COMPANY	COPIER USAGE	34.58
577	Post Retirement Medical-Police Fund		
Non Departmental			
00939009	RETIREE	MEDICAL AFTER RETIREMENT	870.62
611	Water Fund		
Non Departmental			
00392615	ANTIOCH ACE HARDWARE	SUPPLIES	153.22
00392690	SUPERCO SPECIALTY PRODUCTS.	SUPPLIES	380.89
Water Supervision			
00392635	CRYSTAL CLEAR LOGOS INC	CITY APPAREL	817.87
00392641	EAST BAY WORK WEAR	UNIFORMS	395.39
Water Production			
00392613	AMERICAN TROPHIES AWARDS	PROJECT AWARDS	2,403.50
00392614	ANIMAL DAMAGE MANAGEMENT	PEST CONTROL	850.00
00392619	ARAMARK UNIFORM SERVICES	ARAMARK SERVICE	67.94
00392621	BAY AREA AIR QUALITY MANAGEMENT	RENEWAL FEES	362.00
00392654	IDN WILCO	SUPPLIES	544.38
00392674	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	186.56
00392680	REINHOLDT ENGINEERING CONSTR	DIESEL TANK INSPECTION	700.00
00392691	USA BLUEBOOK	PARTS	79.10
00939001	EUROFINS EATON ANALYTICAL INC	TESTING	60.00
Water Distribution			
00392615	ANTIOCH ACE HARDWARE	SUPPLIES	260.84
00392641	EAST BAY WORK WEAR	UNIFORMS	436.03
00392643	EH WACHS	PARTS	1,201.26
00939000	DELL COMPUTER CORP	COMPUTER EQUIPMENT	113.16
00939006	RAY MORGAN COMPANY	COPIER USAGE	277.27
Public Buildings & Facilities			
00392625	BROWN AND CALDWELL INC	PROFESSIONAL SERVICES	22,579.38
621	Sewer Fund		
Swr-Wastewater Administration			
00392615	ANTIOCH ACE HARDWARE	SUPPLIES	88.45
00392616	ANTIOCH AUTO PARTS	SUPPLIES	168.18
00392635	CRYSTAL CLEAR LOGOS INC	SUPPLIES	521.01
00939006	RAY MORGAN COMPANY	COPIER USAGE	372.06
631	Marina Fund		
Marina Administration			
00392628	COMCAST	CONNECTION SERVICES	221.04
00939006	RAY MORGAN COMPANY	COPIER USAGE	137.41


CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Scott Buenting, Project Manager 

APPROVED BY: John Samuelson, Public Works Director/City Engineer 

SUBJECT: First Amendment to the Consulting Services Agreement with Kleinfelder, Inc. for Services Related to the Antioch Pavement Rehabilitation (P.W. 392-31) and Water Tank Slope Mitigation Projects

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution:

1. Approving the first amendment to the Consulting Services Agreement ("Agreement") with Kleinfelder, Inc. ("Kleinfelder") for services related to the Antioch Pavement Rehabilitation and Water Tank Slope Mitigation Projects in the amount of \$43,630 for a total contract amount of \$93,630; and
2. Authorizing the City Manager to execute the Agreement.

FISCAL IMPACTS

The fiscal year 20/21 Capital Improvement Budget includes adequate funding for material testing and special inspection services during construction of the Antioch Pavement Rehabilitation. The fiscal year 20/21 Operating Budget includes adequate funding for the Water Tank Slope Mitigation.

DISCUSSION

The Antioch Pavement Rehabilitation project will consist of constructing concrete curb ramps at various locations, removing and replacing failed asphalt concrete sections, and performing a cape seal treatment over the entire street width on Hillcrest Avenue from Davison Drive to Lone Tree Way, Gentrytown Drive from James Donlon Boulevard to Buchanan Road and Delta Fair Boulevard from Buchanan Road to Somersville Road. The Water Tank Slope Mitigation project will repair damage caused as a result of water eroding a relatively large cavity at the edge of the half million-gallon storage reservoir tank located east of the Water Treatment Plant.

Staff is recommending an amendment to Kleinfelder's existing Consulting Services Agreement to include laboratory testing of aggregate and asphalt concrete and liquid emulsion; laboratory and field testing of liquid emulsion, project documentation, technical

support for the Antioch Pavement Rehabilitation project at a cost not to exceed \$25,630 and to provide a schematic site plan, develop mitigation techniques and provide construction observation and material of the repair of the Water Tank Slope Mitigation at a cost not to exceed \$18,000, for a total contract amendment of \$43,630.

ATTACHMENTS

- A. Resolution
- B. Amendment No. 1 to the Consulting Services Agreement with Kleinfelder, Inc.

ATTACHMENT "A"

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING THE FIRST AMENDMENT TO THE AGREEMENT WITH
KLEINFELDER, INC. FOR SERVICES RELATED TO THE ANTIOCH PAVEMENT
REHABILITATION (P.W. 392-31) AND WATER TANK SLOPE MITIGATION
PROJECTS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE
AGREEMENT**

WHEREAS, on February 19, 2020, Kleinfelder, Inc. entered into an "As Needed" Consulting Services Agreement ("Agreement") for material testing and special inspection services in the amount of \$50,000;

WHEREAS, the City Council has considered approving the first amendment to the Agreement with Kleinfelder, Inc. for services related to the Antioch Pavement Rehabilitation and Water Tank Slope Mitigation Projects in the amount of \$43,630 for a total contract amount of \$93,630.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby:

1. Approves the first amendment to the Agreement with Kleinfelder, Inc. for services related to the Antioch Pavement Rehabilitation and Water Tank Slope Mitigation Projects in the amount of \$43,630 for a total contract amount of \$93,630.
2. Authorizes the City Manager to execute the Agreement.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

ATTACHMENT "B"

AMENDMENT NO. 1 TO AGREEMENT WITH KLEINFELDER, INC. FOR MATERIAL TESTING AND SPECIAL INSPECTION SERVICES FOR THE ANTIOCH PAVEMENT REHABILITATION (P.W. 392-31) AND WATER TANK SLOPE MITIGATION PROJECTS

**THIS FIRSTAMENDMENT TO THE AGREEMENT FOR MATERIAL AND
SPECIAL INSPECTION SERVICES** is entered into this 9th day of March 2021 by and
between the CITY OF ANTIOCH, a municipal corporation ("**City**") and KLEINFELDER, INC.,
their address is 981 Garcia Avenue, Suite A, Pittsburg, CA 94565 ("**Consultant**").

R E C I T A L S

WHEREAS, on February 19, 2020, City and Kleinfelder, Inc., entered into an
Agreement for Professional Consulting Services for "As Needed" Material and Special
Inspection Services ("**Agreement**") in the amount of \$50,000.00.

NOW, THEREFORE, THE PARTIES DO MUTUALLY AGREE AS FOLLOWS:

1. Section 1 "SERVICES" the first paragraph shall be amended to read as follows:

"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 to the Agreement and Exhibit A and Exhibit B to Amendment No. 1 of the Agreement 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 the Exhibits, the Agreement shall prevail."

2. Section 2 "COMPENSATION" the first sentence shall be amended to read as follows:

"City hereby agrees to pay Consultant a sum not to exceed **\$93,630.00**, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement."

All other terms and conditions of the Agreement shall remain in full force and effect.

B1

CITY OF ANTIOCH:

KLEINFELDER, INC.

By: _____

Rowland E. Bernal, Jr.
City Manager

By: _____

Fernando J. Silva, P.E.
President and Principal-in-Charge

ATTEST:

Elizabeth Householder
City Clerk

APPROVED AS TO FORM:

Thomas Lloyd Smith
City Attorney



EXHIBIT "A"

**City of Antioch Pavement Rehabilitation Project
City Project No. P.W. 392-31
Federal Aid Project No. STPL-5038(026)
Various Streets, Antioch, California**

**Cost Proposal
Field Observation, Sampling, and Testing of Rubberized Cape Seal**

Aggregate Acceptance Testing	<u>Tests</u>	<u>Price</u>	<u>Fees</u>
Assume total 13 days, 1 sample per day for first 2 days, then 1 sample per week thereafter.			
Aggregate Gradation (CTM 201/202)	5	\$165.00	\$825.00
Cleanness Value (CTM 227)	5	\$165.00	\$825.00
Durability Coarse (CTM 229)	5	\$150.00	\$750.00
			Subtotal \$2,400.00

Slurry Seal Acceptance Testing	<u>Tests</u>	<u>Price</u>	<u>Fees</u>
Assume total 13 days, 1 sample per day for first 2 days, then 1 sample per week thereafter			
Saybolt Viscosity (AASHTO T 59)	5	\$160.00	\$800.00
Sieve Test (AASHTO T 59)	5	\$105.00	\$525.00
Storage Stability (AASHTO T 59)	5	\$185.00	\$925.00
Residue by evaporation (CTM 331)	5	\$115.00	\$575.00
Aggregate Gradation (ASTM D113)	5	\$165.00	\$825.00
Sand Equivalent (CTM 217)	5	\$170.00	\$850.00
LA Rattler (CTM 211)	5	\$200.00	\$1000.00
			Subtotal \$5,500.00

B3

Field Observations and Sampling (Assume 8 hours/day, 13 days total)	<u>Hours</u>	<u>Fees</u>
Technician/Special Inspector (Includes site and plant sampling activities)	104	\$11,960.00
Technician - Sample Transport	20	\$1,560.00
Mileage (680 miles @ \$0.75 per mile)		\$510.00
		<i>Subtotal \$14,030.00</i>

Project Management, Administration, Reporting	<u>Hours</u>	<u>Fees</u>
Project Management, review test reports	10	\$2,050.00
Final Report		\$850.00
Administration and Dispatch	10	\$800.00
		<i>Subtotal \$3,700.00</i>

Total Estimate \$25,630.00

Assumptions

During our proposal preparation certain assumptions were required based on the scope of services and the information provided in the project plans and special provisions. Based on information available during our preparation of this proposal the following assumptions apply:

- The project will be subjected to California's Prevailing Wage Law for Public Works projects.
- Kleinfelder assumes the contractor's schedule is based on a regular 8-hour day, five days a week, and weekend or night swing shifts are not anticipated.
- It is assumed the contractor will complete Cape Seal application work in 13 days.

B4

- It is anticipated work will be conducted during standard construction hours (Monday through Friday, 6AM – 4PM). Overtime has not been included in our estimate. Additional charges will apply for overtime, double-time, and/or Special/Second Shift in accordance with Prevailing wage requirements.
- Estimates for additional and/or out of scope services can be provided upon request.
- Continuous observation will be performed during the cape seal application. Daily sampling and testing of the aggregate and slurry seal will be performed during the first two days of application and then weekly thereafter. If more sampling and testing is required, it will be provided and charged on a time-and-materials basis.
- All information gathered during work performed by Kleinfelder is considered confidential and will be released only upon written authorization by the Client or as required by law.
- Labor and Laboratory Testing and Usages will be per the Fee Schedules in our current On-Call Consulting Services Agreement with the City of Antioch.
- Our services will not include: (1) supervision, direction, or acceptance of the contractor's work; (2) interpretation or modification of the project plans or specifications; or (3) job site safety.
- Provision of construction monitoring by a technician is not insurance, nor does it constitute a warranty or guarantee of any type. Even with diligent construction monitoring, some construction defects may be missed. In all cases, the contractor shall retain responsibility for the quality of the work and for adhering to plans and specifications and for repairing defects regardless of when they are found.

B5



EXHIBIT "B"

August 4, 2020

Proposal No.: MW200756.001P/03-0000

Mr. Shaun Connelly
Water Distribution Superintendent
Antioch Public Works Department
1201 W 4th Street
Antioch, California 94509-1005

sconnelly@antiochca.gov

**SUBJECT: Proposal for Slope Mitigation Design
Water Tank Slope Erosion
Antioch, California**

Dear Mr. Connelly:

As per your request during our recent site meeting, Kleinfelder is pleased to provide this proposal to provide slope assessment and mitigation design services for the slope extending down from the elevated tank pad located at the City Water Treatment Plant located at 401 Putnam Street, in Antioch, California. During our meeting you indicated that an outside contractor had inadvertently broke the valve on the water tank which caused the erosion problem at the edge of the tank pad and all the way down the hill.

PROJECT DESCRIPTION

As you know, we visited the site with you last week to do a preliminary assessment of the erosion conditions. It appears as though the leaking water eroded a relatively large cavity at the edge of the tank pad, which appears to have originally been constructed with rubbly, rock fill. The torrent track eroded the fines out of the slope fill and transported angular blocks down the slope, which can be a future hazard with rainfall events, if not removed. At mid-slope, there is a resistant bedrock layer that forms a near vertical cliff, which can be a launching point for any future spills and the loose rock fill that now is exposed on the upper slope. Below this steep rock face, the torrent track eroded the soils away in a narrow channel, exposing bedrock above the V-ditch.

SCOPE OF SERVICES

The scope of services for this project was developed based on our review of the existing site conditions and our discussion for the need of a schematic site plan and mitigation design schematics, so that potential contractors could provide estimates and perform the recommended mitigation measures. The intent of this proposal is not to provide detailed plans and specifications. Submittal of a schematic design report considers that Kleinfelder would also be retained to check construction periodically to confirm that mitigation measures are being implemented as designed. This proposal does not include construction observation, which can be estimated once the chosen

BLP

contractor provides a work schedule. Our proposed scope of services is outlined below with the following tasks:

1. Reconnaissance Mapping

- One day of field mapping by a Certified Engineering Geologist and Staff Geologist
- Preparation of a scaled slope profile for mitigation design.

2. Mitigation Design

- The scaled cross section and schematic site plan will be utilized to provide mitigation design for the various corrective measures down the length of the slope. At present, we anticipate a Geoweb slope reconstruction of the large void at the top of the slope. The outer cells of the Geoweb can be infilled with topsoil to promote vegetation growth to partially hide the repair. We also envision design of a small wooden catchment wall below the near vertical rock face to enhance collection of rocks that may roll down the hill, protecting the V-ditch and the buildings below. We will also provide recommendations to improve the eroded soil channel at the base of the slope.

3. Technical Memorandum and Design Schematic

- After our analysis, we will provide a draft Technical Memorandum with the design schematics for the City to review. The Memorandum will include discussion of our geologic assessment, work performed and our recommendations to stabilize the eroded slope. After the City has had a chance to review and provide any comments, we will finalize the memo and design schematics so that they can be used by the City to get estimates from contractors.

4. Project Management and Administration

- We have included in-house project management and administrative time throughout completion of the final memo.

ESTIMATED FEES

Based on the scope of services provided, we have developed an estimated Time and Materials budget of **\$13,000**, based on our On-Call rates with the City of Antioch. A generalized breakdown of the fees is presented below by Task.

SUMMARY OF T & M FEES

Service	Estimated Fee
Task 1 – Reconnaissance Mapping	\$ 4,500
Task 2 - Mitigation Design	\$4,800
Task 3 – Technical Memorandum	\$2,500
Task 4 – Project Management	\$1,200
Total Budget Estimate	\$13,000

B7

LIMITATIONS

Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the services are provided. Our conclusions, opinions and recommendations will be based on a limited number of observations and data. It is possible that conditions could vary between or beyond the data evaluated. Kleinfelder makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided.

This proposal is valid for a period of 45 days from the date of the proposal. This proposal was prepared specifically for the City of Antioch as our Client and its designated representatives and may not be provided to others without Kleinfelder's express permission.

AUTHORIZATION

It is our understanding that the City will issue a Task Order under our existing On-Call Agreement with the City of Antioch. We will proceed with the work upon such written authorization from the City.

CLOSURE

We trust that this proposal meets the needs of the City of Antioch at this time. If there are any questions regarding this proposal, or you require any additional information from us, please do not hesitate to contact the undersigned at (707) 543-8225.

Sincerely,

KLEINFELDER, INC.



William V. McCormick, PG, CEG
Senior Principal Engineering Geologist



Fernando J. Silva, PE, GE
Senior Project Manager

Cc: Mr. Scott Buening, City of Antioch (sbuening@antiochca.gov)



January 19, 2021
File No.: 20210743.001A

Mr. Shaun Connelly
Water Distribution Superintendent
Public Works Department – City of Antioch
1201 W 4th Street
Antioch, CA 94509
sconnelly@antiochca.gov

**SUBJECT: Request for Budget Increase
City of Antioch Water Tank Slope Erosion Repair Work
401 Putnam Street
Antioch, California**

Dear Mr. Connelly:

As requested, as a follow-up to our Technical Memo dated November 17, 2020 Kleinfelder will be providing construction observation services during slope erosion repairs at the subject site in Antioch, California. The purpose of our construction observation services will be to verify that the repairs are performed in accordance with our Technical Memo recommendations.

As discussed in our previous conversation, at this time we request that our current budget on the subject project be increased by an initial amount of \$5,000 to cover as-needed construction observation services. Our services will be charged on a time-and-expense basis using the rates in our current On-Call Agreement with the City of Antioch.

In the event conditions arise which are beyond our control, were unknown at the time this budget estimate was prepared, unanticipated based on available information, or differ significantly from the anticipated services, we may need to revise our scope of work and budget in order to complete the project. Should this occur, we will contact you for authorization before proceeding with additional work.

We appreciate the opportunity to provide assistance to the City of Antioch on this project. If you have questions or require additional information, please contact the undersigned at (925) 766-9417.

Sincerely,

KLEINFELDER, INC.

Fernando J. Silva, PE, GE
Senior Project Manager

Cc: Mr. Scott Buenting, City of Antioch (sbuenting@ci.antioch.ca.us)


B9


CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Scott Buenting, Project Manager 

APPROVED BY: John Samuelson, Public Works Director/City Engineer 

SUBJECT: Fifth Amendment to the Consulting Services Agreement with Coastland for On-Call Consultant Inspection Services

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution:

1. Approving the fifth amendment to the Consulting Services Agreement ("Agreement") with Coastland in an amount not to exceed \$250,000 for a total contract amount of \$1,012,500 for on-call consultant inspection services and extending the term of the contract through December 31, 2021.
2. Authorizing and directing the City Manager or designee to execute the fifth amendment to the Agreement with Coastland in a form approved by the City Attorney.

FISCAL IMPACT

Adoption of this resolution will increase Coastland's contract in an amount not to exceed \$300,000 for a total contract amount of \$1,012,500. Funding for this work will be provided from various funding sources corresponding to the project inspections performed by the consultant. It is anticipated that this recommendation will have no impact to the General Fund.

DISCUSSION

The City has three full time Public Works Inspectors. In addition to City capital projects, currently there are large subdivision projects under construction. The current workload exceeds the capacity of existing staff levels. An amendment is needed to the existing Agreement to continue to oversee the construction of improvements within new subdivisions and various other construction activities. The work is performed on an as needed basis and, as mentioned in the Fiscal Impact section, the anticipated cost will have no impact to the General Fund.

Operating Engineers Local Union No. 3 has been notified of this contract extension.

ATTACHMENTS

A. Resolution

B. Fifth Amendment to the Consulting Services Agreement with Coastland

ATTACHMENT "A"

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING THE FIFTH AMENDMENT TO THE CONSULTING SERVICES
AGREEMENT WITH COASTLAND IN AN AMOUNT NOT TO EXCEED \$250,000 FOR
ON-CALL INSPECTION SERVICES**

WHEREAS, on September 26, 2018, the City of Antioch ("City") entered into a Consulting Services Agreement with Coastland for on-call inspection services in the amount of \$50,000;

WHEREAS, on December 12, 2018, the City increased the compensation for Coastland in the amount of \$12,500 bringing the total compensation to an amount not to exceed \$62,500 each for on-call inspection services;

WHEREAS, on January 8, 2019, the City increased the compensation for Coastland in the amount of \$150,000 bringing the total compensation to an amount not to exceed \$212,500 for on-call inspection services;

WHEREAS, on June 25, 2019, the City increased the compensation for Coastland in an amount not to exceed \$250,000 for a total contract amount of \$462,500;

WHEREAS, on January 28, 2020, the City increased the compensation for Coastland in an amount not to exceed \$300,000 for a total contract amount of \$762,500;

WHEREAS, the City has considered approving the fifth amendment to the Consulting Services Agreement ("Agreement") with Coastland in an amount not to exceed \$250,000 for a total contract amount of \$1,012,500 for on-call consultant inspection services and extending the term of the contract through December 31, 2021; and

WHEREAS, the City has considered authorizing the City Manager to execute the fifth amendment to the Agreement with Coastland in an amount not to exceed \$250,000 for a total contract amount of \$1,012,500.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Antioch hereby:

1. Approves the fifth amendment to the Consulting Services Agreement ("Agreement") with Coastland, in substantially the form attached as Attachment B to the staff report, in an amount not to exceed \$250,000 for a total contract amount of \$1,012,500 for on-call inspection services and extends the term of the contract through December 31, 2021; and
2. Authorizes and directs the City Manager to execute the fifth amendment to the Agreement with Coastland in a form approved by the City Attorney.

* * * * *

AI

RESOLUTION NO. 2021/**

March 9, 2021

Page 2

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

ATTACHMENT "B"

AMENDMENT NO. 5 TO AGREEMENT FOR ON-CALL INSPECTION SERVICES

THIS FIFTH AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES is entered into this 9th day of March 2021, by and between the CITY OF ANTIOCH, a municipal corporation ("CITY") and COASTLAND, their address is 3478 Buskirk Avenue, Suite 1000, Pleasant Hill, CA 94523 ("Consultant").

RECITALS

WHEREAS, on September 26, 2018, CITY and COASTLAND entered into an Agreement for Professional Consultant Services on an "On-Call" Basis ("Agreement") in the amount of \$50,000.00; and

WHEREAS, on December 12, 2018, City increased the compensation in the amount of \$12,500 bringing the total compensation to an amount not to exceed \$62,500; and

WHEREAS, on January 8, 2019, City increased the compensation in the amount of \$150,000 bringing the total compensation to an amount not to exceed \$212,500; and

WHEREAS, on June 25, 2019, City increased the compensation in the amount of \$250,000 bringing the total compensation to an amount not to exceed \$462,500.

WHEREAS, on January 28, 2020, City increased the compensation in the amount of \$300,000 bringing the total compensation to an amount not to exceed \$762,500.

NOW, THEREFORE, THE PARTIES DO MUTUALLY AGREE AS FOLLOWS:

1. Section 1 "SERVICES" the first paragraph shall be amended to read as follows:

"Subject to the terms and conditions set forth in this Agreement, Consultant shall furnish all technical and professional services including labor, materials, equipment, transportation, supervision, and expertise to provide to City the services described in the Scope of Work attached as Exhibit A to the Agreement, Exhibit A to Amendment No. 1, Exhibit A to Amendment No. 2, Exhibit A to Amendment No. 3, Exhibit A to Amendment No. 4, and Exhibit A to Amendment No. 5 of the Agreement 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 the Exhibits, the Agreement shall prevail."

2. Section 1.1 "Term of Services" shall be amended to read as follows:

"The term of this Agreement shall begin on the date first noted above and shall end on **December 31, 2021**, and Consultant shall complete the work described in Exhibit A to the Agreement, Exhibit A to Amendment No. 1, Exhibit A to Amendment No. 2, Exhibit A to Amendment No. 3, Exhibit A to Amendment No. 4, and Exhibit A to Amendment No. 5 of the Agreement prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8 of the Agreement. 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 of the Agreement."

3. Section 2 "COMPENSATION" the first sentence shall be amended to read as follows:

"City hereby agrees to pay Consultant a sum not to exceed **\$1,012,500**, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement."

All other terms and conditions of the Agreement shall remain in full force and effect.

CITY OF ANTIOCH:

COASTLAND

By: _____
Rowland E. Bernal, Jr., City Manager

By: _____
Paul W. Wade, CFO

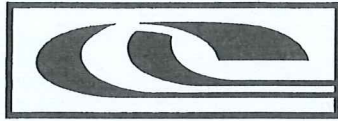
ATTEST:

Elizabeth Householder, City Clerk

APPROVED AS TO FORM:

Thomas Lloyd Smith, City Attorney

EXHIBIT "A"



COASTLAND

CIVIL ENGINEERING - CONSTRUCTION MANAGEMENT - BUILDING DEPARTMENT SERVICES

February 10, 2020

Mr. Scott Buenting
City of Antioch
Capital Improvements Division
PO Box 5007
Antioch, CA 94531-5007

Subject: **Request for Contract Extension for Construction Inspection Services**

Dear Scott:

Coastland has provided construction inspection services to the City through the Fourth Amendment for Consultant Services. The term of this amendment expired December 31, 2020. Based on our discussions, both the City and Coastland would like to extend our agreement through December 31, 2021.

We have reviewed the remaining budget and average utilization of our inspector. Based on these, we believe an increase in the budget of \$250,000 above the current contract maximum of \$762,500 should be sufficient to cover the provision of the anticipated additional services.

We greatly appreciate the opportunity to continue providing inspection services to the City. This proposal and look forward to continuing to serve the City of Antioch. Please let us know if you have any questions or need any additional information to support this request.

Sincerely,

George R. Hicks, PE
Supervising/Managing Engineer

Tony Fisher
Construction Manager

Santa Rosa
1400 Neotomas Avenue
Santa Rosa, CA 95405
Tel: 707.571.8005

Auburn
11641 Blocker Drive, Ste. 170
Auburn, CA 95603
Tel: 530.888.9929

Pleasant Hill
3478 Buskirk Avenue, Ste. 1000
Pleasant Hill, CA 94523
Tel: 925.233.5333

Fairfield
324 Campus Lane, Ste. A
Fairfield, CA 94534
Tel: 707.702.1961

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Tracy Shearer, Assistant Engineer *TS*

REVIEWED BY: Scott Buenting, Project Manager *SB*

APPROVED BY: John Samuelson, Public Works Director/City Engineer *JS*

SUBJECT: Consideration of Bids for the Trenchless Rehabilitation of Sanitary Sewer Main Using Cured in Place Pipe at Various Locations (P.W. 684-2)

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution:

1. Approving an amendment to increase the fiscal year 20/21 Capital Improvement Budget for the Trenchless Rehabilitation of Sanitary Sewer Main Using Cured in Place Pipe at Various Locations ("Project") in the amount of \$700,000 from the Sewer System Improvement Fund;
2. Authorizing and directing the City Manager or designee to make the necessary fiscal year 20/21 budget adjustments;
3. Awarding the construction agreement ("Agreement") for the Project to the lowest, responsive, and responsible bidder, Southwest Pipeline and Trenchless Corp. ("Southwest");
4. Approving an Agreement with Southwest in the amount of \$1,142,240 in substantially the form attached as "Attachment D"; and
5. Authorizing the City Manager to execute the Agreement for the Project with Southwest for a total amount of \$1,142,240.

FISCAL IMPACTS

The fiscal year 20/21 Capital Improvement Budget includes \$524,396 for sewer main trenchless rehabilitation projects through the Sewer Enterprise Fund. Adoption of this resolution will increase funding by \$700,000 from the Sewer System Improvement Fund for a total Project budget of \$1,224,396 to include the cost of the construction contract, engineering, inspection, testing and contract administration of the Project.

DISCUSSION

On February 23, 2021, six (6) bids were received and opened, as shown on the attached bid tabulation (Attachment B). The low bid was submitted by Southwest of Torrance in the amount of \$1,142,240. The bids have been checked and found to be without errors or omissions.

The Project will rehabilitate over 4.6 miles of deteriorating sanitary sewer main of various sizes throughout the City using the trenchless cured-in-place pipe method. The list of streets where work is proposed to be performed is shown on Attachment C. Additional work scheduled to be performed includes repairing or removing offsets and intrusions within the pipelines to be lined and reinstating existing sanitary sewer service laterals following the lining process. Existing rodding inlets within the work area will be replaced with manholes to allow the rehabilitation process to be performed, as well as improved inspection and maintenance capabilities of the pipelines.

ATTACHMENTS

- A: Resolution
- B: Bid Tabulation
- C: Map of Work Locations
- D: Construction Agreement

ATTACHMENT "A"

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING AN AMENDMENT INCREASING THE FISCAL YEAR 20/21 CAPITAL
IMPROVEMENT BUDGET IN THE AMOUNT OF \$700,000 FROM THE SEWER
SYSTEM IMPROVEMENTS FUND; AUTHORIZING AND DIRECTING THE CITY
MANAGER OR DESIGNEE TO MAKE THE NECESSARY FISCAL YEAR 20/21
BUDGET ADJUSTMENTS; AWARDING THE CONTRACT AND AUTHORIZING THE
CITY MANAGER TO EXECUTE AN AGREEMENT WITH SOUTHWEST PIPELINE
AND TRENCHLESS CORP. FOR THE TRENCHLESS REHABILITATION OF
SANITARY SEWER MAIN USING CURED IN PLACE PIPE AT VARIOUS
LOCATIONS PROJECT
P.W. 684-2**

WHEREAS, the City Council has considered an amendment increasing the fiscal year 20/21 Capital Improvement Budget for the Trenchless Rehabilitation of Sanitary Sewer Main Using Cured In Place Pipe at Various Locations ("Project") in the amount of \$700,000 from the Sewer System Improvement Fund;

WHEREAS, City Council has considered directing the City Manager or designee to make the necessary budget adjustments to increase the total fiscal year 20/21 Capital Improvement Budget for the Project;

WHEREAS, the Project was published and advertised in the East County Times on January 22, 2021 and January 23, 2021 and a Notice to Contractors was sent to the construction trade journals;

WHEREAS, on February 23, 2021, six (6) bids were received and opened for the Project;

WHEREAS, the City Council has considered awarding the Project construction agreement ("Agreement") to the lowest, responsive, and responsible bidder, Southwest Pipeline and Trenchless Corp. ("Southwest") for a total amount of \$1,142,240; and

WHEREAS, the City Council has considered authorizing the City Manager to execute the Agreement with Southwest for a total amount of \$1,142,240.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby:

1. Approves an amendment to increase the fiscal year 20/21 Capital Improvement Budget for the Project in the amount of \$700,000 from the Sewer System Improvement Fund;
2. Authorizes and directs the City Manager or designee to make the necessary fiscal year 20/21 budget adjustments;
3. Awards the Agreement for the Project to the lowest, responsive, and responsible

A1

RESOLUTION NO. 2021/**

March 9, 2021

Page 2

4. bidder, Southwest Pipeline and Trenchless Corp.;
5. Approves an Agreement with Southwest Pipeline and Trenchless Corp. in the amount of \$1,142,240 in substantially the form attached as "Attachment D" to the staff report; and
6. Authorizes the City Manager to execute the Agreement in a form approved by the City Attorney.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

A2

**CITY OF ANTIOCH
TABULATION OF BIDS**

JOB TITLE: Trenchless Rehabilitation of Sanitary Sewer Main Using Cured-in-Place Pipe at Various Locations
(P.W. 684-2)

BIDS OPENED: February 23, 2021 ~ 2:00 p.m.
Parking Lot Directly South of Antioch City Hall

	Engineer's Construction Estimate	Southwest Pipeline & Trenchless Corp. Torrance, CA	Insituform Technologies, LLC Chesterfield, MO	Kerex Engineering, Inc. Pleasant Hill, CA	Nor Cal Pipeline West Sacramento, CA	Express Plumbing San Mateo, CA
TOTAL BID PRICE	\$2,100,000.00	\$1,142,240.00	\$1,467,115.00	\$1,530,630.00	\$1,779,850.00	\$1,909,261.00

LIST OF SUBCONTRACTORS

<i>Southwest Pipeline & Trenchless Corp.</i>	<i>Insituform Technologies, LLC</i>	<i>Kerex Engineering, Inc.</i>	<i>Nor Cal Pipeline</i>	<i>Express Plumbing</i>
<u>Manholes</u> Piperin Corp.	<u>Clean & CCTV</u> Pro-Pipe Inc. <u>Excavation</u> JMB Construction	<u>Lining</u> Christian Brothers Lining	<u>Excavation</u> Subterra Construction <u>Traffic Control</u> Cityrise, LLC	<u>CIPP</u> Christian Brothers

ATTACHMENT "B"

8
1

**CITY OF ANTIOCH
TABULATION OF BIDS**

JOB TITLE: Trenchless Rehabilitation of Sanitary Sewer Main Using Cured-in-Place Pipe at Various Locations
(P.W. 684-2)

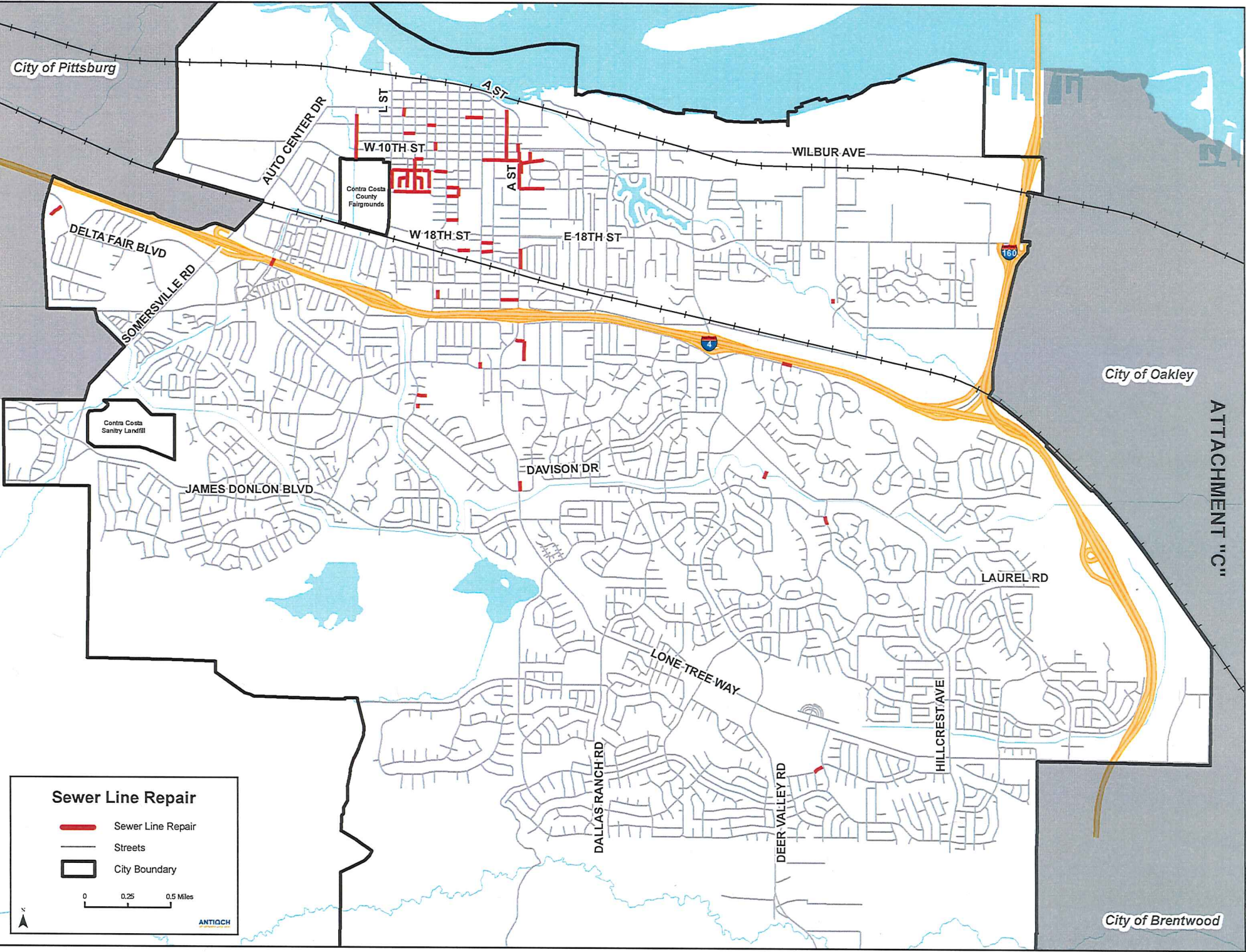
BIDS OPENED: February 23, 2021 ~ 2:00 p.m.
Parking Lot Directly South of Antioch City Hall

	Engineer's Construction Estimate	Michels Pipeline Construction Salem, OR				
TOTAL BID PRICE	\$2,100,000.00	\$2,143,114.00				

LIST OF SUBCONTRACTORS

<i>Michels Pipeline Construction</i>				
<u>New Manholes</u> Gold Coast Pipelines, Inc. <u>Traffic Flagging</u> Statewide Safety Systems <u>Bypass</u> Multiple Pump Services				

b2



City of Pittsburg

City of Oakley

City of Brentwood

ATTACHMENT "C"

Sewer Line Repair

-  Sewer Line Repair
-  Streets
-  City Boundary

0 0.25 0.5 Miles

ANTIOCH

ATTACHMENT "D"

AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of March, 2021 by and between SOUTHWEST PIPELINE AND TRENCHLESS CORP., hereinafter called "CONTRACTOR" and the CITY OF ANTIOCH, hereinafter called the "CITY."

WITNESSETH, that the CONTRACTOR and the CITY, for consideration hereinafter named, agree as follows:

1. SCOPE OF WORK

The work consists, in general, of furnishing all materials, labor, tools, plant, supplies, equipment, transportation and superintendence necessary to perform the work required for **P.W. No. 684-2**. The work is more fully described in the Description of Project, Construction Details and Plans contained in the Contract Documents. The Contract Documents are defined below in Section 4 of this Agreement.

2. TIME OF COMPLETION

After this Agreement has been executed by the parties, the CONTRACTOR shall begin work within ten (10) calendar days after the effective date of the Notice to Proceed, and shall diligently prosecute all of the work under this Agreement in all parts and requirements as defined in the Contract Documents, from the effective date of said Notice to Proceed. The period of performance shall be two hundred ten (210) working days from the Notice to Proceed.

3. TOTAL BID PRICE

The CONTRACTOR shall faithfully perform all of the work hereunder for the Contract Price of **One million, one hundred forty-two thousand, two hundred forty dollars (\$1,142,240.00)**, payable by the CITY to the CONTRACTOR at the time and in the manner provided in the Contract Documents.

**SCHEDULE OF BID PRICES
FOR TRENCHLESS REHABILITATION OF SANITARY SEWER MAIN USING
CURED-IN-PLACE PIPE AT VARIOUS LOCATIONS
PW. 684-2**

Item No.	Unit	Quantity	Description	Unit Price	Extended Amount
1.	LS	1	Mobilization, complete in place for the lump sum price...	\$10,000.00	\$10,000.00
2.	LS	1	Traffic Control, complete in place for the lump sum price..	\$10,000.00	\$10,000.00
3.	LS	1	Sewer Flow Control, complete in place for the lump sum price	\$20,000.00	\$20,000.00
4.	LF	10,700	Cleaning 6-inch Diameter Sanitary Sewer, complete in place for the unit price per lineal foot	\$2.00	\$21,400.00

Item No.	Unit	Quantity	Description	Unit Price	Extended Amount
5.	LF	6,900	Cleaning 8-inch Diameter Sanitary Sewer, complete in place for the unit price per lineal foot	\$2.00	\$13,800.00
6.	LF	1,900	Cleaning 10-inch Diameter Sanitary Sewer, complete in place for the unit price per lineal foot.....	\$2.00	\$3,800.00
7.	LF	130	Cleaning 12-inch Diameter Sanitary Sewer, complete in place for the unit price per lineal foot.....	\$5.00	\$650.00
8.	LF	2,300	Cleaning 15-inch Diameter Sanitary Sewer, complete in place for the unit price per lineal foot.....	\$4.00	\$9,200.00
9.	LF	700	Cleaning 18-inch Diameter Sanitary Sewer, complete in place for the unit price per lineal foot.....	\$4.00	\$2,800.00
10.	LF	1,400	Cleaning 21-inch Diameter Sanitary Sewer, complete in place for the unit price per lineal foot	\$8.00	\$11,200.00
11.	LF	110	Cleaning 24-inch Diameter Sanitary Sewer, complete in place for the unit price per lineal foot	\$20.00	\$2,200.00
12.	EA	4	Spot Repairs of Existing Sanitary Sewer Mains, complete in place for the unit price per each	REMOVED FROM BID	
13.	EA	4	Removal of Protruding Service Lateral Taps, complete in place for the unit price per each	\$300.00	\$1,200.00
14.	LF	10,700	Rehabilitation of 6-inch Diameter Sanitary Sewer by Cured-in-Place Pipe Method, complete in place for the unit price per lineal foot	\$25.00	\$267,500.00
15.	LF	6,900	Rehabilitation of 8-inch Diameter Sanitary Sewer by Cured-in-Place Pipe Method, complete in place for the unit price per lineal foot.....	\$25.00	\$172,500.00
16.	LF	1,900	Rehabilitation of 10-inch Diameter Sanitary Sewer by Cured-in-Place Pipe Method, complete in place for the unit price per lineal foot.....	\$30.00	\$57,000.00
17.	LF	130	Rehabilitation of 12-inch Diameter Sanitary Sewer by Cured-in-Place Pipe Method, complete in place for the unit price per lineal foot.....	\$70.00	\$9,100.00
18.	LF	2,300	Rehabilitation of 15-inch Diameter Sanitary Sewer by Cured-in-Place Pipe Method, complete in place for the unit price per lineal foot.....	\$52.00	\$119,600.00
19.	LF	700	Rehabilitation of 18-inch Diameter Sanitary Sewer by Cured-in-Place Pipe Method, complete in place for the unit price per lineal foot.....	\$70.00	\$49,000.00
20.	LF	1,400	Rehabilitation of 21-inch Diameter Sanitary Sewer by Cured-in-Place Pipe Method, complete in place for the unit price per lineal foot.....	\$80.00	\$112,000.00
21.	LF	110	Rehabilitation of 24-inch Diameter Sanitary Sewer by Cured-in-Place Pipe Method, complete in place for the unit price per lineal foot.....	\$170.00	\$18,700.00

Item No.	Unit	Quantity	Description	Unit Price	Extended Amount
22.	EA	483	Reinstatement of Existing Sanitary Sewer Laterals, complete in place for the unit price per each	\$30.00	\$14,490.00
23.	EA	12	Installation of New 48-inch Sanitary Sewer Manholes, complete in place for the unit price per each.....	\$18,000.00	\$216,000.00
24.	LS	1	Pavement Markings, Stripes, Pavement Markers and Curb Paint, complete in place for the lump sum price.....	\$100.00	\$100.00
TOTAL BID PRICE				\$1,142,240.00	

4. COMPONENT PARTS

This Agreement shall consist of the following documents, each of which is on file in the City of Antioch, Capital Improvements Department, and all of which are incorporated herein by this reference:

- A. Agreement
- B. Notice Inviting Bids
- C. Description of Project
- D. General Conditions (2006 Caltrans Standard Specifications)
- E. Special Provisions
- F. Construction Details
- G. Contract Plans
- H. Addenda No. 1 to 2, inclusive
- I. Performance Bond
- J. Payment bond
- K. Bid Forms

5. SERVICE OF NOTICE

Any notice required or permitted to be given under this Agreement shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage pre-paid, to the appropriate address specified in the CONTRACTOR's bid, and in the case of the CITY, to P. O. Box 5007, Antioch, CA 94531-5007, or at any other address which either party may subsequently designate in writing to the other party.

6. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California. Any action relating to this Agreement shall be instituted and prosecuted in a court of competent jurisdiction in the State of California. Each party hereby appoints the party listed opposite its name to act as its initial agent for service of process relating to any such action:

CITY: Capital Improvements Division
City of Antioch
200 "H" Street
P. O. Box 5007
Antioch, CA 94531-5007

CONTRACTOR: Justin Duchaineau
Southwest Pipeline and Trenchless Corp.
22118 Vermont Avenue
Torrance, CA 90502

Each such agent is hereby authorized and directed to accept service of process in any such action on behalf of his principal until such time as his successor shall have been appointed by his principal and notice thereof has been delivered to the other party in the manner provided herein for the giving of notice.

CONTRACTOR:

SOUTHWEST PIPELINE AND TRENCHLESS CORP.

Name Under Which Business is Conducted

The undersigned certify that they sign this Agreement with full and proper authorization so to do:

*By: _____

Title: _____

By: _____

Title: _____

** If CONTRACTOR is a corporation, this Agreement must be executed by two officers of the corporation, consisting of: (1) the President, Vice President, or Chair of the Board; and (2) the Secretary, Assistant Secretary, Treasurer or Chief Financial Officer. In the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the CITY is provided demonstrating that such individual is authorized to bind the corporation (e.g. – a copy of a certified resolution from the corporation's bylaws).*

CITY OF ANTIOCH, CALIFORNIA
A Municipal Corporation

By: _____
Rowland E. Bernal, Jr., City Manager

By: _____
Elizabeth Householder, City Clerk

APPROVED AS TO FORM:

By: _____
Thomas Lloyd Smith, City Attorney

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Scott Buenting, Project Manager *SB*

APPROVED BY: John Samuelson, Public Works Director/City Engineer *JS*

SUBJECT: Contra Loma Estates Park Renovation; (P.W. 298-P3)

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution:

1. Approving a Consulting Services Agreement ("Agreement") with RRM Design Group ("RRM") for the Contra Loma Estates Park Renovation project ("Project") in the amount of \$201,785 in substantially the form attached as "Attachment B"; and
2. Authorizing the City Manager to execute the Agreement for the Project with RRM for a total amount of \$201,785.

FISCAL IMPACTS

The fiscal year 2020/2021 Capital Improvements Budget includes adequate funding through the Proposition 68, 2018 Parks Bond Act, Statewide Park Development and Community Revitalization Program Fund for work related to the design and construction of the Project.

DISCUSSION

The City of Antioch has been awarded grant funding through the Proposition 68, 2018 Parks Bond Act, Statewide Park Development and Community Revitalization Program in the amount of \$2.9 million to be used for the renovation of the Contra Loma Estates Park. A Conceptual Level Site Plan has been developed for the project through an extensive community engagement process. The proposed park amenities were prioritized by neighborhood residents and community organizations active within the community, including elementary aged children that participated in summer camp, and Antioch Police Department volunteers. The proposed plan includes a walking path, outdoor exercise equipment, shaded picnic and barbecue area, dog park, climbing feature for older youth, a public restroom, lighting for the existing basketball court, landscape, and security lighting throughout the park. The project will also require collaborative efforts with the local high school for the development and implementation of public art and the California Conservation Corps for tree planting and park landscaping work.

On November 11, 2020, staff contacted eleven (11) firms requesting qualifications for consulting services including providing landscaping design, project design documents, construction cost estimates and construction support services in compliance with all grant requirements related to the Project.

On December 17, 2020, qualifications were received from seven (7) consulting firms for the desired consulting services. Based on the content of the qualifications, RRM was selected as the most qualified firm to provide the services required for the Project. Staff has subsequently met with representatives with RRM to develop the attached scope of work and cost proposal (Attachment "B").

ATTACHMENTS

- A. Resolution
- B. Agreement

ATTACHMENT "A"

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING THE AGREEMENT WITH RRM DESIGN GROUP FOR CONSULTING
SERVICES FOR THE CONTRA LOMA ESTATES PARK RENOVATION PROJECT
AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT
P.W. 298-P3**

WHEREAS, the City has considered acquiring consulting services related to the Contra Loma Estates Park Renovation ("Project");

WHEREAS, on November 11, 2020, City staff contacted eleven firms requesting qualifications for consulting services including providing landscaping design, project design documents, construction cost estimates and construction support services in compliance with all grant requirements related to the Project;

WHEREAS, on December 17, 2020, qualifications were received from seven (7) consulting firms;

WHEREAS, the City selected RRM Design Group ("RRM") as the most qualified firm to provide the services required for this Project;

WHEREAS, the City Council has considered approving the Project Consulting Service Agreement ("Agreement") with RRM for a total amount of \$201,785; and

WHEREAS, the City Council has considered authorizing the City Manager to execute the Agreement with RRM for a total amount of \$201,785.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby:

1. Approves an Agreement with RRM Design Group in the amount of \$201,785 in substantially the form attached as "Attachment B" to the staff report; and
2. Authorizes the City Manager to execute the Agreement in a form approved by the City Attorney.

* * * * *

RESOLUTION NO. 2021/**

March 9, 2021

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I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

A2

ATTACHMENT "B"

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF ANTIOCH AND RRM DESIGN GROUP FOR THE CONTRA LOMA ESTATES PARK RENOVATION

THIS AGREEMENT ("**Agreement**") is made and entered into this 9th day of March, 2021 ("**Effective Date**") by and between the City of Antioch, a municipal Corporation with its principle place of business at 200 H Street, Antioch, CA 94509 ("**City**") and RRM Design Group with its principle place of business at 321 Davis Street, San Leandro, CA 94577 ("**Consultant**"). City and Consultant individually are sometimes referred to herein as "**Party**" and collectively as "**Parties**."

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

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2023 the date of completion specified in Exhibit A, and Consultant shall complete the Services described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the Services required by this Agreement shall not affect the City's right to terminate the Agreement, under Section 8.

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

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

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

SECTION 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed Two hundred one thousand, seven hundred eighty-five dollars (\$201,785.00), notwithstanding any contrary indications that may be contained in Consultant's proposal, for Services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for Services rendered pursuant to this Agreement at the time and in the manner set forth below. The payments specified below shall be the only payments from City to Consultant for Services

rendered pursuant to this Agreement. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

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

2.2 Payment Schedule.

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

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

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

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

2.5 Reimbursable Expenses. Reimbursable expenses are specified below. 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: Reproduction costs, postage, shipping, handling of drawings and documents, any additional insurance requested by City of Antioch in excess of that normally carried by RRM Design Group or its subconsultants, travel expenses (transportation/automobile/lodging/meals), and renderings and models.

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

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

SECTION 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

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

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

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

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

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

4.5 Other Insurance Provisions. Unless otherwise specified below, all insurance policies are to contain, or be endorsed to contain, the following provisions:

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

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

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

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

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

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

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

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

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

4.6 Certificate of Insurance and Endorsements. Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

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

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

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

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due to Consultant under the Agreement;

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or,
- Terminate this Agreement.

SECTION 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

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

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

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

SECTION 6. STATUS OF CONSULTANT.

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

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

SECTION 7. LEGAL REQUIREMENTS.

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

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

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

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

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

Consultant shall include the provisions of this Section in any subcontract approved by the Contract Administrator or this Agreement.

7.6 California Labor Code Requirements. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not

apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

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

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

SECTION 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement only for cause upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for Services performed satisfactorily to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

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

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

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

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

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

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

8.6.1 Immediately terminate the Agreement;

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

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

SECTION 9. KEEPING AND STATUS OF RECORDS.

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

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

9.3 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to

charges for Services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant..

9.4 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

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

SECTION 10. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

10.6 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any official of City in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code Section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

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

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

10.9 Contract Administration. This Agreement shall be administered by 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:

Lief McKay, ALSA, PLA, LEED AP
RRM Design Group
321 Davis Street
San Leandro, CA 94577

Any written notice to City shall be sent to:

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

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

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

CITY:

CITY OF ANTIOCH

Rowland E. Bernal, Jr. City Manager

Attest:

Elizabeth Householder, City Clerk

Approved as to Form:

Thomas Lloyd Smith, City Attorney

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

CONSULTANT:

RRM DESIGN GROUP

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____



EXHIBIT "A"

February 9, 2021

Transmitted via email: sbuenting@ci.antioch.ca.us

Scott Buenting, P.E.
City of Antioch
Public Works Department
200 'H' Street
Antioch, CA 94509-1005

**RE: Contra Loma Estates Park Renovation
Proposed Scope of Services**

Mr. Buenting,

We are pleased to present the following scope of services for the Contra Loma Estates Park renovation. The park design will be based upon the plan included in the successful Proposition 68 grant application.

It is our understanding that the following features and amenities will be included in the project:

- Walking path
- Outdoor exercise equipment
- Picnic area with prefabricated shade structure and barbeque grill
- Dog park
- Climbing feature for older kids
- Prefabricated restroom
- Lighting at existing basketball court
- Landscape and irrigation throughout the park
- Security lighting throughout the park
- Security fencing
- Collaboration with local high school to include public art
- Collaboration with the California Conservation Corps for tree and landscape planting



SCOPE OF SERVICES

Task 1: Project Management

Subtask 1.A: Kickoff Meeting and Program Verification

RRM Design Group (RRM) will meet with City staff to discuss the scope of work, stakeholder comments, the project design and construction schedule, and grant requirements. We will prepare and distribute a meeting agenda at least three working days prior to the meeting and submit meeting minutes, including participants list, comprehensive meeting notes, and action items to the City within one week following the meeting. We will also prepare a project schedule, which will be refined during this meeting and sent to the team once finalized.

Deliverables:

- *One (1) project kickoff meeting*
- *Meeting agenda*
- *Meeting notes*
- *Project schedule*

Subtask 1.B: Client Meetings

In addition to the kickoff meeting, RRM will meet with City staff via Zoom video calls up to five times to discuss general issues and review the design at project milestones.

Following each meeting, we will prepare meeting notes summarizing the discussion, including action items to the City within one week following the meeting.

Deliverables:

- *Up to five (5) meetings (virtual)*
- *Meeting notes*

Subtask 1.C: Project Management

This task provides an allowance for RRM's project manager to coordinate the project, including subconsultant coordination and general Client correspondence, throughout the course of the project.

If necessary, we will also coordinate with high school students to integrate the public art element during design and the California Conservation Corps on landscape installation during design and construction.

Deliverables:

- *Up to thirty-two (32) hours of project management time*



Task 2: Project Development

Subtask 2.A: Surveying

RRM subconsultant, Guida Surveying Inc., will field establish control based upon the California Coordinate System and local County/City benchmarks (unless otherwise directed by the City). Guida will set four aerial targets and fly a new 1"=40' scale aerial topography with one-foot contours, planimetric data, and topographic base mapping. Topography will be prepared in AutoCAD Civil 3D and include a digital terrain model (DTM) surface and digital orthographic photo.

Based upon our research and Client provided title reports (if available), Guida will plot the record property lines and include them in the base mapping for this project. Record property lines are considered to be preliminary and subject to change if a boundary survey is performed.

Deliverables:

- *AutoCAD Civil 3D dwg file containing orthographic photo, planimetric data, 1' contours, Civil 3D DTM, field notes*

Subtask 2.B: Geotechnical Investigation

RRM subconsultant, BSK Associates, will perform a limited subsurface investigation for the project including five hand-auger borings to depths of about 3-5 ft BGS each or to practical refusal, whichever is shallower, within the limits of the planned improvements. A field representative from BSK will maintain a log of the soils encountered and obtain bulk samples and relatively undisturbed samples for classification and laboratory testing. A hand-sampler equipped with two-inch stainless steel liners will be used to obtain relatively undisturbed samples. The field exploration is anticipated to be completed in one day. Upon completion, the borings will be backfilled with excess soil cuttings. We assume our investigation can be conducted during regular business hours (8:00 am to 5:00 pm) on a weekday without any time restrictions. The following laboratory testing will be conducted:

- Moisture content and dry density
- Atterberg limits
- Sieve analysis
- Triaxial compression strength
- Corrosion

The results of the BSK investigation, along with conclusions and recommendations, will be presented in a geotechnical investigation letter report. The report will be prepared under the supervision of a California registered geotechnical engineer. We anticipate the report will include the following:

- Vicinity map and site plan showing the approximate hand auger locations
- Results of laboratory tests
- Discussion of geologic setting and seismicity
- Discussion of general site surface and subsurface conditions observed/encountered in our field exploration, including depth to free groundwater if observed



- Recommendations for the design of spread footings and mat foundations, including allowable soil bearing pressures, embedment depths, and resistance to lateral loads
- Recommendations for drilled piers, including allowable skin friction, minimum embedment depth, minimum diameter, and lateral load resistance (if applicable)
- Provision of state-mapped 2019 CBC seismic design parameters (if desired, we included an option below to perform a site-specific ground motion analysis)
- Exterior concrete flatwork recommendations
- Permeable concrete recommendations for walkways
- Recommendations for Portland Cement Concrete paving sections, including the minimum thickness of concrete and aggregate base sections
- Recommendations for site preparation, earthwork, and fill compaction specifications
- Site drainage and stormwater runoff mitigations, including anticipated hydrologic soil group type per Chapter 7 of Part 630 Hydrology National Engineering Handbook (United States Department of Agriculture, 2007)
- Presentation of corrosivity test results

BSK will perform a single-review iteration of the geotechnically relevant aspects of the 95% complete project plans before they go out to bid. They will then issue a letter presenting their review comments, if any. Once our review comments have been addressed, they can issue a final review letter indicating their review comments have been addressed if desired. If additional review iterations are necessary, a fee for this task would need to be adjusted accordingly.

Deliverables:

- *Electronic copy of the geotechnical report in PDF format*
- *Review of plans including comments letter*

Subtask 2.C: Review Existing Information

RRM will review relevant existing documents including but not limited to record drawings, State approved conceptual level site plan, the City's General Plan, Specific Plans, and any supplemental planning documents, policies, and programs. We will rely on the City to direct us on which sections and documents are relevant to this project.

Deliverables:

- *Up to eight (8) hours reviewing existing documents*

B16



Subtask 2.D: Site Furnishings and Amenities Board

RRM will prepare a site furnishings and amenities board for the park based on staff direction and the State approved conceptual level site plan. The boards will include proposed options for landscaping, pathways, picnic and barbeque areas, shade structure, climbing feature, outdoor exercise equipment, and restroom. RRM will present a draft of the proposed options to staff for input prior to final formatting.

Deliverables:

- *Site furnishings and amenities board*

Subtask 2.E: Stakeholder Meeting #1 – High School

RRM will prepare for and facilitate a meeting with representatives of the local high school to discuss the integration of art into the project. At this time, we assume this meeting will be virtual (Zoom or similar). The goal for this meeting is to determine if and how the high school students will play a role in the park design.

Deliverables:

- *One (1) meeting with high school representatives*

Subtask 2.F: Stakeholder Meeting #2 – California Conservation Corps

RRM will prepare for and facilitate a meeting with the California Conservation Corps (CCC) to discuss their potential role in the project. At this time, we assume this meeting will be virtual (Zoom or similar).

Deliverables:

- *One (1) meeting with CCC*

Subtask 2.G: Schematic Level Site Plan

Based on the staff direction, feedback gathered at the stakeholder meetings, and analysis of existing background documents, RRM will create a schematic level site plan. The design will be a refinement of the plan included in the Proposition 68 grant application. We will prepare a draft for staff review prior to finalizing the plan for use in upcoming presentations.

Deliverables:

- *Schematic level site plan*

B17



Subtask 2.H: City Presentations

RRM will attend two meetings to present the schematic level site plan to:

- Parks and Recreation Commission
- City Council

In preparation for these meetings, RRM will prepare a PowerPoint presentation with input from staff. The goal of these meetings is to obtain approval of the design prior to commencement of construction documentation.

Deliverables:

- *Prepare for and attend two (2) public meetings*

Task 3: Construction Documents (Plans, Specifications, and Estimate)

RRM will prepare construction documents based on the City-approved schematic level site plan, including plans, specifications, and cost estimates at the submittal levels listed below.

The following is a list of the construction document (PS&E) package contents:

- Title and reference sheets
- Demolition plans
- Erosion control plans
- Landscape construction plans
- Horizontal control plans (not included in the 50% PS&E submittal)
- Grading and drainage plans (on-site only)
- Site utility plans
 - Utility plans for domestic water and sewer from the point of connection to existing service mains directly adjacent to the project. This scope assumes that the existing off-site and/or on-site water and sewer systems have adequate capacity for the site development and that analysis or upgrades are not included in this proposal. Additional design to increase the capacity of the off-site utilities beyond the closest points of connections, including fire flows and storm drain, are considered outside this scope
- Site electrical/lighting plans including security cameras (includes preparation of Title 24 Lighting compliance for exterior lighting)
- Construction details
- Structural details
- Irrigation plans and details
- Planting plans and details
- Technical specifications (50% PS&E submittal will include outline specifications only)
- Construction cost opinions (50%, 90% and Bid-Ready submittals only)
 - The detailed construction cost opinion will break out each design component on a line-item spreadsheet with item descriptions and unit costs. Due to many variables surrounding bidding and construction conditions, this opinion will not represent a



guarantee that bids received, or actual costs of construction, will be equal to the opinion

- Unit prices will utilize cost data from local projects, City-provided cost information, and Caltrans District 4 historic bid prices

Subtask 3.A: 50% Complete PS&E

Deliverables:

- 50% PS&E submittal (contents listed above)

Subtask 3.B: 90% PS&E

Deliverables:

- 90% PS&E submittal (contents listed above) for permitting review

Subtask 3.C: Bid-Set PS&E

Deliverables:

- Final PS&E submittal (contents listed above) for bidding

Subtask 3.D: Drainage and Stormwater Study

RRM will perform drainage analyses (hydrology and hydraulics) for the project drainage and stormwater design. The findings and recommendations will be provided in a drainage and stormwater technical memorandum. A draft submittal will occur at the 65% design level and a final submittal will occur at the 95% design level.

Analysis will occur for on-site conditions only and assume that all off-site runoff and utilities are compliant with current NPDES and County Flood Control District standards and have capacity to accommodate this project. RRM will identify 10-, and 25-, 50-, and 100-year design hydrology and hydraulics to design the proposed storm drain system in accordance with County Flood Control District standards. Design will assume gravity pipe flow (i.e., no pumps).

RRM anticipates that this project will have 2,500 to 10,000 square feet of new or replaced impervious surface, making it a "Non-Regulated Project" or Small Land Development Project per the Contra Costa Clean Water Program Stormwater C.3 Guidebook. Stormwater runoff compliance will be achieved by designing the proposed impervious surfaces (roofs, hardscape) to drain in vegetated areas – engineered stormwater features such as bioretention are not anticipated for this project. Calculations and exhibits demonstrating Non-Regulated Project status will be included in this task.

Deliverables:

- Drainage and stormwater technical memorandum (draft and final)



Task 4: Bid and Construction Support Services

Subtask 4.A: Bid Support

RRM will support the City during the bidding process. We will respond to bidder questions and pre-bid substitution requests forwarded to us by the City and issue addenda as deemed necessary and reasonable by the City to clarify design-related issues. As a part of this task, we will attend one pre-bid conference.

Deliverables:

- Respond to questions during the bid period
- Attend one (1) pre-bid meeting

Subtask 4.B: Construction Administration

Following the award of the general construction contract, RRM will support the City during the construction phase of the project. We will review and respond to Requests for Information (RFI), Change Orders (CO), submittals, and contractor supplied shop drawings. Under this task, RRM will also prepare and issue supplemental instructions as necessary to clarify technical details. RRM will also coordinate with consultants, agency, and City staff, as necessary.

We assume that the City's project manager and/or construction manager will filter and respond directly to RFI that are straightforward and that not all correspondence will require attention and response by RRM.

Deliverables:

- RFI, CO, submittal reviews, shop drawings responses, supplemental instructions, and general record keeping documents

Subtask 4.C: Construction Observation Meetings

RRM's project manager and/or designated representative will prepare for and attend up to four construction meetings at the park site. Meetings will be scheduled at key milestones during construction, to be determined later.

The purpose of these meetings is to generally coordinate with the City and Contractor and address topical issues.

While in attendance at these construction meetings, RRM will conduct field observations. The field construction observation is not intended to be an exhaustive check or a detailed inspection of the contractor's work but rather to allow RRM to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the contract documents. RRM shall not supervise, direct, or have control over the contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the contractor, nor for the contractor's safety precautions or programs in connection with the work. These rights and responsibilities are solely those of the contractor in accordance with the contract documents.



RRM shall not be responsible for any acts or omissions of the contractor, subcontractor, any entity performing any portion of the work, or any agents or employees of any of them. RRM does not guarantee the contractor's performance and shall not be responsible for the contractor's failure to perform work in accordance with the contract documents or any applicable laws, codes, rules, or regulations.

Deliverables:

- Up to four (4) construction meetings and field observations

Task 5: Project Completion

Subtask 5.A: Operational and Maintenance Standard Requirements

RRM will provide up to eight hours of support to the contractor and City maintenance staff to compile product manuals and instructions for the park's maintenance and operations. The required content will be provided by the general contractor.

Deliverables:

- Up to eight (8) hours of support preparing operational and maintenance standards

Subtask 5.B: Submittal of State Required Close-out Documents

RRM will provide up to eight hours of support preparing close-out documents to meet the State timeline requirements.

Deliverable:

- Up to eight (8) hours of support preparing close-out documents

Subtask 5.C: Project Close-Out

RRM will attend two punch item walks with the contractor and the City, preliminary and final, and prepare a memorandum of punch list items for the contractor to address. We will also conduct other close-out activities required in the project specifications, which might include but are not limited to equipment start-up and irrigation system coverage.

Deliverables:

- Attend two (2) punch item walks and prepare punch list memoranda
- Miscellaneous close-out activities



Subtask 5.D: Record Drawings

Upon completion of construction work, RRM will compile a reproducible set of record drawings based upon the marked-up record drawings, addenda, change orders, and other data furnished by the contractor. These record drawings will show significant changes made during construction. Because these record drawings are based on a third-party's unverified information, RRM shall assume it will be reliable. RRM cannot and does not warrant their accuracy.

Deliverables:

- One (1) reproducible set of Record Drawings

Task 6: Design Contingency

This task may be authorized by the City for additional and/or unforeseen items that may arise throughout the design process. RRM will not incur any time towards this budget without the prior express, written authorization of the City.

SERVICES AND/OR INFORMATION TO BE PROVIDED BY CLIENT

- Single point of contact who will review, consolidate, and reconcile conflicting agency review comments from plan-check submittals into a single list to which we can respond
- Front end specifications (General and Special Provisions), bid form, notice to bidders, City-specific templates
- Compilation of project manual
- Environmental review (CEQA) and permits
- Payment of permit fees
- Water pressure at existing backflow device



LIMITATIONS OF SCOPE AND EXCLUSIONS

Please note that the tasks to be performed by the RRM team are limited purely to those outlined above. Substantive changes requested by the Client or changes in the Client's program or direction that are inconsistent with prior approvals are subject to additional services fees. Any additional services that RRM Design Group is asked to perform over and beyond those described above will be billed on a negotiated and Client-approved, fixed-fee, or hourly basis.

The following services or tasks are specifically excluded from the scope:

- Boundary surveys
- Record of surveys
- Legal description and plats
- Potholing to verify utilities
- Hazmat analysis
- Analysis of and design of the existing off-site storm drainage facilities and conditions
- Drainage pump design
- Analysis of offsite sewer and water utility capacities
- Separate/additional submittals to various agencies beyond those listed above
- Bid documents prior to permitting
- Traffic studies and control plans
- Community outreach outside of tasks listed above
- Arborist report
- Site redesign for rebidding
- Encroachment permit for geotechnical investigation
- CEQA
- Environmental Permits (401, 404)
- Channel/creek restoration design
- Design in Caltrans right of way
- Stormwater Pollution Prevention Plan (SWPPP)
- Construction staking



TASK AND FEE SUMMARY

TASK	DESCRIPTION	T&M/NTE (see footnote)
Task 1	Project Management	
1.A	Kickoff Meeting and Program Verification	\$ 1,420
1.B	Client Meetings	\$ 4,310
1.C	Project Management	\$ 6,800
	Task 1 Subtotal	\$ 12,530
Task 2	Project Development	
2.A	Surveying	\$ 13,105
2.B	Geotechnical Investigation	\$ 13,490
2.C	Review Existing Information	\$ 540
2.D	Site Furnishings and Amenities Board	\$ 1,330
2.E	Stakeholder Meeting #1 – High School	\$ 610
2.F	Stakeholder Meeting #2 – California Conservation Corps	\$ 610
2.G	Schematic Level Site Plan	\$ 5,400
2.H	City Presentations	\$ 3,160
	Task 2 Subtotal	\$ 38,245
Task 3	Construction Documents (Plans, Specifications, and Estimate)	
3.A	50% Complete PS&E	\$ 48,760
3.B	90% PS&E	\$ 32,420
3.C	Bid-Set PS&E	\$ 19,710
3.D	Drainage and Stormwater Study	\$ 4,020
	Task 3 Subtotal	\$ 104,910
Task 4	Bid and Construction Support Services	
4.A	Bid Support	\$ 2,010
4.B	Construction Administration	\$ 10,170
4.C	Construction Observation Meetings	\$ 3,720
	Task 4 Subtotal	\$ 15,900
Task 5	Project Completion	
5.A	Operational and Maintenance Standard Requirements	\$ 720
5.B	Submittal of State Required Close-out Documents	\$ 1,080
5.C	Project Close-Out	\$ 4,020
5.D	Record Drawings	\$ 4,380
	Task 5 Subtotal:	\$ 10,200
Task 6	Design Contingency	\$ 18,000
	Estimated Reimbursable Expenses:	\$ 2,000
	ESTIMATED PROJECT TOTAL:	\$ 201,785

B24



Fee Footnote

Estimated fees for tasks shown as "Time and Materials - Not to Exceed" (T&M/NTE) establish the maximum that will be billed for each task. Amounts billed will reflect actual hours and will not exceed the maximum amount shown without prior approval by the Client.

Reimbursable Expenses

Incidental expenses incurred by RRM Design Group or any subconsultant it may hire to perform services for this project are reimbursed by the Client at actual cost plus 10% to cover its overhead and administrative expenses. Reimbursable expenses include, but are not limited to, reproduction costs, postage, shipping, and handling of drawings and documents, long-distance communications, fees paid to authorities having jurisdiction over the project, the expense of any additional insurance requested by Client in excess of that normally carried by RRM Design Group or its subconsultants, travel expenses (transportation/automobile/lodging/meals), and renderings and models. Reimbursable automobile travel mileage will be billed at the current IRS business standard mileage rate.

Adjustment to Hourly Billing Rates

RRM reserves the right to adjust hourly rates on an annual basis.

If you have any questions or require clarification of the scope of services or fees outlined above, please do not hesitate to call us. Thank you again for this opportunity.

Sincerely,

RRM DESIGN GROUP

A handwritten signature in black ink, appearing to read 'Gina Chavez'.

Gina Chavez, PLA, BFQ Professional
Manager of Landscape Architecture
CA License No. 6040

A handwritten signature in blue ink, appearing to read 'Lief McKay'.

Lief McKay, ALSA, PLA, LEED AP
Principal
CA License No. 4937

Attachment: Exhibit A-I, Schedule I

EXHIBIT A-1 SCHEDULE 1

Bill Rate Ranges

Subject to change effective March 1st each year

ARCHITECTURE

Architect	\$ 95 - \$ 155
Assistant Manager of Architecture	\$ 130 - \$ 195
Design Director	\$ 145 - \$ 235
Designer I	\$ 70 - \$ 100
Designer II	\$ 80 - \$ 125
Designer III	\$ 90 - \$ 150
Intern	\$ 45 - \$ 80
Job Captain	\$ 90 - \$ 150
Manager of Architecture	\$ 145 - \$ 255
Principal	\$ 180 - \$ 350
Project Architect	\$ 110 - \$ 185
Project Designer	\$ 110 - \$ 175
Project Manager	\$ 110 - \$ 185
Senior Architect	\$ 135 - \$ 220
Senior Designer	\$ 135 - \$ 210
Senior Project Manager	\$ 135 - \$ 230

ENGINEERING & SURVEYING

Construction Inspector	\$ 105 - \$ 155
Designer I	\$ 55 - \$ 95
Designer II	\$ 75 - \$ 120
Designer III	\$ 90 - \$ 135
Engineer I	\$ 85 - \$ 130
Engineer II	\$ 105 - \$ 160
Land Surveyor	\$ 115 - \$ 160
Manager of Engineering Services	\$ 170 - \$ 280
Manager of Surveying	\$ 150 - \$ 230
Party Chief	\$ 90 - \$ 140
Principal	\$ 180 - \$ 350
Project Engineer	\$ 125 - \$ 175
Project Manager	\$ 145 - \$ 230
Senior Designer	\$ 110 - \$ 185
Senior Land Surveyor	\$ 130 - \$ 195
Senior Party Chief	\$ 115 - \$ 180
Senior Project Engineer	\$ 135 - \$ 225
Supervisor of Surveying	\$ 135 - \$ 205
Survey Technician I	\$ 60 - \$ 90
Survey Technician II	\$ 75 - \$ 115
Survey Technician III	\$ 90 - \$ 155

Surveying Crew Rates

REGULAR

One person w/ GPS or Robotic Workstation	\$ 125 - \$ 155
Two person	\$ 175 - \$ 290
Three person	\$ 235 - \$ 390

PREVAILING WAGE

One person w/ GPS or Robotic Workstation	\$ 150 - \$ 180
Two person	\$ 225 - \$ 340
Three person	\$ 325 - \$ 490

INTERIOR DESIGN

Designer I	\$ 55 - \$ 85
Designer II	\$ 65 - \$ 115
Interior Designer I	\$ 75 - \$ 125
Interior Designer II	\$ 90 - \$ 150
Intern	\$ 45 - \$ 80
Senior Interior Designer	\$ 110 - \$ 195

LANDSCAPE ARCHITECTURE

Assistant Designer	\$ 70 - \$ 110
Associate Designer	\$ 80 - \$ 125
Designer	\$ 95 - \$ 135
Intern	\$ 45 - \$ 80
Landscape Architect	\$ 95 - \$ 145
Manager of Landscape Architecture	\$ 150 - \$ 240
Principal	\$ 180 - \$ 350
Principal Landscape Architect	\$ 135 - \$ 230
Senior Designer	\$ 105 - \$ 160
Senior Landscape Architect	\$ 110 - \$ 175

PLANNING

Assistant Planner	\$ 75 - \$ 115
Associate Planner	\$ 90 - \$ 150
Intern	\$ 45 - \$ 80
Manager of Planning	\$ 145 - \$ 240
Principal	\$ 180 - \$ 350
Principal Planner	\$ 140 - \$ 230
Senior Planner	\$ 115 - \$ 185

CORPORATE SERVICES

Accounting Specialist	\$ 60 - \$ 110
Business Development Coordinator	\$ 85 - \$ 135
Chief Executive Officer	\$ 195 - \$ 500
Graphic Designer	\$ 80 - \$ 135
Marketing Manager	\$ 110 - \$ 220
Marketing Specialist	\$ 90 - \$ 150
Office Coordinator	\$ 70 - \$ 125
Project Accountant	\$ 65 - \$ 135
Project Administrator	\$ 70 - \$ 125
Receptionist	\$ 40 - \$ 80



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Shaun Connelly, Distribution Superintendent

APPROVED BY: John Samuelson, Public Works Director/City Engineer ^{KS}

SUBJECT: Update to the Emergency Declaration for Mitigation and Repairs to the Water Tank Hillside Erosion at the Water Treatment Plant

RECOMMENDED ACTION

It is recommended that the City Council receive this update to the declaration of emergency for mitigation and repairs to the water tank hillside erosion at the Water Treatment Plant.

FISCAL IMPACT

None anticipated once reimbursement accomplished.

DISCUSSION

On December 8, 2020, the City Council adopted Resolution No. 2020/181 approving a declaration of emergency for mitigation and repairs to the hillside erosion at the City's Water Treatment Plant (WTP). The emergency project was necessitated by a contractor that damaged the City's one-half million-gallon water tank. As required by Antioch Municipal Code Section 3-4.28.B.2, updates will be provided to the City Council until the repairs are complete.

Pearson Exploration, the contractor, has completed all repairs recommended by Kleinfelder, the consultant geotechnical engineer. In addition, Pearson Exploration has completely removed all extra materials and debris. Kleinfelder was on site during construction to ensure proper steps were taken during the construction. City staff removed the temporary three-foot-tall commercial grade erosion control fencing placed as an interim safety measure, returning the site to normal conditions.

Staff will invoice the repair costs to the responsible party.

ATTACHMENTS

None

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Jeff Cook, Collections Superintendent

APPROVED BY: John Samuelson, Public Works Director/City Engineer ^{JS}

SUBJECT: Consideration of Bids for Mower Attachment for 5090M John Deere Tractor Bid No. 020-0222-21A

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution:

1. Awarding Bid No. 020-0222-21A Mower Attachment for 5090M John Deere Tractor to Municipal Maintenance Equipment, Inc.; and
2. Authorizing the City Manager to execute the purchase with Municipal Maintenance Equipment, Inc. for the amount not to exceed \$89,243.37.

FISCAL IMPACT

This action utilizes three funding sources:

- \$33,444.00 from approved Fiscal Year 20/21 Vehicle Replacement Fund budget
- \$27,899.69 from approved Fiscal Year 20/21 National Pollution Discharge Elimination System ("NPDES") Fund budget
- \$27,899.68 from approved Fiscal Year 20/21 Sewer Fund budget

DISCUSSION

The NPDES division recently replaced Vehicle #257 with a John Deere 5090M for fire abatement, including roadside and trail-side weed abatement, in preparation for fire season each year. The mower attachment of Vehicle #257 needs to also be replaced. This equipment will be utilized by multiple Public Works divisions, allowing for more effective and timely fire abatement maintenance throughout the City, and to reduce the likelihood of fires in the City's open spaces and creeks.

Public Works published the bid for the Mower Attachment for the 5090M John Deere Tractor, Bid No. 020-0222-21A, on February 8, 2021. On February 22, 2021 one (1) bid was received and opened as shown on the attached bid tabulation "Attachment B". The bid has been checked and found to be without errors or omissions. Municipal Maintenance Equipment, Inc. was determined to be the lowest, responsive and responsible bidder.

ATTACHMENTS

- A. Resolution
- B. Bid Tabulation

ATTACHMENT "A"

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
AWARDING THE BID AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE
PURCHASE WITH MUNICIPAL MAINTENANCE EQUIPMENT FOR A MOWER
ATTACHMENT FOR THE 5090M JOHN DEERE TRACTOR**

WHEREAS, vehicle #257 was recently replaced with a 5090M John Deere tractor, however, no attachments were included;

WHEREAS, staff is in need of a mower attachment for the abatement of weeds and brush to prevent fires throughout the City's open spaces and creeks;

WHEREAS, bids were solicited on February 8, 2021 and closed on February 22, 2021;

WHEREAS, Municipal Maintenance Equipment, Inc. was the lowest, responsive and responsible, bidder, and sole submission; and

WHEREAS, funding for replacement of this equipment is included in the adopted fiscal year 2020-21 budget in the Vehicle Replacement, National Pollution Discharge Elimination System and Sewer Funds.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby:

1. approves the award of Bid No. 020-0222-21A, for a Mower Attachment for the 5090M John Deere Tractor to Municipal Maintenance Equipment, Inc.; and
2. authorizes the City Manager to execute the purchase with Municipal Maintenance Equipment, Inc., in the amount not to exceed \$89,243.37.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

ATTACHMENT "B"

ANTIOCH
CALIFORNIA

**BID TABULATION
MOWER ATTACHMENT FOR 5090M JOHN DEERE TRACTOR
BID NO. 02-0222-21A**

BID CLOSED: FEBRUARY 22, 2020

EQUIPMENT	QTY	TOTAL COST INCLUDING TAX, DELIVERY & INSTALLATION
Mower Attachment compatible with a 5090M John Deere Tractor	1	<u>\$89,243.37</u>

Grand Total: \$89,243.37
(Includes Tax and Delivery)

No Bids: John Deere - Belcorp AG

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Phil Hoffmeister, Administrative Analyst II

APPROVED BY: John Samuelson, Public Works Director/City Engineer ^{JS}

SUBJECT: Resolution Establishing the Rate per Equivalent Runoff Unit for Fiscal Year 2021-22 and Requesting the Contra Costa County Flood Control and Water Conservation District to Adopt an Annual Parcel Assessment for Drainage Maintenance and the National Pollution Discharge Elimination System Program

RECOMMENDED ACTION

It is recommended that the City Council adopt the resolution establishing a rate of twenty-five dollars (\$25) per equivalent runoff unit ("ERU") for fiscal year ("FY") 2021-22. That rate will generate the funds necessary to maintain stormwater quality as mandated by the Clean Water Act.

FISCAL IMPACTS

The adoption of the National Pollution Discharge Elimination System ("NPDES") rate of \$25 per ERU will generate approximately \$1,200,000 annually. The City of Antioch will receive approximately \$850,000 of that revenue to provide services and administer the NPDES program as mandated by the Clean Water Act. The remaining \$350,000 reflects the City's share of the County Clean Water Program costs. Such costs are allocated to all participating agencies on a population basis.

DISCUSSION

At its March 9, 1993 meeting, the City Council adopted Resolution 93/49 authorizing the establishment of an annual parcel assessment for drainage maintenance and the NPDES program. That action set the fee for fiscal year 1993-94 at \$20 per ERU per year and established a maximum rate of \$25 per ERU per year. At its April 12, 1994 meeting, the Council concurred with budget revisions proposed by staff and reduced that fee for fiscal year 1994-95 to \$17 per ERU per year. By subsequent actions, City Council set the rate for fiscal years 1995-96 through 2001-02 at \$17 per ERU per year.

At the April 9, 2002 Council meeting, in preparation for permit revisions and increased costs by the State Water Resources Control Board, staff presented alternatives to raising

the ERU from \$17 to the maximum of \$25 over a 3-year period to meet projected increased costs. Staff recommended raising the ERU to \$21 in 2002-03 and proposed increasing the fee per ERU to \$23 in 2003-04 and \$25 in 2004-05. Council approved those increases respectively. The City is required by May 1st to determine the cost to be assigned to the ERU for the forthcoming fiscal year. The resolution submitted with this report meets that condition.

With the uncertainty of future regulations and the cost to implement and administer State mandates, reliable costs projections are challenging to calculate. However, based on the City's current NPDES permit requirements and financial data and estimates for revenue and expenditures to meet those provisions, a revised zero fund balance could be realized by the end of FY 2024-2025. Any rate above the maximum of \$25 requires a Proposition 218 vote.

ATTACHMENTS

A. Resolution

ATTACHMENT "A"

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
ESTABLISHING THE RATE PER EQUIVALENT RUNOFF UNIT FOR FISCAL YEAR
2021-22 AND REQUESTING THE CONTRA COSTA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT TO ADOPT AN ANNUAL PARCEL
ASSESSMENT FOR DRAINAGE MAINTENANCE AND THE NATIONAL POLLUTION
DISCHARGE ELIMINATION SYSTEM PROGRAM**

WHEREAS, under the Federal Clean Water Act, prescribed discharges of stormwater require a permit from the appropriate California Regional Water Quality Control Board under the National Pollutant Discharge Elimination System ("NPDES") program;

WHEREAS, the City of Antioch (City) applied for, and received, a NPDES permit which requires the implementation of selected Best Management Practices to minimize or eliminate pollutants from entering stormwaters;

WHEREAS, it is the intent of the City to utilize funds received from its Stormwater Utility Area (SUA) for implementation of the NPDES program and drainage maintenance activities;

WHEREAS, at the request of the City, the Contra Costa County Flood Control and Water Conservation District ("District") has completed the process for formation of a SUA, including the adoption of the Stormwater Utility Assessment ("SUA") Drainage Ordinance No. 93-47; and

WHEREAS, the SUA and Program Group Costs Payment agreement between City and District requires the City, by May 1st, determine the rate to be assessed to a single Equivalent Runoff Unit ("ERU") for the forthcoming fiscal year.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Antioch does determine that the rate to be assigned to a single ERU for FY 2021-22 shall be set at twenty-five dollars (\$25.00).

BE IT FURTHER RESOLVED, that the City Council does hereby request the District to adopt SUA levies based on said amount.

* * * * *

RESOLUTION NO. 2021/**

March 9, 2021

Page 2

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Vicky Lau, Junior Engineer

APPROVED BY: John Samuelson, Public Works Director/City Engineer ^{JS}

SUBJECT: Resolution Authorizing the Execution of a Park Fee Credit Agreement, Roadway Reimbursement Agreement, and Sanitary Sewer Reimbursement Agreement for Aviano Subdivision 9249 with Civic Aviano, LLC.

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution authorizing the City Manager to execute a Park Fee Credit Agreement, Roadway Reimbursement Agreement, and Sanitary Sewer Reimbursement Agreement for Aviano Subdivision 9249 between the City of Antioch and Civic Aviano, LLC.

FISCAL IMPACT

There is no net fiscal impact from reimbursements and credits, as costs are to be borne by future developers.

DISCUSSION

On September 8, 2015, the City Council adopted Resolution No. 2015/68 approving a vesting tentative map and final development plan to subdivide an approximately 184-acre parcel into a development of 533 single-family homes for the Aviano subdivision project (Attachment "C"). The project is located on the easterly side of the Sand Creek Focus Area, west of the current terminus of Hillcrest Avenue, east and north of Dozier Libby Medical High School, Assessor's Parcel Number (APN) 057-050-022, 057-030-005 (Attachment "B").

On September 22, 2015, the City Council adopted Ordinance No. 2107-C-S, entering into a development agreement with Aviano Farms, LLC, now known as Civic Aviano, LLC (Attachment "D").

The Development Agreement and Conditions of Approval require the construction of Hillcrest Avenue and Sand Creek Road extension, two parks, and multiple traffic signals. The developer, Civic Aviano, LLC, has expressed to the City the desire to establish a funding mechanism for partial reimbursement or credit on said improvements. Civic

Aviano, LLC, has met with the City and negotiated the terms of all the reimbursement and park fee credit agreements. All agreements have been reviewed and approved to form by the City Attorney.

Park Fee Credit Agreement

The Developer has been conditioned to design and construct two parks and Sand Creek Regional Trail. On August 15, 2019, the City Parks and Recreation Commission adopted Resolution 2019-02 (Attachment "E"), recommending the approval of park-in-lieu fee credits for the Aviano subdivision. It was determined that such improvements were deemed sufficient for park-in-lieu fee credits. The proposed Park Fee Credit Agreement (Attachment "F") shall allow developer to waive the payment of any park-in-lieu and parks and recreation development impact fees on the condition the developer constructs all park improvements pursuant to approved Park Improvement plans.

Roadway Reimbursement Agreement

The Developer has been conditioned to design and construct extensions of Hillcrest Avenue and Sand Creek Road and traffic signals as shown on Exhibit B of the Roadway Reimbursement Agreement. The proposed Roadway Reimbursement Agreement (Attachment "G") shall allow developer to waive the payment of traffic signal impact fees and receive reimbursement from future developers for the fair share costs of improvements depicted on Exhibit C of the Roadway Reimbursement Agreement. The agreement also references that local developers are responsible for 70% of costs (Local Share) for Sand Creek Road extension improvements and they may be entitled to a 30% reimbursement (Regional Share) from the East Contra Costa Regional Financing Authority in the future. The City Engineer shall determine and calculate the amount of reimbursement, including the allocable portion of the Sand Creek Road Local Share, upon the completion and acceptance of roadway improvement.

Sewer Reimbursement Agreement

Developer has been conditioned to design and construct all infrastructure for their portion of Sand Creek Road and Hillcrest Avenue extensions, some of which contain oversized utilities to facilitate future developments in the Sand Creek Focus Area. Developer is seeking reimbursement for the fair share of design and construction costs of sanitary sewer mains from future developers. The Sewer Reimbursement Agreement (Attachment "H") allows for the fair share reimbursement to be conditioned onto future developers and upon completion and acceptance of sewer improvements, the City Engineer shall calculate and determine the amount applicable for reimbursement.

ATTACHMENTS

- A. Resolution
- B. Vicinity Map
- C. Resolution 2015/68
- D. Development Agreement
- E. Resolution 2019-02
- F. Park Fee Credit Agreement
- G. Roadway Reimbursement Agreement
- H. Sewer Reimbursement Agreement

ATTACHMENT "A"

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
AUTHORIZING THE EXECUTION OF A PARK FEE CREDIT AGREEMENT,
ROADWAY REIMBURSEMENT AGREEMENT, AND SANITARY SEWER
REIMBURSEMENT AGREEMENT FOR AVIANO SUBDIVISION 9249 WITH
CIVIC AVIANO, LLC**

WHEREAS, Civic Aviano, LLC made a request for a reimbursement agreement with the City for improvements required under 'conditions of approval' approved on September 8, 2015 and a development agreement approved on September 22, 2015;

WHEREAS, Civic Aviano, LLC made a request for a fee credit agreement (Attachment "F") with the City for designated park, trails, and landscaping improvements;

WHEREAS, the City Parks and Recreation Commission held a meeting on August 15, 2019 and has recommended for the City's approval of park-in-lieu fee credits through Resolution 2019-02;

WHEREAS, Civic Aviano, LLC made a request for a reimbursement agreement (Attachment "G") with the City for roadway and traffic signal improvements at Hillcrest Avenue and Sand Creek Road extensions;

WHEREAS, Civic Aviano, LLC made a request for a reimbursement agreement (Attachment "H") with the City for oversized sanitary sewer improvements at Hillcrest Avenue and Sand Creek Road extensions;

WHEREAS, the City met with Civic Aviano, LLC to negotiate the terms of the park fee credit agreement and reimbursement agreements and have reached an agreement to terms; and

WHEREAS, the City Attorney has reviewed and approved said agreements as to form (Attachment "F", "G", and "H").

NOW, THEREFORE, BE IT RESOLVED that the City Manager is hereby authorized to sign and execute said Park Fee Credit Agreement (Attachment "F"), Roadway Reimbursement Agreement (Attachment "G"), and Sewer Reimbursement Agreement (Attachment "H") for the construction of various improvements under Aviano Subdivision 9249 between the City of Antioch and Civic Aviano, LLC.

* * * * *

RESOLUTION NO. 2021/**

March 9, 2021

Page 2

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March 2021, by the following vote:

AYES:

NOES:

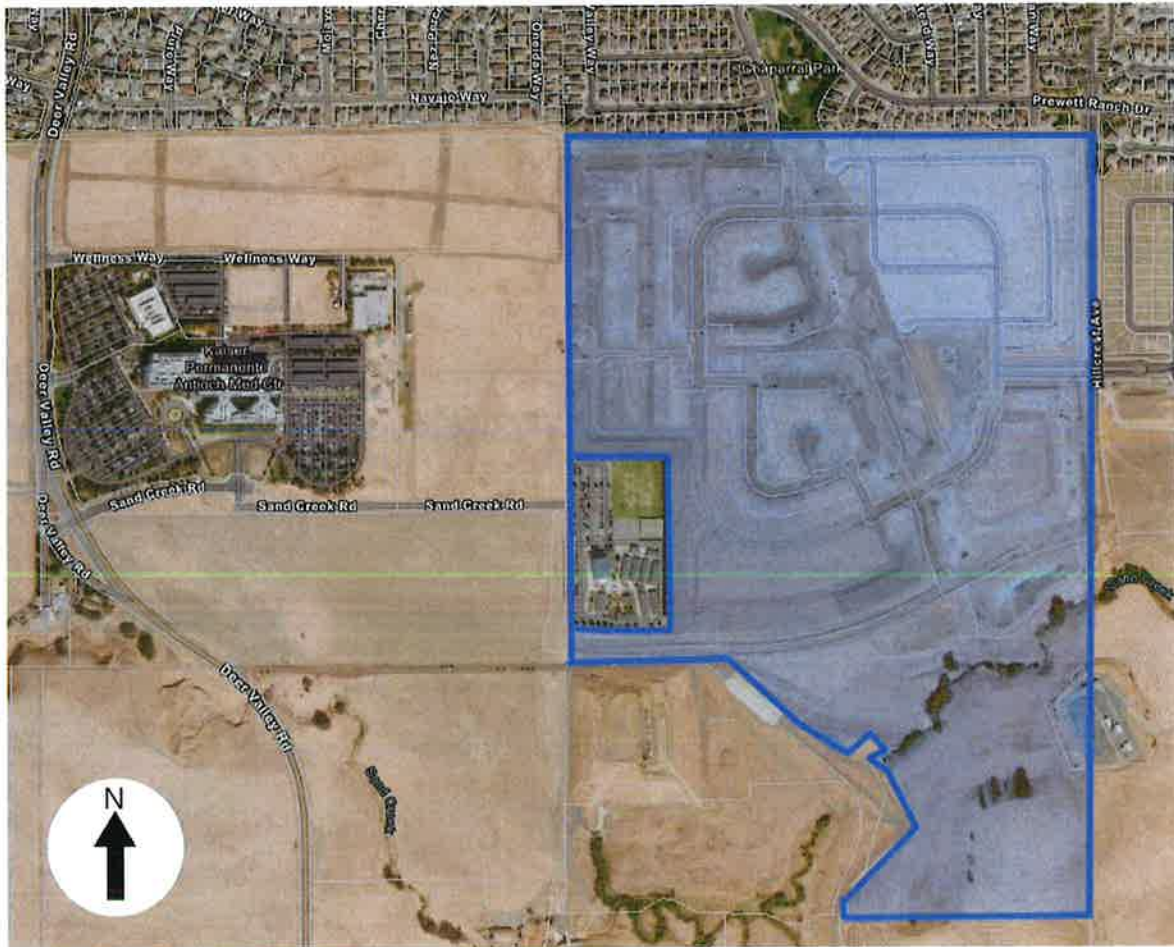
ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

ATTACHMENT "B"

Vicinity Map



ATTACHMENT "C"

RESOLUTION NO. 2015/68

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING A VESTING TENTATIVE MAP/FINAL DEVELOPMENT PLAN AND USE
PERMIT FOR THE AVIANO FARMS PROJECT**

WHEREAS, the City received an application from Aviano Farms, LLC to modify the Aviano Active Adult Community Project, including a request for a Development Agreement, General Plan Amendment, Planned Development Rezone, a Vesting Tentative Map/Final Development Plan, and a Use Permit, for the development of a 533 unit residential community on a portion of approximately 184 acres. The project is located on the easterly side of the Sand Creek Focus Area, west of the current terminus of Hillcrest Avenue, east and north of Dozier Libby Medical High School (APNs 057-050-022, 057-030-005); and

WHEREAS, the City determined the necessary environmental document is an Addendum to the Aviano Adult Community Project Environmental Impact Report (EIR); and

WHEREAS, on August 5, 2015, the Planning Commission recommended adoption of an Addendum to the Aviano Adult Community Project EIR, recommended approval of a General Plan Amendment to allow small lot development on this site, recommended approval of a rezone to modify the Planned Development District (PD) development standards, and recommended approval of a tentative map/final development plan and use permit; and

WHEREAS, on September 8, 2015, the City Council adopted a resolution approving an Addendum to the Aviano Adult Community Project Environmental Impact Report (EIR); and

WHEREAS, on September 8, 2015, the City Council adopted a resolution approving a General Plan Amendment to allow small lot development on land designated Low Density Residential on this site within the Sand Creek Focus Area, introduced an ordinance approving a development agreement between the City of Antioch and Aviano Farms, LLC, introduced an ordinance rezoning the site to modify the Planned Development District development standards; and

WHEREAS, the City Council duly gave notice of public hearing as required by law; and

WHEREAS, on September 8, 2015, the City Council duly held a public hearing on the matter, and received and considered evidence, both oral and documentary.

NOW THEREFORE BE IT RESOLVED, that the City Council makes the following required findings for approval of a Final Development Plan:

1. Each individual unit of the development can exist as an independent unit capable of creating an environment of sustained desirability and stability

RESOLUTION NO. 2015/68

September 8, 2015

Page 2

because each parcel has its own independent parking and access. The uses proposed will not be detrimental to present and potential surrounding uses but instead will have a beneficial effect which could not be achieved under another zoning district due to the General Plan designations for the project site and the requirement to establish a Planned Development Zoning District and receive approval for a Final Development Plan for each project in the Sand Creek Focus Area in the General Plan;

2. The streets and thoroughfares proposed meet the standards of the City's Growth Management Program and adequate utility service can be supplied to all phases of the development because the project will be constructing all the required streets and utilities to serve the project and the ultimate design, location and size of these improvements will be subject to the approval of the City Engineer;
3. Any commercial component of the project is justified. There are no commercial components of the Project;
4. Any deviation from the standard zoning requirements is warranted by the design and additional amenities incorporated in the final development plan which offers certain unusual redeeming features to compensate for any deviations that may be permitted. The project is substantially in conformance with the standard zoning requirements for residential development and the Planned Development District development standards established for the project site;
5. The area surrounding the PD district can be planned and zoned in coordination and substantial compatibility with the proposed development because the proposed development is consistent with the General Plan and the area around the Project will also be required to develop according to the General Plan policies for the Sand Creek Focus Area and to comply with the requirements of the alternate planning process established for the Focus Area; and,
6. The Project and the PD District conform to the General Plan of the City in that the small lot single family residential, park/trail and undeveloped open space uses are consistent with the General Plan designations of Low Density Residential, Public/Quasi Public and Open Space for those portions of the project site, as approved in the General Plan Amendment for the proposed project.
7. The Conditions of approval protect the public safety, health and general welfare of the users of the project and surrounding area. In addition, the conditions ensure the project is consistent with City standards.

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BE IT FURTHER RESOLVED that the City Council does hereby make the following findings for approval of a Vesting Tentative Map:

1. That the subdivision, design and improvements are consistent with the General Plan, as required by Section 66473.5 of the Subdivision Map Act and the City's Subdivision Regulations. The site is designated Low Density Residential, Multiple Family Residential, Public/Quasi Public and Open Space and is zoned Planned Development and the subdivision will accommodate uses that are consistent with the General Plan on each of the lots created by the subdivision; and,
2. That the subdivision proposed by the Vesting Tentative Map complies with the rules, regulations, standards and criteria of the City's Subdivision Regulations. The proposed subdivision meets the City's criteria for the map. The City's Planning and Engineering staff have reviewed the Vesting Tentative Map and evaluated the effects of the subdivision proposed and have determined that the Vesting Tentative Map as conditioned complies with and conforms to all the applicable rules, regulations, standards, and criteria of the City's Subdivision Regulations.
3. The Conditions of approval protect the public safety, health and general welfare of the users of the project and surrounding area. In addition, the conditions ensure the project is consistent with City standards.

BE IT FURTHER RESOLVED that the City Council does hereby make the following findings for approval of a use permit:

1. The granting of such use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity because the project has been designed to comply with the City of Antioch Municipal Code requirements.
2. The use applied at the location indicated is properly one for which a use permit is authorized because the City of Antioch Zoning Ordinance requires a use permit for all Planned Development District (PD) applications.
3. That the site for the proposed use is adequate in size and shape to accommodate such use, and all yards, fences, parking, loading, landscaping, and other features required, to other uses in the neighborhood. The site plan complies with the Planned Development standards established for the project's Planned Development District.
4. That the site abuts streets and highways adequate in width and pavement type to carry the kind of traffic generated by the proposed use. The project site will construct an extension of Hillcrest Avenue and Sand Creek Road to

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serve the project site. The street extensions are designed to meet City standards for adequate width and pavement.

5. That the granting of such use permit will not adversely affect the comprehensive General Plan because the proposed uses and design are consistent with the General Plan. The General Plan designation for the northern portion of the project site is Low Density Residential, which allows for the type of active adult community being developed by the project. The General Plan designations for the southern portion of the project site are Hillside, Estate and Executive Residential and Open Space, Public/Quasi Public and Multiple Family Residential. The proposed Sand Creek Regional Trail, dedicated open space parcels are consistent with the General Plan designations and the need for habitat preservation on the site.
6. The Conditions of approval protect the public safety, health and general welfare of the users of the project and surrounding area. In addition, the conditions ensure the project is consistent with City standards.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Antioch does hereby APPROVE a vesting tentative map/final development plan, and use permit, for the development of a 533 unit single family residential community on a portion of an approximately 184 acre parcel. The project is located on the easterly side of the Sand Creek Focus Area, west of the current terminus of Hillcrest Avenue, east and north of Dozier Libby Medical High School (APNs 057-050-022, 057-030-005), subject to the following conditions:

A. GENERAL CONDITIONS

1. The development shall comply with the City of Antioch Municipal Code, unless a specific exception is granted thereto, or is otherwise modified in these conditions or in the development agreement.
2. Concurrent with the first submittal of grading or improvement plans, the applicant shall submit a site plan exhibit showing the site plan as modified by conditions and approvals.
3. Prior to the issuance of building permits architecture, sound walls, fencing, mailboxes, lighting, any accent paving, addressing, and landscaping for the entire project shall be subject to review and approval by the Planning Commission.
4. Sound wall locations and elevations for each phase of the project shall be included on the grading plan(s).

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5. This approval expires two years from the date of approval (Expires _____, 2017) or alternate date as identified in the Development Agreement.
6. The applicant shall defend, indemnify, and hold harmless the City in any action brought challenging any land use approval or environmental review for the Project. In addition, applicant shall pay any and all costs associated with any challenge to the land use approval or environmental review for the Project, including, without limitation, the costs associated with any election challenging the Project.
7. A final and unchallenged approval of this project supersedes previous approvals that have been granted for this site.
8. Permits or approvals, whether discretionary or ministerial, will not be considered if the applicant is not current on fees, reimbursement and/or other payments that are due the City.
9. All required easements or rights-of-way for improvements shall be obtained by the applicant at no cost to the City of Antioch. Advance permission shall be obtained from any property or, if required from easement holders, for any work done within such property or easements.
10. All easements of record that are no longer required and affect individual lots or parcels within this project shall be removed prior to or concurrently with the recordation of the final map or subsequent separate document as approved by City Engineer.
11. The applicant shall establish a Home Owners Association (HOA) for this project in conformance with the regulations set forth by the State Bureau of Real Estate. The HOA shall be responsible for maintaining:
 - Landscaping in rights of way not adjacent to front-on or side-on lots and HOA owned parcels north of the northerly curb line of Sand Creek Road and west of the westerly curb line of Hillcrest Avenue.
 - Storm drain pipes leading into basin 1A and 2A (from the nearest catch basin or manhole).
 - All C.3 infrastructure north of the northerly curb line of Sand Creek Road and west of the westerly curb line of Hillcrest Avenue which may include, but is not limited to engineered soil, gravel, cleanouts, pipes, overflows, and flow control orifices.
 - Parcel R, unless retained by applicant.
 - The City shall be reimbursed if it maintains landscape or C.3 areas that are not maintained by the HOA to an acceptable City level.
 - Parcel F Park, unless dedicated as a City owned park.

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12. Subject to approval by the State, the CC&Rs shall include a provision indicating that the City of Antioch is named as a third-party beneficiary with the right, but not the obligation, to enforce the provisions of the CC&Rs relating to the maintenance and repair of the property and improvements, including but not limited to landscaping, parking, open space, storm water facilities and the prohibition of nuisances. The City shall have the same rights and remedies as the Association, Manager or Owners are afforded under the CC&Rs, including but not limited to rights of entry. This right of enforcement is in addition to all other legal and equitable remedies available to the City, including the right to refuse to issue building permits for any building or structure that is not in compliance with applicable federal, state or local laws, regulations, permits or approvals. Neither action nor inaction by the City shall constitute a waiver or relinquishment of any rights or remedies. In addition, the CC&Rs shall include a provision that any design approvals required by the CC&RS for construction, reconstruction and remodeling are in addition to any approvals needed from the City as well. Further, the CC&Rs cannot be terminated or amended materially without the prior written consent of the Community Development Director and City Attorney of the City of Antioch. Material changes are those that would change the fundamental purpose of the development including but not limited to:

- City approvals of uses or external modifications.
- Property ownership or maintenance obligations including, but not limited to, common areas, storm water and landscaping.

The CC&Rs for this project shall be reviewed and approved by the City Attorney and the Community Development Director.

13. All advertising signs shall be consistent with the Sign Ordinance or as approved by the Community Development Director.
14. The property shall annex into or establish and participate in a Lighting and Landscape District (LLD) and accept a level of annual assessments sufficient to maintain:

- The street lights within the development,
- Street lights and landscaping adjacent to the project area excluding those areas to be maintained by the HOA (generally medians on Sand Creek Road, Dozier Libby Road, half of the median on Hillcrest Avenue).
- Parcel Q.

The annual assessment shall cover the actual annual cost of maintenance as described in the Engineer's Report.

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B. TENTATIVE MAP CONDITIONS

1. The Tentative Map approval is subject to the time lines established in the State of California Subdivision Map Act.
2. Approval is based upon substantial conformance with the Vesting Tentative Map dated July 13, 2015.
3. Approval of this tentative map shall not be construed as a guarantee of future extension or re-approvals of this or similar maps.

C. CONSTRUCTION CONDITIONS

1. The use of construction equipment shall be as outlined in the Antioch Municipal Code. Requests for alternative days/time may be submitted in writing to the City Engineer for consideration.
2. The project shall be in compliance with and supply all the necessary documentation for AMC 6-3.2: Construction and Demolition Debris Recycling.
3. Standard dust control methods and designs shall be used to stabilize the dust generated by construction activities. The applicant shall post dust control signage with a contact number of the applicant, City staff, and the air quality control board.
4. The site shall be kept clean of all debris (boxes, junk, garbage, etc.) at all times.

D. SITE AND PROJECT DESIGN

1. Provisions for mail delivery in the subdivision area shall be reviewed and approved by staff prior to the approval of the final map. Applicant shall install mail box facilities as required by the City Engineer.
2. Any conversion of the homes to allow for a second unit shall be subject to a use permit for such a conversion, in conformance with the City's "Second Unit" provisions of the Zoning Ordinance.
3. Prior to the approval of the grading plan(s), the City Engineer shall determine if it is necessary to engage soils and structural engineers, as well as any other professionals, deemed necessary to review and verify the adequacy of the building plans submitted for this project. If deemed necessary by the City Engineer, this condition may include field inspections by such professionals to verify implementation of the plans. Costs for these services shall be borne by the applicant.

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4. All proposed improvements shall be constructed to City standards or as approved by the City Engineer. The applicant, at its sole discretion, may use a land based financing mechanism such as an assessment district, and/or a community facilities district, statewide community infrastructure program, and/or other financing district or program to fund acquisition and/or construction of master infrastructure improvements and/or prepayment of development fees. The City shall act in good faith and cooperate with applicant in forming and implementing a land based financing mechanism.
5. All public streets shall intersect at approximately 90 degrees or as approved by the City Engineer.
6. All driveways shall be perpendicular to the street centerline, or as approved by the City Engineer.
7. All driveways shall be a minimum of five feet from curb return.
8. Monolithic sidewalks with beveled curb shall be 6" thick and reinforced as approved by the City Engineer. Detached sidewalks that will be crossed by vehicles at driveway locations shall be 6" thick and reinforced as approved by the City Engineer. Minimum sidewalks widths shall be as follows:
 - Adjacent to beveled curb, 4 feet excluding curb (bevel curb to be 12" deep by 3" high with ½" lip and 18" gutter).
 - Adjacent to vertical curb, 4.5 feet excluding curb.
 - Detached sidewalk, 5 feet.
9. A minimum of a 20 foot tangent shall extend beyond the return at intersections, or as approved by the City Engineer.
10. All lot sidelines shall be perpendicular or radial to the fronting street centerline, or as approved by the City Engineer.
11. Sight distance triangles shall be maintained per 9-5.1101, Site Obstructions at Intersections of the Antioch Municipal Code or as approved by the City Engineer.
12. Rear and side yard fencing shall be provided for all units. All fences shall be located at the top of slope, or as approved by the City Engineer.
13. In cases where a fence is to be built in conjunction with a retaining wall, and the wall face is exposed to a side street, the fence shall be setback a

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minimum of three feet (3') behind the retaining wall per 9-5.1603 or as approved by the City Engineer.

14. The applicant shall install streetlights within the project area at no cost to the City. Streetlights will be owned by the City and maintained as part of the LLD.
15. The proposed street names approved by Planning Commission shall be utilized in the development. Changes to street names not included in the staff report will require Planning Commission review and approval.
16. The applicant shall provide a "checklist" of universal design accessibility features to home buyers as required by Section 17959.6 of the Health and Safety Code.
17. All improvements for each lot (water meters, sewer cleanouts, etc.) shall be contained outside of the driveway and within the lot and the projection of its sidelines, or as approved by the City Engineer.
18. Cul-de-sac parking shall be provided as required by the City Engineer.
19. One on-street parking space per lot shall be located within close proximity to the unit served as approved by the City Engineer.
20. The applicant and then the HOA, once the CC&Rs are operative, shall maintain all undeveloped areas within this subdivision in an attractive manner, which shall also ensure fire safety.
21. All fencing adjacent to open space (trails and basins), shall be wrought iron, black vinyl clad chain link, or other material as approved by the City Engineer.
22. Masonry sound walls shall be constructed along the lots adjoining or adjacent to Sand Creek Road (Parcels D & G), Hillcrest Avenue (Parcels A & D), 'A' Street (Parcels B & C), 'B' Street (Parcel F), Dozier-Libbey Medical High School, and the western boundary of lots 423-444. Sound walls shall be a minimum of six (6) foot high and in conformance to the sound study.
23. That all two-car garages be a minimum of 20 feet by 20 feet clear inside dimensions or as approved by the Community Development Director.
24. Phasing of the project shall be in general conformance with the Preliminary Phasing Plan dated July 13, 2015 (PPP) or as approved by the City Engineer. If the City Engineer approves changes to the phasing of the project from that in the PPP in a manner that impacts the timing for

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the construction of improvements as set forth herein, the City Engineer has the authority to change the timing for those improvements to be consistent with the modified PPP. Such changes will not require an amendment to these conditions or to the project approvals.

25. Concurrent with the construction of the adjacent roadways, the applicant shall construct bus turnouts, benches, and shelters at the following locations or as approved by the City Engineer:
 - South side of Sand Creek Road east of the intersection of Dozier-Libbey Road.
 - South side of Sand Creek Road east of 'B' Street.
 - North side of Sand Creek Road west of 'B' Street.
 - West side of Hillcrest Avenue south of 'A' Street.
26. Prior to the issuance of any building permits for the lots on "E" Street or "E" Court, the applicant shall construct a wall across the end of Equestrian Way at the project boundary as approved by the City Engineer.
27. Prior to the issuance of the 1st model building permit, Hillcrest Avenue shall be constructed with west side curb and gutter and west side median curb and gutter, utilities to be placed under the west half of the roadway, and asphalt for the southbound bike, turn, and travel lanes from the existing stub of Hillcrest Avenue to the south curb returns of 'A' Street. Hillcrest Avenue shall remain closed to the general public until Condition of Approval D.28 is implemented.
28. Prior to opening the model complex to the public and prior to issuance of the 1st production building permit, Hillcrest Avenue shall be constructed to the interim configuration with two 12 foot lanes and an 8 foot bike lane southbound and one 12 foot lane and a 4 foot shoulder northbound (or as required by the fire district), landscaped median and western right of way and Parcel A, street lights, turn pockets and other appurtenances, and all utilities, including interconnect conduit and pull boxes, from the existing stub of Hillcrest Avenue to the south curb returns of 'A' Street. Improvements shall include conduits and pull boxes for a traffic signal at Hillcrest Avenue and 'A' Street, all as approved by the City Engineer. The existing asphalt on Hillcrest Avenue south of the southerly curb returns of Prewett Ranch Drive shall be ground down and receive a grind and overlay. Should development occur simultaneous with the Vineyards at Sand Creek development, full improvements shall be constructed with each developer paying their fair share of the improvements as approved by the City Engineer.
29. Design of Parcel L (Park) shall be approved by the Planning Commission and completed (signed by the City) prior to the issuance of the 188th

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building permit. Construction of Parcel L (Park) shall be completed prior to the issuance of the 225th building permit. Parcel L (approximately 1.9 acres) shall be dedicated to the City at no cost to the City.

30. Design of Parcel P (Park) shall be approved by the Planning Commission and completed (signed by the City) prior to the issuance of the 282nd building permit. Construction of Parcel P (park) shall be completed prior to the issuance of the 319th building permit.
31. The Candlewood Way connection shall be completed prior to the issuance of any building permits on 'U' Street. This connection or an approved alternative 2nd access to the development shall be provided prior to the issuance of the 250th building permit.
32. Hillcrest Avenue shall be constructed at the interim configuration with two 12 foot lanes and an 8 foot bike lane southbound and one 12 foot lane and an 4 foot shoulder northbound (or as required by the fire district), landscaped medians, street lights, turn pockets and other appurtenances, and all utilities, including interconnect conduit and pull boxes, from 'A' Street to an asphalt dike constructed across Sand Creek Road from the extension of the its southerly face of curb prior one of the following:
 - The issuance of the 355th or any subsequent building permit if the extension of Sand Creek Road between the SR4 interchange and Hillcrest Avenue is completed (by others).
 - The issuance of the 400th building permit.

Should development occur simultaneous with the Vineyards at Sand Creek development, full improvements shall be installed with each developer paying their fair share of the improvements as approved by the City Engineer.

33. Sand Creek Road shall be constructed to its ultimate width of 80 foot curb to curb and 112 foot right-of-way from the intersection with 'B' Street to the easterly edge of Hillcrest Avenue with two 12 foot lanes and an 8 foot bike lane westbound and two 12 foot lanes and an 8 foot bike lane eastbound with landscape medians, street lights, turn pockets and other appurtenances, and all utilities, including interconnect conduit, prior to one of the following:
 - The issuance of the 355th or any subsequent building permit if the extension of Sand Creek Road between the SR4 interchange and Hillcrest Avenue is completed (by others).
 - The issuance of the 400th building permit.

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Improvements shall include conduits and pull boxes for traffic signals at Sand Creek Road/Hillcrest Avenue and Sand Creek Road/'B' Street, all as approved by the City Engineer. Should development occur simultaneous with the Vineyards at Sand Creek development, improvements at the intersection of Sand Creek Road/Hillcrest Avenue shall be coordinated with the other project with each developer paying their fair share of the improvements as approved by the City Engineer.

34. Sand Creek Road shall be constructed to its ultimate width of 80 foot curb to curb and 112 foot right-of-way from the intersection of Dozier-Libbey Road to 'B' Street with two 12 foot lanes and an 8 foot bike lane westbound and two 12 foot lanes and an 8 foot bike lane eastbound with landscape medians, street lights, turn pockets and other appurtenances, and all utilities prior to one of the following:
- The issuance of the 400th or any subsequent building permit if the extension of Sand Creek Road between the Deer Valley Road and Dozier-Libbey Road is completed (by others).
 - The issuance of the 450th building permit.
35. As shown on the tentative map, Dozier-Libbey Road shall be constructed from the Sand Creek Road to the temporary access road to Deer Valley Road with landscape median, street lights, turn pockets and other appurtenances, and all utilities prior to one of the following:
- The issuance of the 400th or any subsequent building permit if the extension of Sand Creek Road between the Deer Valley Road and Dozier-Libbey Road is completed (by others).
 - The issuance of the 450th building permit.
36. The applicant shall construct full traffic signals with interconnect at the following:
- Sand Creek Road and Dozier-Libbey Road.
 - Sand Creek Road and 'B' Street.
 - Sand Creek Road and Hillcrest Avenue.
 - Hillcrest Avenue and 'A' Street.

Traffic signal improvements shall be completed at each location concurrently with roadway construction that creates an intersection with 3 or more legs.

Should development occur simultaneous with the Vineyards at Sand Creek development, traffic signals on Hillcrest Avenue shall be installed with each developer paying their fair share of the improvements as approved by the City Engineer. Should the traffic signals on Hillcrest

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Avenue be constructed by the Vineyards at Sand Creek development, the applicant shall pay ½ of the cost of the design and construction to the City for reimbursement to the Vineyards at Sand Creek development prior to the issuance of the building permit that would have triggered the traffic signal construction.

37. Trails shall be constructed as shown on the Revised Tentative Map and as approved by the City Engineer. All trails adjacent to basins shall be constructed and landscaped in conjunction with the construction of the adjacent basin.
38. Parcel N trail and landscaping shall be constructed prior to the issuance of 9th building permit on lots 284 thru 292 and lots 250 thru 259 and prior to the issuance of the certificate of occupancy for any home on lots 284 through 292 or lots 250 through 259.
39. As shown on the tentative map, the applicant shall construct the multi-use Sand Creek Regional Trail prior to issuance of the 400th building permit. If allowed by the resource agencies, the Regional Trail shall be unfenced (on the Sand Creek side) and the surface shall be as required by the City Engineer. A portion of the maintenance roads/trails around Basin 3 and Basin East as shown on the tentative map may be incorporated into the Sand Creek Regional Trail if, in the opinion of the City Engineer, they meet the intent of the Regional Trail and the requirements of this condition. The trail shall extend along the Creek from the east boundary of the project to the west boundary of the project. The applicant shall discuss with the Vineyard at Sand Creek development and the Contra Costa County Flood Control District for the location and elevation of connection points. The final location of the Trail will be approved by the City Engineer. The last segment of the Trail (westerly segment) will be constructed at the 400th building permit if the Flood Control District connection is determined or at the 500th building permit if no connection is determined.
40. The sidewalk elevation on the south side of Sand Creek Road adjacent to the Sand Creek Flood Control Basin is to be constructed with a minimum elevation of 195.0 or as directed by the City Engineer.
41. A 60 foot wide, approximately 2.5 acre, irrevocable offer of dedication be offered to the City south of the intersection of Sand Creek Road and 'B' Street, south through Parcels Q and R to the Albers property boundary. The City does not intend to accept the offer of dedication until such time as the access road is constructed by Albers.

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E. UTILITIES

1. Public utilities shall be constructed to their ultimate size and configuration with the road construction in which they are to be located.
2. All existing and proposed utilities shall be undergrounded (e.g. transformers and PMH boxes) and subsurface in accordance with the Antioch Municipal Code, except the existing PG&E towers or as approved by the City Engineer.
3. Underground utilities shall be designed to flow approximately parallel to the centerline of the street, or as approved by the City Engineer.
4. All sewage shall flow by gravity to the intersecting street sewer main.
5. All public utilities shall be installed in streets, avoiding between lot locations unless approved by the City Engineer. Provide minimum 15' wide HOA maintained parcel with a trail and landscaping to accommodate the storm drain line shown between lots 243 and 244. Trail and landscaping shall be constructed prior to the issuance of building permits on lots 243 or 244.
6. Prior to the recordation of the first final map, the applicant shall submit hydrology and hydraulic analyses with a storm water control plan to the City for review and approval and to Contra Costa County Flood Control for review at no cost to the City as directed by the City Engineer.
7. The applicant shall provide adequate water pressure and volume to serve this development. This will include a minimum residual pressure of 20 psi with all losses included at the highest point of water service and a minimum static pressure of 50 psi or as approved by the City Engineer. See Fire Requirements 3.c. for additional water flow conditions.
8. The houses shall contain rain gutters and downspouts that direct water away from the foundation as approved by the City Engineer.
9. Recycled water mains shall be constructed in arterial roadways and internal streets with significant right of way, park, or other landscaping as approved by the City Engineer. This development is subject to State Laws which may require recycled water to all landscaped area.
10. Prior to recordation of the first final map, the applicant shall complete the sewer study for the Sand Creek Focus Area to the approval of the City Engineer. The applicant shall extend the existing sanitary sewer main trunk line from the stub in Heidorn Ranch Road at no cost to the City.

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Construction of some or all of the background infrastructure (including the sanitary sewer main) may be reimbursed through the formation of a land based financing mechanism or other benefit district as reflected in the final sewer study and as approved by the City Engineer.

11. Prior to issuance of any building permit for a lot with the existing temporary water or sewer line serving Dozier-Libbey Medical High School, an alternate water and sewer line shall be constructed and the existing temporary water and sewer lines shall be removed. A temporary water connection to the lines in 'U' Street is acceptable or other method as approved by the City Engineer. A temporary sewer connection may be constructed, as approved by the City Engineer, should there be a mechanism in place, acceptable to the City Engineer, requiring the applicant to cover all or a portion of the expenses incurred by AUSD for maintenance of the temporary sewer facilities. The Dozier-Libbey Medical High School shall be connected to the water and sewer lines in Sand Creek Road when such lines are constructed and all temporary piping and appurtenances, if any, shall be removed.

F. LANDSCAPING

1. Except Chaparral Park (Parcel L) all slopes, medians, and open space areas north of the northerly curb line of Sand Creek Road and west of the westerly curb line of Hillcrest Avenue shall be landscaped and managed by the applicant or HOA as required by the City Engineer and shall be maintained at no cost to the City.
2. Parcel P (park) shall be designed and landscaped by the applicant and either:
 - Dedicated to and maintained by the HOA.
 - Dedicated to the City and maintained by the LLD.
3. Parcel Q shall be landscaped by the applicant and maintained by the LLD.
4. Parcel R shall be owned and maintained by the applicant or HOA.
5. Parcel L (park) shall be designed and landscaped by the applicant, owned by the City, and maintained by the LLD.
6. A minimum of one 15 gallon tree shall be located within 10' of the sidewalk in the front yard of each lot and the side yard of corner lots prior to the issuance of the certificate of occupancy. The type and location of the tree shall be as approved by the City Engineer.

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7. Based on drought conditions, the City Engineer has the authority to delay some or all of the landscape Conditions of Approval.

G. FIRE REQUIREMENTS

1. All weather access roads and a water supply shall be provided prior to commencing any combustible construction, as required by the Fire Chief.
2. Street widths shall be subject to approval by the Contra Costa County Fire Protection District and the City Engineer.
3. The applicant shall comply with the following conditions provided by the Contra Costa County Fire Protection District:
 - a. Access roadways of less than 28-feet unobstructed width shall have NO PARKING – FIRE LANE signs posted or curbs painted red with the words NO PARKING – FIRE LANE clearly marked, per 22500.1 CVC.
 - b. The cul-de-sacs or turnarounds shall have an outside turning radius of a minimum of a 45' or as approved by the City Engineer. Should the sidewalk be included in the turning radius, it shall be clear of street lights, fire hydrants and other obstructions.
 - c. The applicant shall provide an adequate reliable water supply for fire protection with a minimum fire flow of 1750 GPM. Required flow shall be delivered from not more than one hydrant flowing simultaneously for the duration of 120 minutes while maintaining 20-pounds residual pressure in the main. (508.1), (B105) CFC
 - d. The applicant shall provide hydrants of the East Bay type, which shall be maintained by the City. Approximate hydrant locations will be determined by the Fire District and approved by the City Engineer.
 - e. Emergency apparatus access roadways and hydrants shall be installed, in service, and inspected by the Fire District prior to construction or combustible storage on site. (501.4) CFC. Gravel roads are not considered all-weather roadways for emergency apparatus access. The first lift of asphalt concrete paving shall be installed as the minimum sub base materials and capable of supporting the designated gross vehicle weight specified above.
 - f. Premises identification shall be provided. Such numbers shall contrast with their background and be a minimum of four inches high with ½-inch stroke or larger as required to be readily visible from the street. (505.1) CFC, (501.2) CBC

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- g. Plan review and inspection fees shall be submitted at the time of plan review submittal. Checks may be made payable to Contra Costa County Fire Protection District (CCCFPD).
- h. Submit plans to: Contra Costa County Fire Protection District, 2010 Geary Road, Pleasant Hill, CA 94523.

H. FEES

1. The applicant shall pay all City fees which have been established by the City Council and as required by the Antioch Municipal Code. Fees include but are not limited to:
 - Any acreage and utility connection fees which have been established by the City Council prior to the filing of the final map and as required by the Antioch Municipal Code.
 - Park in lieu fees.
2. The applicant shall pay all pass through fees. Fees include but are not limited to:
 - East Contra Costa Regional Fee and Financing Authority (ECCRFFA) Fee in effect at the time of building permit issuance.
 - Contra Costa County Fire Protection District Fire Development Fee in place at the time of building permit issuance. (See G.3.g.)
 - Contra Costa County Map Maintenance Fee in affect at the time of recordation of the final map(s) (currently \$50 per lot or parcel).
 - Contra Costa County Flood Control District.
 - School Impact Fees.
 - Delta Diablo Sanitation Sewer Fees.
 - Contra Costa Water District Fees.

I. MODEL HOMES

1. Prior to the placement of any sales trailers, plans shall be submitted to the Engineering Department for review and approval. Any trailer shall be placed out of the public right-of-way and shall have its own parking lot.
2. The model home complex parking lot location and design shall be subject to City Engineer approval.
3. The model home landscaping shall be drought tolerant, with total area of spray irrigation for the complex not to exceed 50 percent of the landscaping area.

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J. GRADING

1. The grading operation shall take place at a time, and in a manner, so as not to allow erosion and sedimentation. The slopes shall be landscaped and reseeded as soon as possible after the grading operation ceases. Erosion measures shall be implemented during all construction phases in accordance with an approved erosion and sedimentation control plan.
2. Prior to any grading on the site, the applicant shall provide written confirmation from PG&E that the construction of basins in the easement is acceptable.
3. All lots and slopes shall drain to approved drainage facilities as approved by the City Engineer.
4. All grading shall be accomplished in a manner that precludes surface water drainage across any property line.
5. All lots shall be graded to drain positively from the rear to the street or as approved by the City Engineer.
6. The swales adjacent to the house structure shall have a minimum of a one (1) percent slope or as directed by the City Engineer.
7. All off-site grading is subject to the coordination and approval of the affected property owners and the City Engineer. The applicant shall submit written authorization to "access, enter, or grade" adjacent properties prior to performing any work.
8. Any sale of a portion (or portions) of this project to multiple developers shall include the necessary agreement and/or grading easements to assure that project-wide grading conforms to the approved map and conditions of this resolution.
9. The grading plan for this development shall be approved by the City Engineer.
10. All elevations shown on the improvement plans shall be on the USGS 1929 sea level datum or as approved by the City Engineer.
11. Retaining walls shall not be constructed in City right-of-way or other City maintained parcels unless approved by the City Engineer.
12. All retaining walls shall be of masonry construction.

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13. All retaining walls shall be reduced in height to the maximum extent practicable and the walls shall meet the height requirements in the front yard setback and sight distance triangles as required by the City Engineer.
14. The back to back or side to side grading transitions from lot to lot shall have a maximum slope of 2:1, and shall be accommodated entirely on the lower lot or as approved by the City Engineer.
15. The minimum concrete gutter flow slope shall be 0.75%.
16. All property lines shall be located at the top of slope.

K. CONSERVATION/NPDES

1. Water conservation measures, including low volume toilets, flow restrictors in showers and the use of drought tolerant landscaping, shall be used.
2. The Project shall meet or exceed Tier 1 of the CALGreen Building Code.
3. The project shall comply with all Federal, State, and City regulations for the National Pollution Discharge Elimination System (NPDES) (AMC§6-9). (Note: Per State Regulations, NPDES Requirements are those in affect at the time of the Final Discretionary Approval.) Under NPDES regulations, the project is subject to provision C.3: New development and redevelopment regulations for storm water treatment. Provision C.3 requires that the project include storm water treatment and source control measures, as well run-off flow controls, so that post-project runoff does not exceed estimated pre-project runoff. C.3 regulations require the submittal of a Storm Water Control Plan (SWCP) that demonstrates how compliance will be achieved. The SWCP shall be submitted simultaneously with the project plans. For the treatment and flow-controls identified in the approved SWCP, a separate Operation and Maintenance Plan (O&M) shall be submitted and approved before the Building Department will issue Certificate of Occupancy permits. Both the approved SWCP and O&M plans shall be included in the project CC&Rs. Prior to building permit final and issuance of a Certificate of Occupancy, the applicant shall execute any agreements identified in the Storm Water Control Plan that pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs. Already stated in COAs below, 5.c and 5.h.w.
4. The applicant shall comply with the Storm Water Treatment Plan dated _____.

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5. The following requirements of the federally mandated NPDES program (National Pollutant Discharge Elimination System) shall be complied with as appropriate, or as required by the City Engineer:
 - a. Prior to issuance of permits for building, site improvements, or landscaping, the applicant shall submit a permit application consistent with the applicant's approved Storm Water Control Plan, and include drawings and specifications necessary for construction of site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants.
 - b. The Storm Water Control Plan shall be certified by a registered civil engineer, and by a registered architect or landscape architect as applicable. Professionals certifying the Storm Water Control Plan shall be registered in the State of California and submit verification of training, on design of treatment measures for water quality, not more than three years prior to the signature date by an organization with storm water treatment measure design expertise (e.g., a university, American Society of Civil Engineers, American Society of Landscape Architects, American Public Works Association, or the California Water Environment Association), and verify understanding of groundwater protection principles applicable to the project site (see Provision C.3.i of Regional Water Quality Control Board Order R2 2003 0022).
 - c. Prior to building permit final and issuance of a Certificate of Occupancy, the applicant shall submit, for review and approval by the City, a final Storm Water BMP Operation and Maintenance Plan in accordance with City of Antioch guidelines. This O&M plan shall incorporate City comments on the draft O&M plan and any revisions resulting from changes made during construction. The O&M plan shall be incorporated into the CC&Rs for the Project.
 - d. Prior to building permit final and issuance of a Certificate of Occupancy, the applicant shall execute and record any agreements identified in the Storm Water Control Plan which pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs.
 - e. Prevent site drainage from draining across sidewalks and driveways in a concentrated manner.
 - f. Collect and convey all storm water entering, and/or originating from, the site to an adequate downstream drainage facility without diversion of the watershed. Submit hydrologic and hydraulic calculations with

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the Improvement Plans to Engineering Services for review and approval.

- g. Prior to issuance of the grading permit, submit proof of filing of a Notice of Intent (NOI) by providing the unique Waste Discharge Identification Number (WDID#) issued from the Regional Water Quality Control Board.
- h. Submit a copy of the Storm Water Pollution Prevention Plan (SWPPP) for review to the Engineering Department prior to issuance of a building and/or grading permit. The general contractor and all subcontractors and suppliers of materials and equipment shall implement these BMP's. Construction site cleanup and control of construction debris shall also be addressed in this program. Failure to comply with the approved construction BMP may result in the issuance of correction notices, citations, or a project stop work order.
- i. Install appropriate clean water devices at all private storm drain locations immediately prior to entering the public storm drain system. Implement Best Management Practices (BMP's) at all times.
- j. Install on all catch basins "No Dumping, Drains to River" decal buttons.
- k. If sidewalks are pressure washed, debris shall be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged into the storm drain. If any cleaning agent or degreaser is used, wash water shall be collected and discharged to the sanitary sewer, subject to the approval of the sanitary sewer District.
- l. Include erosion control/storm water quality measures in the final grading plan that specifically address measures to prevent soil, dirt, and debris from entering the storm drain system. Such measures may include, but are not limited to, hydro seeding, gravel bags and siltation fences and are subject to review and approval of the City Engineer. If no grading plan is required, necessary erosion control/storm water quality measures shall be shown on the site plan submitted for an on-site permit, subject to review and approval of the City Engineer. The applicant shall be responsible for ensuring that all contractors and subcontractors are aware of and implement such measures.
- m. Sweep or vacuum the parking lot(s) a minimum of once a month and prevent the accumulation of litter and debris on the site. Corners and hard to reach areas shall be swept manually.

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- n. Ensure that the area surrounding the project such as the streets stay free and clear of construction debris such as silt, dirt, dust, and tracked mud coming in from or in any way related to project construction. Areas that are exposed for extended periods shall be watered regularly to reduce wind erosion. Paved areas and access roads shall be swept on a regular basis. All trucks shall be covered.
 - o. Clean all on-site storm drain facilities a minimum of twice a year, once immediately prior to October 15 and once in January. Additional cleaning may be required if found necessary by City Inspectors and/or City Engineer.
6. Per State Regulations, all impervious surfaces including off-site roadways to be constructed as part of the project, are subject to C.3 requirements.

L. FINAL EIR AND MITIGATION MONITORING AND REPORTING PROGRAM

- 1. The applicant shall comply with all mitigation measures identified in the Mitigation Monitoring and Reporting Program for the Aviano Adult Community Project EIR, as modified by the project Addendum.

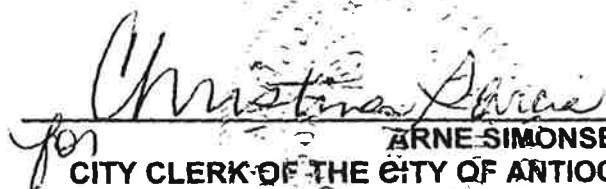
* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch, at a regular meeting thereof, held on the 8th day of September, 2015 by following vote:

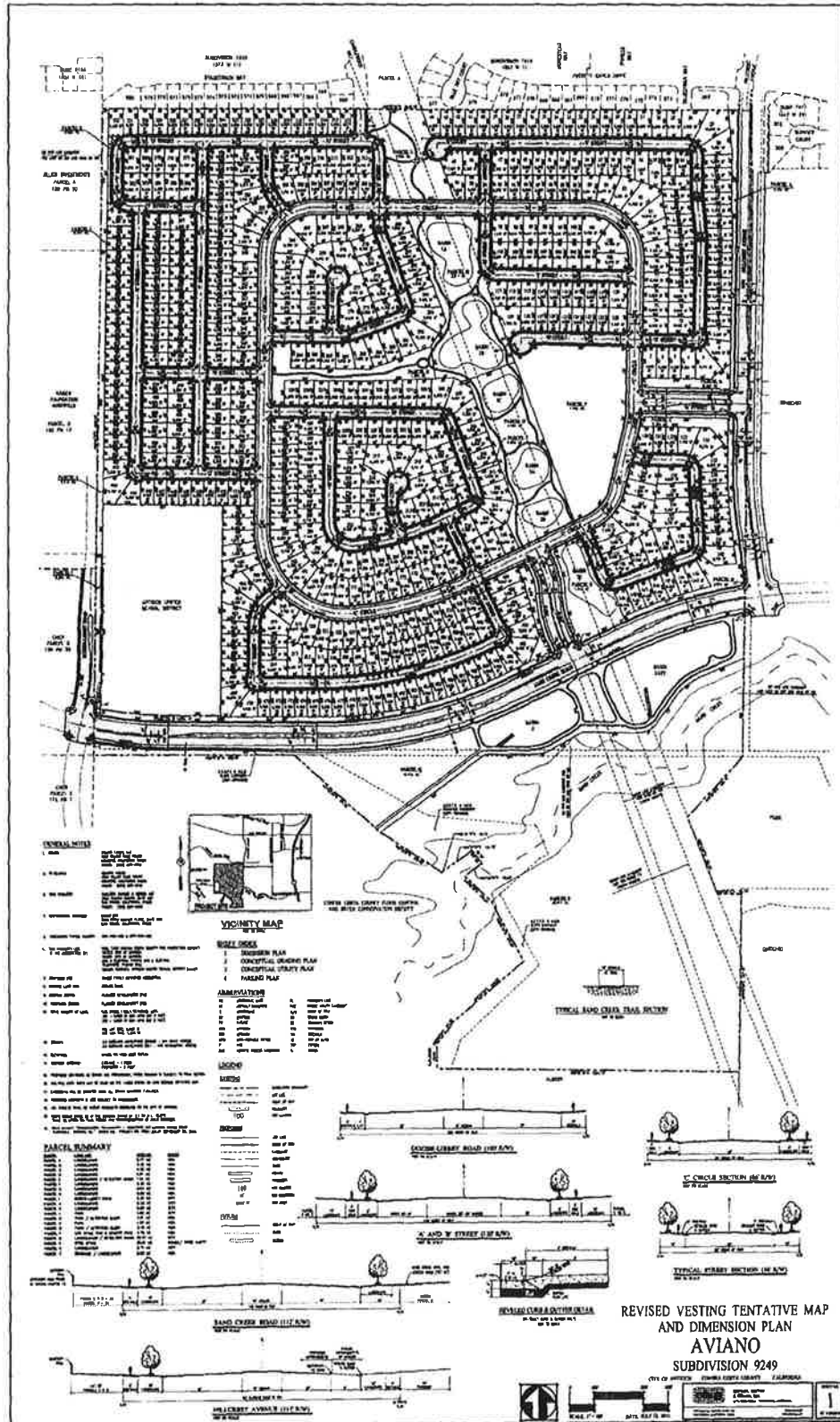
AYES: Council Members Wilson, Ogorchock, Tiscareno, Rocha and Mayor Harper

NOES: None

ABSENT: None


ARNE SIMONSEN
CITY CLERK OF THE CITY OF ANTIOCH

Vesting Tentative Map



—



ATTACHMENT "D"

REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Antioch
200 H Street
Antioch, CA 94509
Attention: City Clerk

CONTRA COSTA Co Recorder Office

JOSEPH CANGIAMILLA, Clerk - Recorder

DOC - 2017-0036178-00

Tuesday, FEB 28, 2017 14:02:38

FRE \$0.00

TII Pd \$0.00 Nbr-0002859873

mom / R3 / 1-64



(Space Above This Line Reserved For Recorder's Use)

DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF ANTIOCH
AND
AVIANO FARMS, LLC

THIS DEVELOPMENT AGREEMENT ("Agreement") by and between the City of Antioch, a municipal corporation ("City") and Aviano Farms, LLC, a California limited liability company ("Aviano Farms") (each a "Party" and collectively the "Parties"), pursuant to the authority of Division I, Chapter 4, Article 2.5, Sections 65864 et seq. of the Government Code (the "Statute") is entered into as of September 22, 2015 (the "Effective Date") in the following factual context:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the California State Legislature enacted the Statute, which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. De Nova Homes ("De Nova Homes") dba Aviano Farms is the owner of approximately 189 acres of real property located in the City of Antioch, Contra Costa County more particularly described in Exhibit A (the "Property") which it plans to develop as a single-family residential subdivision.

C. On October 25, 2005 the Antioch City Council approved a development agreement with Pulte Homes Corporation, dba Del Webb ("Del Webb") for this Property and on November 13, 2007 the City Council approved the First Amended and Restated Development Agreement with Del Webb ("Del Webb Development Agreement"). The Del Webb Development Agreement set forth Del Webb's intent to develop the Property with no more than 535 active senior adult residential units ("Del Webb Project"). The Del Webb Development Agreement was not assigned to or assumed by Aviano Farms.

D. On June 23, 2009, the Antioch City Council considered various environmental review and planning actions relating to the Del Webb Project ("Del Webb Project Approvals"). These actions include, without limitation, the following:

1. **Environmental Impact Report.** Pursuant to the California Environmental Quality Act ("CEQA") and the CEQA Guidelines, the City Council certified final environmental impact report for the Del Webb Project (SCH No. 2006072027) pursuant to Resolution No. 2009/54 ("EIR").

2. **Master Development Plan/Planned Development Rezone.** The City Council, after a duly noticed public hearing and certification of the EIR, introduced Ordinance No. 2031-C-S rezoning the property to Planned Development District and approving a Master Development Plan ("Rezoning") and on July 14, 2009 adopted the Rezoning.

3. **Residential Development Allocations.** The City Council, after a duly noticed public hearing and certification of the EIR, approved residential development allocations for age restricted senior housing units for 0.5 allocation pursuant to Resolution No. 2009/55 ("RDA Approval").

4. **Vesting Tentative Map/Final Development Plan and Use Permit.** The City Council, after a duly noticed public hearing and certification of the EIR, adopted Resolution No. 2009/56, approving a vesting tentative map/final development plan and use permit to subdivide the Property into multiple parcels to accommodate up to 535 age-restricted senior residential units as well as recreational, parks and open space parcels ("Vesting Tentative Map").

E. In response to changed market conditions, Aviano Farms revised the Vesting Tentative Map mainly to 1) reflect a development with 533 non-age restricted units as opposed to 533 age restricted units, and 2) re-align the major sewer truck line from portions of Heidorn Ranch Road and future Sand Creek Road, to a location through the neighboring property to the east ("Revised Vesting Tentative Map").

F. In order to move forward with the Revised Vesting Tentative Map, a text change will be made in the General Plan and Rezoning to clarify that a non-age restricted development may proceed on the Property ("General Plan Amendment" and "Rezoning Amendment," respectively).

G. The Del Webb Project Approvals, as modified by the General Plan Amendment, Rezoning Amendment, Revised Vesting Tentative Map, and this Agreement, are sometimes referred to as "Project Approvals" and are set forth in Exhibit B.

H. Aviano Farms prepared a Preliminary Phasing Plan consistent with the Revised Tentative Map to facilitate development of the Property ("Preliminary Phasing Plan"). The Preliminary Phasing Plan is included as part of the conditions of approval that accompany the Revised Vesting Tentative Map (contained in Exhibit B).

I. An Addendum to the EIR was prepared in accordance with CEQA to provide the environmental analysis on the Project Approvals.

J. Aviano Farms and the City desire to enter into this Agreement to extend the term of the Project Approvals and to vest Aviano Farms with the right to develop the Property consistent with the Project Approvals. In exchange for the covenants contained in this

Agreement and the continued commitment of Aviano Farms to continue to provide the benefits described in the Project Approvals and any other necessary approvals required by the City that are consistent with and necessary to implement the Project Approvals ("**Subsequent Approvals**"), when and if the Aviano Farms Project proceeds, and in order to encourage the investment by it necessary to do so, the City is willing to enter into this Agreement to set forth the right of Aviano Farms to complete the Project as provided in this Agreement.

K. As part of the original development plans for the Property, Del Webb conveyed to the Antioch Unified School District ("**AUSD**") approximately 10 acres located adjacent to the southwest corner of the Property for the development of the Dozier Libbey Medical High School ("**School**"). The School has been built and is operating with temporary access, sewer, water and power utilities. This Agreement is necessary to allow Aviano Farms, if it elects to proceed with the Project Approvals, the ability to 1) design and construct permanent access, sewer, water, and power utility improvements to serve the School, and 2) reimburse AUSD for its certain costs associated with the AUSD's installation of the temporary access, sewer, water and power utility improvements.

L. During the original development plans for the Del Webb Project Approvals, two agreements were entered into to set forth the terms and conditions relating to the proposed Southern Alignment of Sand Creek Road through the Property; (1) a Memorandum of Agreement Resolving Alignment of Sand Creek Road Through City of Antioch's Sand Creek Focus Area dated November 22, 2007 (the "**MOU**"), by and between Del Webb, City, Kaiser Foundation Hospitals ("**Kaiser**"), AUSD and Donald Williamson Charitable Trust and Shirley Perry as Trustee of the Shirley Perry Declaration of Living Trust ("**Covenantor**"); and (2) a Declaration of a Covenant to Run with the Land dated December 13, 2007, by and between Covenantor, Kaiser, City and AUSD as amended by the First Amendment to Declaration of Covenant to Run with the Land dated January 19, 2011 (the "**Declaration of Covenant**").

M. On August 5, 2015, at a duly noticed public hearing, the Planning Commission considered and recommended approval of the Addendum, General Plan Amendment, Rezoning Amendment, Revised Vesting Tentative Map and this Agreement to the City Council pursuant to Resolution Nos. 2015/12 through 16.

N. On September 8, 2015, at a duly noticed public hearing, the City Council approved the 1) Addendum pursuant to Resolution No. 2015/66, 2) General Plan Amendment pursuant to Resolution No. 2015/67, 3) Rezoning Amendment pursuant to Ordinance No. 2108-C-S, and 4) Revised Vesting Tentative Map pursuant to Resolution No. 2015/68.

O. The City Council has found that, among other things, this Agreement and the Project Approvals, are consistent with its General Plan and has been reviewed and evaluated in accordance with California Government Code §§65864 *et seq.*

P. On September 22, 2015, at a duly noticed public hearing, the City Council adopted Ordinance No. 2107-C-S approving this Agreement, a copy of which is attached as **Exhibit C.**

AGREEMENT

In this factual context and intending to be legally bound, the Parties agree as follows.

ARTICLE 1 TERM AND APPLICABLE LAW

The term of this Agreement shall commence as of the Effective Date and continue to and including December 31, 2029. The expiration of the term of this Agreement shall not be interpreted to, and shall not affect, terminate or waive any additional rights that Aviano Farms may have that exist independently of this Agreement and derive from common law vesting or other laws or regulations of the State or the City.

ARTICLE 2 COVENANTS OF AVIANO FARMS

2.1. Obligations of Aviano Farms Generally. Aviano Farms shall have no obligation to proceed with, or complete the Aviano Farms Project at any particular time or at all. However, if Aviano Farms proceeds, it shall comply the Applicable Law, as defined below in Section 2.2.

2.2. Applicable Law. The rules, regulations, and official policies governing permitted uses of the Property, density and improvement requirements applicable to development of the Property shall be the ordinances, rules, regulations, and official policies in force on the Effective Date (collectively, the "**City Regulations**"), except as otherwise expressly provided in the Project Approvals or this Agreement. The law applicable to the Project shall be (a) the City Regulations, (b) the Project Approvals and (c) this Agreement (collectively, the "**Applicable Law**"). If there is a conflict between this Agreement and the City Regulations or Project Approvals, this Agreement shall control. If there is a conflict between the Project Approvals and the City Regulations, the Project Approvals shall control.

2.3. Development Fees. Aviano Farms shall pay when due all applicable development fees in effect and at the rates and in the amounts applicable at the time of payment unless otherwise stated herein. Aviano Farms has agreed to complete certain improvements required by the Project Approvals to Hillcrest Avenue, Sand Creek Road and Dozier Libby Road as described in the Project Approvals, and shall therefore not be subject to any existing or future adopted traffic impact fees or any other fees related to roadway improvements.

In addition, Aviano Farms shall pay processing fees and charges of every kind and nature imposed by City, including planning processing deposits, to cover the actual costs to City of processing applications for Subsequent Approvals or for monitoring compliance with and review submittals for any Subsequent Approvals, as such fees and charges are adjusted from time to time. The foregoing notwithstanding, no fees other than processing fees shall be due before approval of the final map, unless earlier payment is expressly required by the Project Approvals.

2.4. Construction and Timing of Improvements. Aviano Farms shall construct the improvements required by, and more particularly described in, the conditions of approval contained in Exhibit B. Aviano Farms shall perform the work in accordance with the standards and specifications established by Applicable Law. To the extent there are no such standards or

specifications, the work shall be performed in accordance with industry standards and in good and workmanlike manner, as approved by the City Engineer.

The Parties acknowledge that the Project may be built in phases different from those set forth in the Preliminary Phasing Plan attached in Exhibit B. The timing of certain improvements set forth in the conditions of approval were based on the Preliminary Phasing Plan. If the City Engineer approves changes to the phasing of the Project from that in the Preliminary Phasing Plan in a manner that impacts the timing for the construction of the improvements set forth therein, the City Engineer has the authority to change the timing for those improvements to be consistent with the changes to the phasing. Such changes will automatically be incorporated into the Project Approvals and will not require an amendment to the Project Approvals, including this Agreement.

2.5. Subdivision and Other Agreements; Multiple Final Maps. Aviano Farms shall execute and perform its obligations as set forth in any Subdivision Improvement Agreements required or permitted by Applicable Law to obtain approval of final maps. Aviano Farms may file multiple final maps in accordance with 3.5 below.

2.6. Design Review. The Project Approvals do not include design review approval, which Aviano Farms has yet to obtain. Aviano Farm's design review applications and submittals shall be consistent with the design review guidelines in effect at the time of their application to the extent such guidelines are consistent with the Project Approvals. The designs shall continue to incorporate a level of quality craftsmanship consistent with other De Nova Homes projects completed in similar regional markets.

2.7. Design and Construction of Sand Creek Road. Aviano Farms shall design, construct and install improvements to Sand Creek Road as more particularly described in the conditions of approval attached in Exhibit B.

2.8. Sewer Line Improvements. Aviano Farms shall design and obtain rights-of-way and easements at its sole cost in order to construct the major sewer trunk line in portions of Heidorn Ranch Road to a location through the neighboring property to the east to connect to the Project as more particularly described in the conditions of approval attached in Exhibit B ("Sewer Line Improvements"). Upon acceptance by the City, the Sewer Line Improvements shall be maintained by City.

2.9. Parks, Trail Improvements and Landscaped Areas. Aviano Farms shall, at its cost and expense, design, construct and dedicate to the City, Parcel L, as an expansion to the existing Chaparral Park as more particularly described in the conditions of approval attached in Exhibit B ("Parcel L Park"). Upon acceptance by the City, the Parcel L Park shall be owned by the City and maintained by the Lighting and Landscaping District. Aviano Farms shall also construct the Sand Creek Regional Trail as more particularly described in the conditions of approval attached in Exhibit B ("Trail Improvements"). Upon acceptance by the City, the Trail Improvements shall be maintained by the City. Aviano Farms shall, at its cost expense, design and construct other park and landscaped areas as more particularly described in the conditions of approval attached in Exhibit B. The park identified on Parcel P shall also be designed and landscaped by Aviano Farms and may either be: 1) dedicated to and maintained by the

Homeowners Association, or 2) dedicated to the City and maintained by the City through the Lighting and Landscape District ("**Parcel P Park**"). The City shall take into consideration Aviano Farm's construction and dedication of the Parcel L Park, Trail Improvements and Park P Park (and other applicable park/landscaped areas) in determining credits against the park fees applicable to the Project.

2.10. Irrevocable Offer of Dedication. Prior to the approval of the last final map, Aviano Farms shall irrevocably offer to dedicate to City a 60-foot wide strip of land, approximately 2.5 acres in size south of the intersection of Sand Creek Road and "B" Street running south through Parcels "Q" and "R," as more particularly described in the conditions of approval attached in Exhibit B.

2.11. Homeowners Association. Aviano Farms shall establish a Homeowners Association ("**HOA**") for the Project in conformance with the regulations set forth by the State Bureau of Real Estate as more particularly described in the conditions of approval attached in Exhibit B. In the CC&Rs that are submitted to the Bureau of Real Estate for review and approval, Aviano Farms shall include the following:

2.11.1 A provision informing homeowners of their obligation to secure a business license before a home can be rented as required by Municipal Code Section 3-1.217.

2.11.2 A requirement that front yards be adequately maintained and allows the HOA, or the City as third-party beneficiary, to enforce this maintenance requirement if a homeowner fails to maintain front yards in accordance with the CC&Rs.

2.12. RDA Approval and Application of Development Impact Fee Ordinance. On March 11, 2014, pursuant to Ordinance No. 2079-C-S, the City Council enacted a development impact fee ordinance and also repealed its residential development allocation ordinance ("**Development Impact Fees Ordinance**"). Aviano Farms shall abide by the newly enacted Development Impact Fees Ordinance except as may be specifically provided in the Project Approvals and specifically Section 2.3 of this Agreement, and the City agrees it will not enforce the RDA Approval as set forth in Recital D.3 on Aviano Farms.

2.13. Police Services Funding.

2.13.1 Formation of a Financing Mechanism. In order to assist the City in meeting a police force level within a range of 1.2 to 1.5 officers per 1,000 residents as set forth in Performance Standard 3.5.3.1 of the General Plan, at the direction of the City, Aviano Farms shall create on the Property, a land based financing mechanism in the form of a community facilities district or other means ("**Financing Mechanism**"). The City and Aviano Farms shall work cooperatively in forming the Financing Mechanism. The costs for forming the Financing Mechanism, including consultant costs, shall be paid by Aviano Farms ("**Formation Costs**"). It is the intent of the City to require other properties, as they develop, to annex into this Financing Mechanism. For those properties that will be required to annex into the Financing Mechanism, the City shall require, by imposing a condition of approval, inserting a requirement in a development agreement or otherwise, an obligation on that property owner to reimburse Aviano Farms for that property owner's fair share of the Formation Costs. The City shall require this

reimbursement obligation to occur at the earlier of the filing of a final map or issuance of a building permit on the effected property. The City shall collect the reimbursement amount on behalf of Aviano Farms and distribute that amount to Aviano Farms. Aviano Farms shall provide the Formation Costs, with supporting documentation, to the City.

2.13.2 Financial Obligation for Aviano Farms. The amount of the financial obligation through the Financing Mechanism for the Property shall not exceed an initial amount of \$445.00 per lot (calculated as 1.35 officers per 1,000 resident under Performance Standard 3.5.3.1 of the General Plan), with annual increases based on the Consumer Price Index for the San Francisco Bay Area. The requirements of this Section 2.13 shall be waived if the City imposes a special tax or other form of revenue generation on all City residents dedicated specifically for the purpose of funding police services, which shall not include the business license tax approved by voters in 2014 (Measure O) or any additional sales tax or extension of such sales tax.

2.14. MOU and Declaration of Covenant. Aviano Farms acknowledges that it is obligated to compensate Kaiser for potential diminution in value that Kaiser asserts resulted in the realignment of Sand Creek Road, and reimburse AUSD for its cost associated with construction of temporary improvements it made to serve its property and construct or reimbursement AUSD for certain permanent school improvements and comply with any other obligations as owner of the Property, at such time and as set forth in the Declaration of Covenant and MOU. If Aviano Farms enters into separate agreements with Kaiser and AUSD to satisfy Aviano Farms' potential obligations under the MOU and Declaration of Covenant if needed, the City shall cooperate with Aviano Farms to provide and record the necessary documentation to recognize the separate agreements. This Agreement is not intended to and does not modify any term or provision of the MOU or Declaration of Covenant.

ARTICLE 3 COVENANTS OF THE CITY

3.1. Obligations of City Generally. The City shall act in good faith to accomplish the intent of this Agreement, to protect Aviano Farm's vested rights provided by this Agreement, and to ensure this Agreement remains in full force and effect. City shall cooperate with Aviano Farms so that it receives the benefits of and the rights vested by this Agreement, including prompt and timely action and assistance in (a) forming a Communities Facilities District(s) or other appropriate financing district(s) or mechanisms, and (b) obtaining from other governmental entities necessary or desirable permits or other approvals for the Project.

3.2. Eminent Domain. Aviano Farms shall purchase any and all real property interests necessary to allow it to construct the public improvements required by the Project Approvals (including access and other permanent improvements for the School) and Subsequent Approvals. In the event that an affected property owner has rejected an offer by Aviano Farms, based upon fair market value as determined by an appraisal prepared by a City-approved appraiser in cooperation with City, Aviano Farms may request City assistance. Provided that Aviano Farms provides adequate funding and enters into an agreement with the City setting forth the terms of City's obligations, in a form approved by City in its reasonable discretion. City shall promptly and timely negotiate and seek the purchase of the necessary property, including the

possible consideration of City's use of its power of eminent domain to acquire such real property interests. Aviano Farms shall pay all costs associated with such acquisition or condemnation proceedings. Nothing herein is intended to or shall prejudice or commit City regarding any findings and determinations required to be made in connection with adoption of a resolution of necessity.

3.3. Vested Development Rights. The City confirms and grants to Aviano Farms the vested right to develop the Property in accordance with the Project Approvals, Subsequent Approvals and this Agreement. This Agreement shall be enforceable as set forth in Section 9.2 below.

3.4. Permitted Uses. The permitted uses of the Property; the density and intensity of use of the Property; the maximum height, bulk and size of buildings, except as such may be limited by any design review approvals yet to be obtained; and provisions for reservation or dedication of land for public purposes are as set forth in the Project Approvals, which City confirms and vests by this Agreement. City shall not require Aviano Farms to reserve or dedicate land for public purposes except as expressly required by the Project Approvals.

3.5. Life of Vesting Tentative Subdivision Map. By approval of this Agreement, City extends and vests the term of the Revised Vesting Tentative Map approved by Resolution No. 2015/68 for the term of this Agreement (including any subsequent extensions). The term of this Agreement and of the Revised Vesting Tentative Map shall be extended automatically by a time period equal to the sum of any periods of time during which a development moratorium, as defined in Section 66452.6(f) of the Subdivision Map Act (the "Map Act"), is in effect. The term of each Project Approval and any other permit issued by City in conjunction with the Revised Vesting Tentative Map as provided in Section 66452.12 of the Map Act shall expire no sooner than (a) the Revised Vesting Tentative Map or (b) the term otherwise applicable to the Project Approval or permit if this Agreement were not in effect, whichever occurs later. The City shall not require Aviano Farms to enter into any subdivision or other agreement that is inconsistent with this Agreement or the Project Approvals or that requires more work than is required by them, provided however that the Parties agree and understand that Aviano Farms will be required to enter into subdivision improvement agreements as set forth in 2.5 above. The City shall allow Aviano Farms to file multiple final maps, if Aviano Farms desires, in accordance with Section 66456.1 of the Map Act.

3.6. City's Reservations of Authority. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Property;

3.6.1 Regulations regarding processing fees and charges, provided such procedures are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties.

3.6.2 Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties.

3.6.3 Regulations governing construction standards and specifications, including (a) City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, (b) all uniform construction codes applicable in City at the time of building permit issuance, and (c) design and construction standards for road and storm drain facilities; provided any such regulation has been adopted and uniformly applied by City on a citywide basis and has not been adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.

3.6.4 New City ordinances and regulations that may be in conflict with this Agreement or the Project Approvals but that are necessary to protect persons or property from dangerous or hazardous conditions that create a threat to the public health or safety or create a physical risk, based on findings by the City Council identifying the dangerous or hazardous conditions requiring such changes in the law, why there are no feasible alternatives to the imposition of such changes, and how such changes would alleviate the dangerous or hazardous condition. Changes in laws, regulations, plans or policies that are specifically mandated and required by changes in state or federal laws or regulations that require such to apply to the Project.

3.6.5 Notwithstanding anything to the contrary provided herein, as provided in the Statute at Section 65869.5; "In the event that state or federal law or regulations, enacted after [this Agreement] has been entered into, prevent or preclude compliance with one or more provisions of [this Agreement], such provisions of [this Agreement] shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations."

3.6.6 Notwithstanding anything to the contrary provided herein, Aviano Farms shall have the right to challenge in court any City ordinance, policy, regulation or standard that would conflict with Applicable Law or this Agreement or reduce the development rights provided by this Agreement.

ARTICLE 4 AMENDMENT

4.1. **Amendment to Approvals.** To the extent permitted by state and federal law, any Project Approval or Subsequent Approvals (hereafter in the ARTICLE 4, an "Approval") may, from time to time, be amended or modified in the following manner;

4.1.1 **Administrative Project Amendments.** Upon the written request of Aviano Farms for an amendment or modification to an Approval, the Director of Community Development, or his/her designee (collectively "Authorized Official") shall determine; (i) whether the requested amendment or modification is minor when considered in light of the Project Approvals as a whole; and (ii) whether the requested amendment or modification is substantially consistent with Applicable Law. If the Authorized Official finds that the proposed amendment or modification is minor, substantially consistent with Applicable Law, and will result in no new significant environmental impacts, the amendment shall be determined to be an "Administrative Project Amendment" and the Authorized Official may, except to the extent otherwise required by law, approve the Administrative Project Amendment, following consultation with other relevant City staff, without notice and public hearing. Without limiting

the generality of the foregoing, lot line adjustments, non-substantial reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the design and location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project Approvals, and minor adjustments to the Property diagram or Property legal description shall be treated as Administrative Project Amendments.

4.1.2 Non-Administrative Amendments. Any request of Aviano Farms for an amendment or modification to an Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

4.1.3 Amendment Exemptions. Amendment of an Approval requested by Aviano Farms shall not require an amendment to this Agreement. Instead, the amendment automatically shall be deemed to be incorporated into the Project Approvals and vested under this Agreement.

4.2. Amendment of This Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

4.2.1 Administrative Amendments. The City Manager and City Attorney are authorized on behalf of the City to enter into any amendments to this Agreement other than amendments which substantially affect (i) the term of this Agreement (excluding extensions of time for performance of a particular act), (ii) permitted uses of the Property, (iii) provisions for the reservation or dedication of land, (iv) the density or intensity of use of the Property or the maximum height or size of proposed buildings, or (v) monetary payments by Aviano Farms. Such amendments ("Administrative Agreement Amendment") shall, except to the extent otherwise required by law, become effective without notice or public hearing.

4.2.2 Non-Administrative Amendments. Any request of Aviano Farms for an amendment or modification to this Agreement which is determined not to be an Administrative Agreement Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

ARTICLE 5

ASSIGNMENT, TRANSFER AND MORTGAGEE PROTECTION

5.1. Assignment of Interests, Rights and Obligations. Nothing herein limits the right of Aviano Farms to freely alienate or transfer all or any portion of the Property. However, Aviano Farms may only transfer or assign all or any portion of its interests, rights or obligations under this Agreement or the Project Approvals, including any amendments thereto (a "Transfer"), subject to the requirements for City's consent set forth in this ARTICLE 5, to a third party who acquires an interest or estate in the Property or any portion thereof including,

without limitation, purchasers or ground lessees of lots, parcels or improvements (a "Transferee").

5.2. Transfer Agreements.

5.2.1 Written Agreement. In connection with a Transfer by Aviano Farms (other than a Transfer by Aviano Farms to an Affiliated Party (as defined below), to a Mortgagee (as defined below in 5.4) or to a Home Purchaser (as defined below in 5.3), Aviano Farms and the Transferee shall enter into a written agreement (a "Transfer Agreement"), with City's consent in writing to the Transfer, regarding the respective interests, rights and obligations of Aviano Farms and the Transferee in and under the Agreement and the Project Approvals. Such Transfer Agreement may (i) release Aviano Farms from obligations under the Agreement or the Project Approvals that pertain to that portion of the Project being transferred, as described in the Transfer Agreement, provided that the Transferee expressly assumes such obligations, (ii) transfer to the Transferee vested rights to improve and use that portion of the Project being transferred, and (iii) address any other matter deemed by Aviano Farms to be necessary or appropriate in connection with the transfer or assignment. Aviano Farms shall notify the City in writing that it plans to execute a Transfer Agreement at least 60 days in advance of the execution date and provide City with such information as may be required by City to demonstrate the Transferee's qualifications and financial ability to complete the Project. City shall have 30 days from the date of such notice to review the information and provide a determination to Aviano Farms. City may withhold its consent if the City reasonably determines that the Transferee, or an entity with similar or related ownership or control as Transferee, has been a party to litigation filed against the City or if the Transferee lacks the financial ability to complete the Project. If City consents to the Transfer, Aviano Farms shall be released from its obligations as provided in the Transfer Agreement. If City does not consent to the Transfer, City shall provide its reasons in writing and shall meet with Aviano Farms in good faith to determine what additional information may be necessary for City to provide its consent. An "Affiliated Party" is defined as any corporation, limited liability company, partnership or other entity which is controlling of, controlled by, or under common control with Aviano Farms, and "control," for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity.

5.2.2 Binding. Any Transfer Agreement shall be binding on Aviano Farms, the City and the Transferee, but shall not release Aviano Farms absent express language in the Transfer Agreement. Upon recordation in the Official Records of Contra Costa County of any Transfer Agreement, Aviano Farms shall be released from those obligations assumed by the Transferee therein, subject to the provisions of 5.2.1 above.

5.3. Home Purchaser. The burdens, obligations and duties of Aviano Farms under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor the City's consent shall be required in connection with, any single-family residence conveyed to a purchaser or leased for a period in excess of one year. The Transferee in such a transaction and its successors ("Home Purchaser") shall be deemed to have no obligations under this Agreement.

5.4. Mortgage Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording of this Agreement, including the lien of any deed of trust or mortgage ("**Mortgage**"). The foregoing notwithstanding, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement (including but not limited to the City's remedies to terminate the rights of Aviano Farms and its successors and assigns under this Agreement, to terminate this Agreement, and to seek other relief as provided in this Agreement) shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

5.4.1 Mortgagee Not Obligated. The provisions of 5.4 notwithstanding, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals.

5.4.2 Notice of Default to Mortgagee. If the City receives a written notice from a Mortgagee or from Aviano Farms requesting a copy of any notice of default given Aviano Farms and specifying the address for notice, then the City shall deliver to the Mortgagee at the Mortgagee's cost, concurrently with delivery to Aviano Farms, any notice with respect to any claim by the City that Aviano Farms committed an event of default. Each Mortgagee shall have the right during the same period available to Aviano Farms to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in the City's notice. The City Manager is authorized on behalf of the City to grant to the Mortgagee an extension of time to cure or remedy, not to exceed an additional 60 days.

ARTICLE 6

COOPERATION IN THE EVENT OF LEGAL CHALLENGE AND INDEMNITY

6.1. Aviano Farms shall defend, indemnify, and hold harmless the City from any legal action brought by any third party concerning: (i) the validity, legality, or constitutionality of any term, condition, obligation, fee, dedication, or exaction required or imposed on the Property subject to this Agreement; (ii) the procedures utilized in or the sufficiency of the environmental review associated with this Agreement; and (iii) the implementation of this Agreement through such further actions, measures, procedures, and approvals as are necessary to satisfy the Agreement's requirements concerning the Property subject to this Agreement. Aviano Farms shall defend the City with qualified legal counsel subject to the approval of the City Attorney, which approval shall not unreasonably be withheld. Aviano Farms shall be exclusively responsible for paying all costs, damages, attorney fees, and other court-ordered compensation awarded to any third party (whether awarded against the City, Aviano Farms, or any other party) in any legal action in which Aviano Farms' duties to defend, indemnify, and hold the City harmless arise under this Paragraph. City shall promptly notify Aviano Farms of any action filed and the Parties shall cooperate fully in the defense of any such action.

The parties expressly recognize that the obligations stated in this Paragraph do not require or contemplate that Aviano Farms shall indemnify or hold harmless or be responsible for any error, omission, intentional act, negligent act, or default of, or any injury caused by, any homeowners association or any City department or dependent special district that is formed by, or that receives funding, as a result of any term or condition of this Agreement. Nor shall Aviano Farms be required to defend, indemnify, or hold the City harmless for or from any legal action by a third party challenging the City's legal authority to impose any condition, obligation, fee, dedication, or exaction on projects or properties other than the Property which is the subject of this Agreement.

6.2. In entering into this Agreement, Aviano Farms expressly recognizes that its sole right to sue the City concerning this Agreement shall arise, if at all, for default of the Agreement as provided in Article 7 below. Aviano Farms releases and waives all claims it may have against the City concerning the validity, legality, or constitutionality of any term, condition, obligation, fee, dedication, or exaction required or imposed on the Property subject to this Agreement.

6.3. **Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

ARTICLE 7 DEFAULT; TERMINATION; ANNUAL REVIEW

7.1. Default.

7.1.1 **Remedies In General; No Damages.** City and Aviano Farms agree that, as part of the bargained for consideration of this Agreement, in the event of default by either Party, the only remedy shall be declaratory relief or specific performance of this Agreement. In no event shall either Party, or any of their officers, agents, representatives, officials, employees or insurers, be liable to the other Party for damages, whether actual, consequential, punitive or special, for any breach or violation of this Agreement. The Parties agree that any action or proceeding to cure, correct or remedy any default or to enforce any covenant or promise under this Agreement shall be limited solely and exclusively to the remedies expressly provided. Following notice and expiration of any applicable cure periods and completion of the dispute resolution process set forth in ARTICLE 8 below, either Party may institute legal or equitable proceedings to cure, correct, or remedy any default, or to enforce any covenant or promise herein, enjoin any threatened or attempted violation, or enforce by specific performance, declaratory relief or writ of mandate the obligations and rights of the Parties. As noted above, in no event shall either Party be liable for any damages. Any legal action to interpret or enforce the provisions of this Agreement shall be brought in the Superior Court for Contra Costa County, California.

7.1.2 Cure Period. Subject to extensions of time by mutual consent in writing of the Parties, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a default. In the event of any alleged default of any term, condition, or obligation of this Agreement, the Party alleging such default shall give the defaulting Party notice in writing specifying the nature of the alleged default and the manner in which such default may be satisfactorily cured ("**Notice of Breach**"). The defaulting Party shall cure the default within 30 days following receipt of the Notice of Breach, provided, however, if the nature of the alleged default is non-monetary and such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available.

7.1.3 Procedure for Default by Aviano Farms. If Aviano Farms is alleged to be in default hereunder by City then after notice and expiration of the cure period specified above and the dispute resolution process set forth in ARTICLE 8 below, City may institute legal proceedings against Aviano Farms pursuant to this Agreement, and/or give notice of intent to terminate or modify this Agreement to Aviano Farms pursuant to California Government Code Section 65868. Following notice of intent to terminate or modify this Agreement as provided above, the matter shall be scheduled for consideration and review at a duly noticed and conducted public hearing in the manner set forth in Government Code Sections 65865, 65867 and 65868 by the City Council within 60 calendar days following the date of delivery of such notice (the "**Default Hearing**"). Aviano Farms shall have the right to offer written and oral testimony prior to or at the time of said public hearing. If the City Council determines that a default has occurred and is continuing, and elects to terminate the Agreement, City shall give written notice of termination of the Agreement to Aviano Farms by certified mail and the Agreement shall thereby be terminated 30 days thereafter; provided, however, that if Aviano Farms files an action to challenge City's termination of the Agreement within such 30-day period, then the Agreement shall remain in full force and effect until a trial court has affirmed City's termination of the Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired). This Section shall not be interpreted to constitute a waiver of section 65865.1 of the Government Code, but merely to provide a procedure by which the Parties may take the actions set forth in Section 65 865.1.

7.1.4 Procedure for Default by City. If the City is alleged by Aviano Farms to be in default under this Agreement, then after notice and expiration of the cure period and completion of the dispute resolution procedures below, Aviano Farms may enforce the terms of this Agreement by an action at law or in equity, subject to the limitations set forth above.

7.2. Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, or a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, enactment or imposition against the Project of any moratorium, or any time period for legal

challenge of such moratorium by Aviano Farms, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Litigation attacking the validity of this Agreement or any of the Project Approvals, Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than the City necessary for the development of the Project pursuant to this Agreement, or Aviano Farms' inability to obtain materials, power or public facilities (such as water or sewer service) to the Project, shall be deemed to create an excusable delay as to Aviano Farms. Upon the request of either Party, an extension of time for the performance of any obligation whose performance has been so prevented or delayed shall be memorialized in writing. The City Manager is authorized on behalf of the City to enter into such an extension. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon.

7.3. Annual Review. Throughout the term of this Agreement, at least once every 12 months, Aviano Farms shall provide City with a written report demonstrating its good-faith compliance with the terms of this Agreement (the "**Written Report**"). City's City Manager and City Attorney shall review the Written Report to determine whether Aviano Farms is in good-faith compliance with the terms of the Agreement and, if they have concerns about Aviano Farms' compliance, shall schedule a review before the City Council (the "**Periodic Review**"). At least 10 days prior to the Periodic Review, the City shall provide to Aviano Farms a copy of any staff reports and documents to be used or relied upon in conducting the review (and, to the extent practical, related exhibits) concerning Aviano Farms' performance. Aviano Farms shall be permitted an opportunity to respond to the City's evaluation of Aviano Farms' performance, either orally at a public hearing or in a written statement, at Aviano Farms' election. If before the public hearing, such response shall be directed to the Community Development Director. At the conclusion of the Periodic Review, the City Council shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Aviano Farms has complied in good faith with the terms and conditions of this Agreement. If the City Council finds and determines, based on substantial evidence, that Aviano Farms has not complied with such terms and conditions, the City Council may initiate proceedings to terminate or modify this Agreement, in accordance with Government Code Section 65865.1, by giving notice of its intention to do so, in the manner set forth in Government Code Sections 65867 and 65868. If after receipt of the Written Report, the City does not (a) schedule a Periodic Review within two months, or (b) notify Aviano Farms in writing of the City's determination after a Periodic Review, then it shall be conclusively presumed that Aviano Farms has complied in good faith with the terms and conditions of this Agreement during the year covered under the Written Report.

7.4. Notice of Compliance. Within 30 days following any written request which Aviano Farms or a Mortgagee may make from time to time, the City shall execute and deliver to the requesting party (or to any other party identified by the requesting party) a written "**Notice of Compliance**," in recordable form, duly executed and acknowledged by the City, that certifies: (a) this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of the modifications; (b) there are no current uncured defaults under this Agreement or specifying the dates and nature of any default; and (c) any other information reasonably requested by Aviano Farms or the Mortgagee. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the City that this Agreement is in full force and effect without modification except as may be represented by Aviano Farms and that there are no uncured

defaults in the performance of Aviano Farms, except as may be represented by Aviano Farms. Aviano Farms shall have the right, in its sole discretion, to record the Notice of Compliance.

ARTICLE 8 DISPUTE RESOLUTION

8.1. Dispute; Confidentiality. Any controversy or dispute arising out of or related to this Agreement, or the development of the Project (a "**Dispute**"), shall be subject to private negotiation among the Parties, and if then not resolved shall be subject to non-binding mediation followed by litigation, if necessary, as set forth below. Each Party agrees that any Dispute, and all matters concerning any Dispute, will be considered confidential and will not be disclosed to any third-party except (a) disclosures to a Party's attorneys, accountants, and other consultants who assist the Party in the resolution of the Dispute, (b) as provided below with respect to the mediation, and (c) as otherwise required by law, including without limitation, the California Public Records Act.

8.2. Private Negotiation. If a Dispute arises, the Parties agree to negotiate in good faith to resolve the Dispute. If the negotiations do not resolve the Dispute to the reasonable satisfaction of the Parties within 30 days from a written request for a negotiation, then the Dispute shall be submitted to mediation pursuant to 8.3.

8.3. Mediation. Within 15 days following the written request to negotiate, either Party may initiate non-binding mediation (the "**Mediation**"), conducted by JAMS/Endispute, Inc. ("**JAMS**") or any other agreed-upon mediator. Either Party may initiate the Mediation by written notice to the other Party. The mediator shall be a retired judge or other mediator, selected by mutual agreement of the Parties, and if the Parties cannot agree within 15 days after the Mediation notice, the mediator shall be selected through the procedures regularly followed by JAMS. The Mediation shall be held within 15 days after the Mediator is selected, or a longer period as the Parties and the mediator mutually decide. If the Dispute is not fully resolved by mutual agreement of the Parties within 15 days after completion of the Mediation, then either Party may commence an action in state or federal court. The Parties shall bear equally the cost of the mediator's fees and expenses, but each Party shall pay its own attorneys' and expert witness fees and any other associated costs.

8.4. Injunction. Nothing in this ARTICLE 8 shall limit a Party's right to seek an injunction or restraining order from a court of competent jurisdiction in circumstances where such relief is deemed necessary to preserve assets.

ARTICLE 9 MISCELLANEOUS

9.1. Defined Terms; Citations. The capitalized terms used in this Agreement, unless the context obviously indicates otherwise, shall have the meaning given them in this Agreement. Except as otherwise expressly stated, all citations are to the Government Code of the State of California.

9.2. Enforceability. As provided in Section 65865.4, this Agreement shall be enforceable by either Party notwithstanding any change enacted or adopted (whether by

ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or resolution or other rule, regulation or policy adopted by the City that changes, alters or amends the ordinances, rules, regulations and policies included in the Applicable Law, except as this Agreement may be amended or canceled pursuant to Section 65868 or modified or suspended pursuant to Section 65869.5.

9.3. Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals or this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement.

9.4. Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals shall be deemed to refer to this Agreement or the Project Approval, as it may be amended from time to time. This Agreement has been reviewed and revised by legal counsel for both the City and Aviano Farms, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

9.5. Covenants Running with the Land. Subject to the Transfer provisions in ARTICLE 5, all of the provisions contained in this Agreement shall be binding upon and benefit the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of, or interest in, the Property, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Property, as appropriate, runs with the Property and is for the benefit of and binding upon the owner, Aviano Farms, and each successive owner of all or a portion of the Property, during its ownership of such property.

9.6. Attorneys' Fees. If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party or parties shall pay the prevailing party's or parties' actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post-judgment motion, and any action to enforce or collect the judgment including without limitation contempt, garnishment, levy, discovery and bankruptcy. For this purpose "expenses" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "prevailing party" shall mean the party which is determined in the proceeding to have prevailed or which prevails by dismissal, default or otherwise.

9.7. No Agency, Joint Venture or Partnership. The City and Aviano Farms disclaim the existence of any form of agency relationship, joint venture or partnership between the City and Aviano Farms. Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as creating any relationship other than a contractual relationship between the City and Aviano Farms.

9.8. No Third Party Beneficiary. This Agreement is made solely and specifically among and for the benefit of the Parties, and their respective successors and assigns subject to the express provisions relating to successors and assigns, and no other party other than a Mortgagee will have any rights, interest or claims or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

9.9. Notices. All notices, consents, requests, demands or other communications to or upon the respective Parties shall be in writing and shall be effective for all purposes: (A) upon receipt on any City business day before 5:00 PM local time and on the next City business day if received after 5:00 PM or on other than a City business day, including without limitation, in the case of (i) personal delivery, or (ii) delivery by messenger, express or air courier or similar courier, or (B) five days after being duly mailed certified mail, return receipt requested, postage prepaid, all addressed as follows:

If to City:

City of Antioch
Attention: City Manager
200 H Street
Antioch, CA 94509
Telephone: (925) 779-7011
Facsimile: (925) 779-7003

With a mandatory
copy to:

City Attorney
City of Antioch
200 H Street
Antioch, CA 94509
Telephone: (925) 779-7015
Facsimile: (925) 779-7003

If to Aviano Farms:

Aviano Farms, LLC
Attention: Dave Sanson
1500 Willow Pass Court
Concord, CA 94520
Telephone: (925) 852-0548
Facsimile: (925) 685-0660

With a mandatory
copy to:

Wendel, Rosen, Black & Dean LLP
Attention: Patricia E. Curtin
1111 Broadway, 24th Floor
Oakland, CA 94607-4036
Telephone: (510) 834-6600
Facsimile: (510) 808-4730

In this Agreement "City business days" means days that the Antioch City Hall is open for business and does not currently include Fridays, Saturdays, Sundays, and federal and state legal holidays. Either Party may change its address by written notice to the other on five business days'

prior notice in the manner set forth above. Receipt of communication by facsimile shall be sufficiently evidenced by a machine-generated confirmation of transmission without notation of error. In the case of illegible or otherwise unreadable facsimile transmissions, the receiving Party shall promptly notify the transmitting Party of any transmission problem and the transmitting Party shall promptly resend any affected pages.

9.10. Entire Agreement and Exhibits. This Agreement constitutes in full, the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter of this Agreement. No oral statements or prior written matter not specifically incorporated in this Agreement shall be of any force and effect. No amendment of, supplement to or waiver of any obligations under this Agreement will be enforceable or admissible unless set forth in a writing approved by the City and Aviano Farms. The following exhibits are attached to this Agreement and incorporated for all purposes:

Exhibit A Property Description described in Recital B.

Exhibit B Aviano Farms Project Approvals described in Recital G.

Exhibit C Ordinance approving this Agreement described in Recital P.

9.11. Counterparts. This Agreement may be executed in any number of identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document. This Agreement may be executed by signatures transmitted by facsimile, adobe acrobat or other electronic image files and these signatures shall be valid, binding and admissible as though they were ink originals.

9.12. Recordation of Development Agreement. Pursuant to Section 65868.5, no later than ten days after the City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of Contra Costa.

This Agreement has been entered into by and between Aviano Farms and the City as of the Effective Date.


CITY:

City of Antioch, a municipal corporation

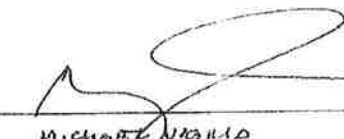
By: 
City Manager

AVIANO FARMS:

Aviano Farms, LLC, a California limited liability company


By: 
Dave Sanson, President

APPROVED AS TO FORM:

By: 
Michael J. Vignola
Special Counsel to City

APPROVED AS TO FORM:

Wendel, Rosen, Black & Dean LLP

By: 
Patricia D. Curtin
Attorneys for Aviano Farms


ATTEST:

By: 
ARUE SIMONSON
City Clerk

This Agreement has been entered into by and between Aviano Farms and the City as of the Effective Date.

CITY:

City of Antioch, a municipal corporation

By: 
City Manager

AVIANO FARMS:

Aviano Farms, LLC, a California limited liability company


By: _____
Dave Sanson, President

APPROVED AS TO FORM:

By: _____
Special Counsel to City

APPROVED AS TO FORM:

Wendel, Rosen, Black & Dean LLP

By: 
Patricia E. Curtin
Attorneys for Aviano Farms

ATTEST:

By: _____
City Clerk

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Contra Costa

On 2/8/2017 before me, Jessica Moraes, Notary Public
(insert name and title of the officer)

personally appeared DAVE SANSON
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)



ATTACHMENT "E"

RESOLUTION NO. 2019/02

RESOLUTION OF THE PARKS AND RECREATION COMMISSION OF THE CITY OF ANTIOCH RECOMMENDING APPROVAL OF PARK-IN-LIEU FEE CREDIT FOR AVIANO PHASES 1, 2 AND 3: SUBDIVISIONS 9249, 9449 and 9489 (PW 676-1, 676-2 and 676-3)

WHEREAS, the applicant, Aviano Farms, LLC, requests approval of park-in-lieu fee credit for Aviano Phases 1, 2 and 3: Subdivisions 9249, 9449 and 9489 (PW 676-1, 676-2 and 676-3); and

WHEREAS, on September 8, 2015 the City Council adopted Resolution No. 2015/68 approving the Vesting Tentative Map/Final Development Plan and Use Permit for the Aviano Farms project; and

WHEREAS, on September 22, 2015 the City Council adopted Ordinance 2017-C-S approving a Development Agreement between the City of Antioch and Aviano Farms, LLC; and

WHEREAS, the vesting tentative map (VTM) allows the developer to employ multiple (phased) final maps, creating separate phases of the project (currently approximated at 3 phases), and includes a Phasing Plan consistent with the VTM to facilitate development of the property; and

WHEREAS, Aviano Farms, LLC, at its own expense will design, construct and dedicate two parks to the City: a centrally-located 4.88-acre park (Parcel "P") in the Phase 1 subdivision and a 1.92-acre park (Parcel "L") along the northern boundary in the Phase 2 subdivision which will connect to and expand the existing Chaparral Park; and

WHEREAS, per Resolution No. 2015/68, Condition of Approval #F.2 and #F.5, both parks shall be maintained by a Street Light and Landscape Maintenance District; and

WHEREAS, the proposed parks total 6.8 acres, an amount less than the 8.0 acres of park land dedication required by the Subdivision Ordinance (AMC §9-4.1004); and

WHEREAS, Development Agreement Section 2.9 states that "the City shall take into consideration Aviano Farms' construction and dedication of the Parcel "L" Park, Trail Improvements and Park "P" Park (and other applicable park/landscaped areas) in determining credits against the park fees applicable to the Project."; and

WHEREAS, the City Engineer has determined that trail improvements and other applicable park/landscaped areas are enough to eliminate payment of remaining park-in-lieu fees;

NOW, THEREFORE, BE IT RESOLVED, that the Park and Recreation Commission does hereby approve park-in-lieu fee credit for Aviano Phases 1, 2 and 3: Subdivisions 9249, 9449 and 9489 (PW 676-1, 676-2 and 676-3).

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the Parks and Recreation Commission of the City of Antioch, acting as the City's PBAC, at a regular meeting thereof held on the 15th day of August, 2019 by the following vote:

AYES: Commissioners Eubanks, Foster, Knight

NOES: Commissioner Arce

ABSENT: Commissioners Belche, McMelland, Othman



NANCY KAISER
CLERK TO THE PARKS AND
RECREATION COMMISSION

ATTACHMENT "F"

FEE-CREDIT AGREEMENT FOR PUBLIC PARK IMPROVEMENTS

This FEE-CREDIT AGREEMENT FOR PUBLIC PARK IMPROVEMENTS ("**Agreement**") by and between by and between the CITY OF ANTIOCH, a municipal corporation ("**City**"), and CIVIC AVIANO, LLC, a California limited liability company ("**Developer**"). The City and Developer are collectively referred to within as the "**Parties**." This agreement is made with respect to the following facts:

RECITALS

A. Developer owns the real property described in Exhibit A, attached hereto, and incorporated herein by this reference (the "**Property**").

B. Developer and Developer's predecessor-in-interest obtained various approvals and entitlements for development of the Property, including the Revised Vesting Tentative Map for Subdivision 9249 approved by the City Council on September 8, 2015, the EIR Addendum approved by the City Council on September 8, 2015, and the Development Agreement between the City of Antioch and Aviano Farms, LLC, with an effective date of September 22, 2015, and recorded on February 28, 2017 as document no. 2017-0036178-00 in the Official Records of Contra Costa County, California (the "**Approvals**," or more specifically, the "**Development Agreement**" or "**Conditions of Approval**").

C. The Development Agreement (Paragraph 2.9) and Conditions of Approval (Site and Project Design, Conditions 29 and 30) provide that the Developer shall design, construct, and dedicate to the City, the Parcel L park; the Developer shall construct the Sand Creek Regional Trail per the Conditions of Approval; and, the Developer shall design and landscape the Parcel P park (the "**Park Improvements**"). The City's Parks and Recreation Commission has subsequently approved Resolution No. 2019-02, giving the Developer park-in-lieu fee credit under the City Code (the "**Fee Credits**").

D. As set forth more fully below, the City will benefit from the Park Improvements. The City has found that this Agreement is in accordance with the requirements of its Municipal Code and with California Government Code Sections 66485 through 66489.

E. The City is authorized, under the Subdivision Map Act and other applicable law, to enter into a fee-credit agreement with a developer for that portion of the cost of public improvements, including an amount attributable to interest, in excess of the construction required for the development and to require owners of property benefitted by the public improvements to reimburse the developer for their fair share of the cost thereof as a condition of approval of development.

F. This Agreement is intended to be the agreement or mechanism referenced in the Development Agreement to provide the Developer with the Fee Credits for certain of

the Park Improvements.

NOW, THEREFORE, in view of the foregoing recitals and in consideration of the following terms, conditions, and covenants, the Parties agree as follows:

AGREEMENT

SECTION 1. **FEE CREDITS FOR CERTAIN OF THE PARK IMPROVMENTS**

1.1 Design and Construction of Improvements. Developer shall be solely responsible for designing, financing, bonding, constructing, installing and providing for the inspection of the Park Improvements, as set forth in the Approvals. The Park Improvements shall be constructed per the timelines and phasing set forth in the Approvals.

1.2 Consistency with Approvals. If any provision in paragraph 1.1 conflicts with the Approvals for the Project, it is the intent of the Parties that the Approvals shall apply.

1.3 Credit for Park In-Lieu and Impact Fees. The Developer is improving private land consistent with the Park Improvement plans approved by the City, and dedicating land to the City for the City's use as a park available to all of its residents. Consequently, and consistent with the Development Agreement, Developer shall not be required to pay the park in-lieu or the parks and recreation development impact fee for any lot developed on the Property, provided Developer performs its obligations to construct the Park Improvements pursuant to the Approvals, Resolution No. 2019-02, and the approved Park Improvements plans.

SECTION 2. **MISCELLANEOUS**

2.1 Defined Terms. Unless defined in this Agreement, the capitalized terms used in this Agreement shall have the meaning given them in the Development Agreement. Defined terms in the singular form include the plural and vice versa.

2.2 Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement.

2.3 Construction. All references to this Agreement shall be deemed to refer to this Agreement as it may be amended from time to time. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

2.4 Attorneys' Fees. If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party or parties shall pay the prevailing party's or parties' actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in

the proceeding, any appeal or other post-judgment motion, and any action to enforce or collect the judgment including without limitation contempt, garnishment, levy, discovery and bankruptcy. For this purpose, "expenses" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "prevailing party" shall mean the party which is determined in the proceeding to have prevailed or which prevails by dismissal, default or otherwise.

2.5 No Agency, Joint Venture or Partnership. The City and Developer disclaim the existence of any form of agency relationship, joint venture or partnership between the City and Developer. Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as creating any relationship other than a contractual relationship between the City and Developer.

2.6 No Third-Party Beneficiary. This Agreement is made solely and specifically among and for the benefit of the Parties, and their respective successors and assigns.

2.7 Notice. Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party, upon receipt of confirmation of overnight delivery by a commercial carrier, or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City:

City of Antioch
Attention: City Attorney
200 H Street
Antioch, CA 94509

Developer:

Dave B. Sanson
Civic Aviano, LLC
1500 Willow Pass Court
Concord, CA 94520

Dana C. Tsubota, General Counsel
DeNova Homes, Inc.
1500 Willow Pass Court
Concord, CA 94520

2.8 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

2.9 Governing Law; Venue. This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Contra Costa, State of California.

2.10 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by both Parties.


2.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one instrument.

WHEREFORE, this Agreement has been entered into by and between Developer and the City as of September 3, 2020.

“DEVELOPER”

CIVIC AVIANO, LLC,
a California limited liability company

By: CIVIC PROPERTY GROUP, INC.,
a California corporation
Its: Sole member and manager

By: 
Dana C. Tsubota, Vice
President and General
Counsel

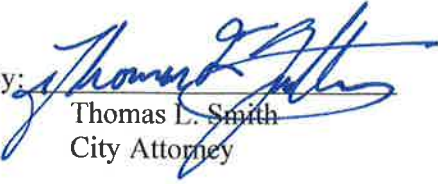
“CITY”

By: 
Rowland E. Bernal, Jr.
City Manager

ATTEST:

By: _____
Arne Simonsen
City Clerk

APPROVED AS TO FORM:

By: 
Thomas L. Smith
City Attorney

AUGUST 18, 2020
JOB NO.: 0514-072

LEGAL DESCRIPTION
SUBDIVISION 9249 (542 M 34)
ANTIOCH, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF
ANTIOCH, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING ALL OF LOTS 1 THROUGH 127, INCLUSIVE, PARCELS A, B, D, E, F, H,
I, J, K, L, M, AND N, AS SAID LOTS AND PARCELS ARE SHOWN AND SO
DESIGNATED ON THE FINAL MAP FOR SUBDIVISION 9249, FILED APRIL 28,
2020, IN BOOK 542 OF MAPS, AT PAGE 34, IN THE OFFICE OF THE COUNTY
RECORDER OF CONTRA COSTA COUNTY.



END OF DESCRIPTION

S. Kyle Pack

SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

ATTACHMENT "G"

REIMBURSEMENT AGREEMENT FOR ROADWAY IMPROVEMENTS

This REIMBURSEMENT AGREEMENT FOR ROADWAY IMPROVEMENTS ("**Agreement**") by and between by and between the CITY OF ANTIOCH, a municipal corporation ("**City**"), and CIVIC AVIANO, LLC, a California limited liability company ("**Developer**") for reimbursement of costs associated with supplemental capacity improvements made by Developer in relation to the Aviano Subdivision project (the "**Project**"). The City and Developer are collectively referred to within as the "**Parties**." This agreement is made with respect to the following facts:

RECITALS

A. Developer owns the real property described in Exhibit A, attached hereto, and incorporated herein by this reference (the "**Property**").

B. Developer and Developer's predecessor-in-interest obtained various approvals and entitlements for development of the Property, including the Revised Vesting Tentative Map for Subdivision 9249 approved by the City Council on September 8, 2015, the EIR Addendum approved by the City Council on September 8, 2015, and the Development Agreement between the City of Antioch and Aviano Farms, LLC, with an effective date of September 22, 2015, and recorded on February 28, 2017 as document no. 2017-0036178-00 in the Official Records of Contra Costa County, California (the "**Approvals**," or more specifically, the "**Development Agreement**" or "**Conditions of Approval**").

C. The Development Agreement and Conditions of Approval provide that Developer shall design and construct specified portions of Hillcrest Avenue and Sand Creek Road, in addition to constructing traffic signals at specified intersections, as more fully depicted on Exhibit B (collectively, "**Roadway Improvements**"). In exchange, the Developer is not subject to any existing or future adopted City traffic signal impact fees or any other City fees related to roadway improvements ("**City Transportation Fees**"). As such, and for purposes of example only, the Developer is not required to pay the current traffic signal impact fee of \$229,190 (i.e., \$430 traffic fee per parcel multiplied by the 533 parcels) that it otherwise would be required to pay as of the Effective Date of this Agreement. To the extent that the City has asked the Developer to construct roadway improvements in excess of those required by the Project ("**Supplemental Roadway Improvements**") for the benefit of property owners identified in Exhibit C ("**Future Developers**"), the City has agreed to cooperate with Developer to establish a financing mechanism or reimbursement agreement to provide for reimbursement to Developer by the owners or developers of benefitted properties that would have otherwise been conditioned to provide such Supplemental Roadway Improvements.

D. The City is a member of the East Contra Costa Regional Fee and Financing Authority (the "**Authority**") which has the authority to establish a fee program to assist in the funding and implementation of regional transportation improvement projects in the East Contra

Costa County area. The Authority has adopted Regional Transportation Development Impact Mitigation Fees (“**RTDIM Fees**”) which each of its members, including the City, have approved and are responsible for collecting for the Authority. RTDIM Fees are not City Transportation Fees and Developer is required to pay the RTDIM Fees applicable for the development of the Property.

E. After the Development Agreement and Conditions of Approval were adopted, by Resolution No. 2020/01, the Authority Board of Directors added the Sand Creek Extension Project from State Route 4 (“**SR4**”) to Deer Valley Road (“**SCR Extension**”) to the list of projects to be funded with the RTDIM. The resolution also approved a September 2020 report prepared by Fehr & Peers describing the SCR Extension (the “**F&P Report**”), including detailed cost estimates and the appropriate allocation of costs between the regional and local portions of the SCR Extension. The F&P Report found that approximately 70% of the cost should be borne by local developers (the “**SCR Local Share**”), while approximately 30% should be considered a regional responsibility (the “**SCR Regional Share**”). A copy of Authority Resolution 2020/01, including the F&P Report, is attached hereto as **Exhibit D** and hereby incorporated herein by reference. The SCR Extension consists of a center median and one lane of travel on either side of the median (the “**SCR Extension Improvements**”).

F. Developer has approved roadway improvement plans dated April 1, 2019, July 30, 2019 and January 14, 2020 that include the Supplemental Roadway Improvements and the SCR Extension Improvements (the “**Approved Plans**”). A copy of the Approved Plans is attached hereto as **Exhibit E** and hereby incorporated herein by reference.

G. As set forth more fully below, the City will benefit from the Supplemental Roadway Improvements and the East Contra Costa County area will benefit from the SCR Extension. The City has found that this Agreement is in accordance with the requirements of its Municipal Code and with California Government Code Sections 66485 through 66489.

H. The City is authorized, under the Subdivision Map Act and other applicable law, to enter into a reimbursement agreement with a developer for that portion of the cost of public improvements, including an amount attributable to interest, in excess of the construction required for the development and to require owners of property benefitted by the public improvements to reimburse the developer for their fair share of the cost thereof as a condition of approval of development. Developer and the City desire to enter into this Agreement to establish the terms and conditions under which Developer shall be reimbursed for the fair share of the costs of the Supplemental Roadway Improvements and SCR Extension Improvements to be borne by benefitting property owners for portions of such improvements, including the SCR Local Share, and by the Authority for the SCR Regional Share of the SCR Extension Improvements.

I. The City has determined that a fair and equitable method of allocating the share of costs of the Supplemental Roadway Improvements among the adjacent property owners is as shown and described on **Exhibit C**, including the allocable portion of the SCR Local Share.

J. On _____, 2021, the City Council held a public hearing regarding approval and execution of this Agreement, of which written notice was provided by mail to the record owners of the Future Developers, all of whom are adjacent property owners as shown on the latest County Assessor's secured real property assessment roll.

K. This Agreement is intended to be the agreement or mechanism referenced in the Approvals for reimbursement of the Developer for the Supplemental Roadway Improvements as well as the SCR Local Share.

NOW, THEREFORE, in view of the foregoing recitals and in consideration of the following terms, conditions, and covenants, the Parties agree as follows:

AGREEMENT

SECTION 1. DESIGN AND CONSTRUCTION OF SUPPLEMENTAL ROADWAY IMPROVEMENTS INCLUDING THE SCR EXTENSION

1.1 Supplemental Roadway Improvements. The Supplemental Roadway Improvements and the SCR Extension shall be designed and constructed as described and depicted on **Exhibit B** and in accordance with the Conditions of Approval and Approved Plans, Exhibit E.

1.2 Consistency with Conditions of Approval. If any provision in paragraph 1.1 conflicts with the Conditions of Approval for the Project, it is the intent of the Parties that the Approved Plans shall apply.

1.3 Determination of Supplemental Improvement Costs. The costs of the Supplemental Roadway Improvements and the SCR Local Share, for which Developer shall be entitled to reimbursement ("**Improvement Costs**") consist of all costs of the design and construction thereof and all costs incidental to such design and construction including, without limitation, the following:

(a) **Design, Engineering, Inspection and Environmental.** All design, planning, engineering, environmental analysis and mitigation, and inspection services and costs, including all associated fees, charges and permits for the Supplemental Roadway Improvements and the SCR Local Share.

(b) **Easements and Rights of Way.** Cost of acquisition of easements and rights of way for infrastructure and utilities as they relate to the Supplemental Roadway Improvements and the SCR Local Share, including appraisal and title insurance costs and actual costs of acquisition.

(c) **Construction Costs.** The sum of all costs incurred for the construction

of the Supplemental Roadway Improvements and the SCR Local Share in accordance with the Approved Plans including, without limitation, the direct costs of construction labor, materials, equipment, and services.

(d) Overhead and Management. An amount equal to 8% of the direct cost of construction of the Supplemental Roadway Improvements and SCR Local Share for overhead, construction management, and supervision costs.

(e) Bonds and Insurance. The cost of premiums paid for insurance coverage and any surety bonds required for the Supplemental Roadway Improvements and SCR Local Share.

(f) Interest. Interest at the lower of 6% or the Prime Rate of interest, as published in the Wall Street Journal, plus 1% from the date the Improvement Costs for the Supplemental Roadway Improvements and the SCR Local Share are incurred to the date of payment pursuant to Section 2, compounded quarterly.

(g) Documentation of Costs. Developer shall provide evidence as requested by and satisfactory to City of all costs listed above including, but not limited to, paid invoices, receipts, contracts, etc.

SECTION 2. REIMBURSEMENT AND DEVELOPMENT CONDITIONS

2.1 Determination of Reimbursement. Upon completion and acceptance of the Supplemental Roadway Improvements, the City Engineer shall calculate the amount of reimbursement, including all Improvement Costs per Section 1.3, to which Developer is entitled ("**Reimbursement Amount**") from Future Developers for their fair share of the cost of such improvements, including the allocable portion of the SCR Local Share, determined in accordance with Recital H. The Authority shall determine the amount of the SCR Regional Share to be reimbursed to Developer by Authority.

2.2 Development Condition for Future Developers. The City shall condition the approval of development of the Future Developers by requiring the owners or developers thereof to pay to the City their fair share of the Reimbursement Amount, plus the City's reasonable costs of administering the collection and disbursement of the Reimbursement Amount, prior to recordation of the first final map for such property. If a subdivision map is not required for development of the property, the City shall require payment of the Reimbursement Amount and any related City costs prior to issuance of the first permit or approval for development of such property.

2.3 Remittance to Developer by Future Developers. The City shall remit to Developer the Reimbursement Amount collected from Future Developers pursuant to Section 2.2 within thirty days of receipt thereof.

2.4 Remittance to Developer by Authority. Developer understands and agrees

that City has no authority to remit any portion of the SCR Regional Share to Developer and that only Authority may determine the amount and timing of the remittance of the SCR Regional Share to Developer.

SECTION 3. MISCELLANEOUS

3.1 Defined Terms. Unless the context indicates otherwise, the capitalized terms used in this Agreement shall have the meaning given them in this Agreement, and defined terms in the singular form include the plural and vice versa.

3.2 Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement.

3.3. Construction. All references to this Agreement shall be deemed to refer to this Agreement as it may be amended from time to time. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

3.4 Attorneys' Fees. If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party or parties shall pay the prevailing party's or parties' actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post-judgment motion, and any action to enforce or collect the judgment including without limitation contempt, garnishment, levy, discovery and bankruptcy. For this purpose "expenses" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "prevailing party" shall mean the party which is determined in the proceeding to have prevailed or which prevails by dismissal, default or otherwise.

3.5 No Agency, Joint Venture or Partnership. The City and Developer disclaim the existence of any form of agency relationship, joint venture or partnership between the City and Developer. Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as creating any relationship other than a contractual relationship between the City and Developer.

3.6 No Third Party Beneficiary. This Agreement is made solely and specifically among and for the benefit of the Parties, and their respective successors and assigns.

3.7 Notice. Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to

that party, upon receipt of confirmation of overnight delivery by a commercial carrier, or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City:

City of Antioch
Attention: City Attorney
200 H Street
Antioch, CA 94509

Developer:

Dave B. Sanson
Civic Aviano, LLC
1500 Willow Pass Court
Concord, CA 94520

Dana C. Tsubota, General Counsel
DeNova Homes, Inc.
1500 Willow Pass Court
Concord, CA 94520

3.8 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

3.9 Governing Law; Venue. This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Contra Costa, State of California.

3.10 Incorporation of Recitals. The parties agreement all of the recitals above are true and correct and are hereby incorporated herein by reference.

3.11 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by both Parties.

3.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one instrument.

WHEREFORE, this Agreement has been entered into by and between Developer

and the City as of _____, 2021.

[Signatures on following page]

[Signatures to Reimbursement Agreement for Roadway Improvements]

<p>Date: _____</p>	<p>CITY OF ANTIOCH, a municipal corporation</p> <p>By: _____ Ron Bernal, City Manager</p> <p>Attest:</p> <p>By: _____ Ellie Householder, City Clerk</p> <p>Approved as to Form:</p> <p>By: _____ Thomas Lloyd Smith, City Attorney</p>
<p>Date: _____</p>	<p>CIVIC AVIANO, LLC, a California limited liability company</p> <p>By: Civic Property Group, Inc., a California corporation Its authorized signer</p> <p>By: _____ David B. Sanson, President [or] Dana C. Tsubota, Vice President and General Counsel</p>

EXHIBIT A
DESCRIPTION OF PROPERTY

EXHIBIT A

Legal Description of the Overall Property

AUGUST 18, 2020
JOB NO.: 0514-072

LEGAL DESCRIPTION
SUBDIVISION 9249 (542 M 34)
ANTIOCH, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF
ANTIOCH, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING ALL OF LOTS 1 THROUGH 127, INCLUSIVE, PARCELS A, B, D, E, F, H,
I, J, K, L, M, AND N, AS SAID LOTS AND PARCELS ARE SHOWN AND SO
DESIGNATED ON THE FINAL MAP FOR SUBDIVISION 9249, FILED APRIL 28,
2020, IN BOOK 542 OF MAPS, AT PAGE 34, IN THE OFFICE OF THE COUNTY
RECORDER OF CONTRA COSTA COUNTY.



END OF DESCRIPTION

S. Kyle Pack
SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

EXHIBIT B
DESCRIPTION OF ROADWAY IMPROVEMENTS

EXHIBIT B

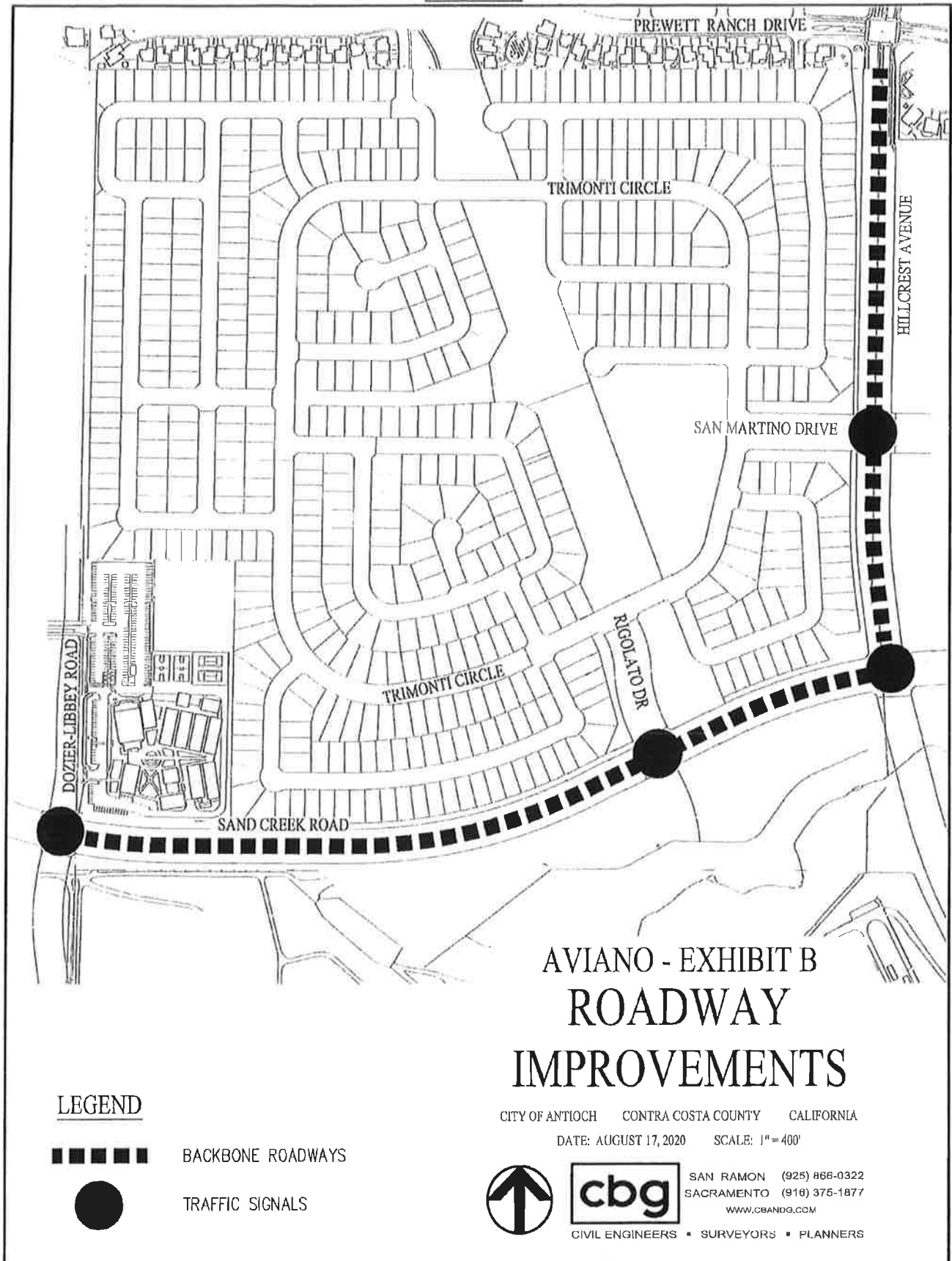
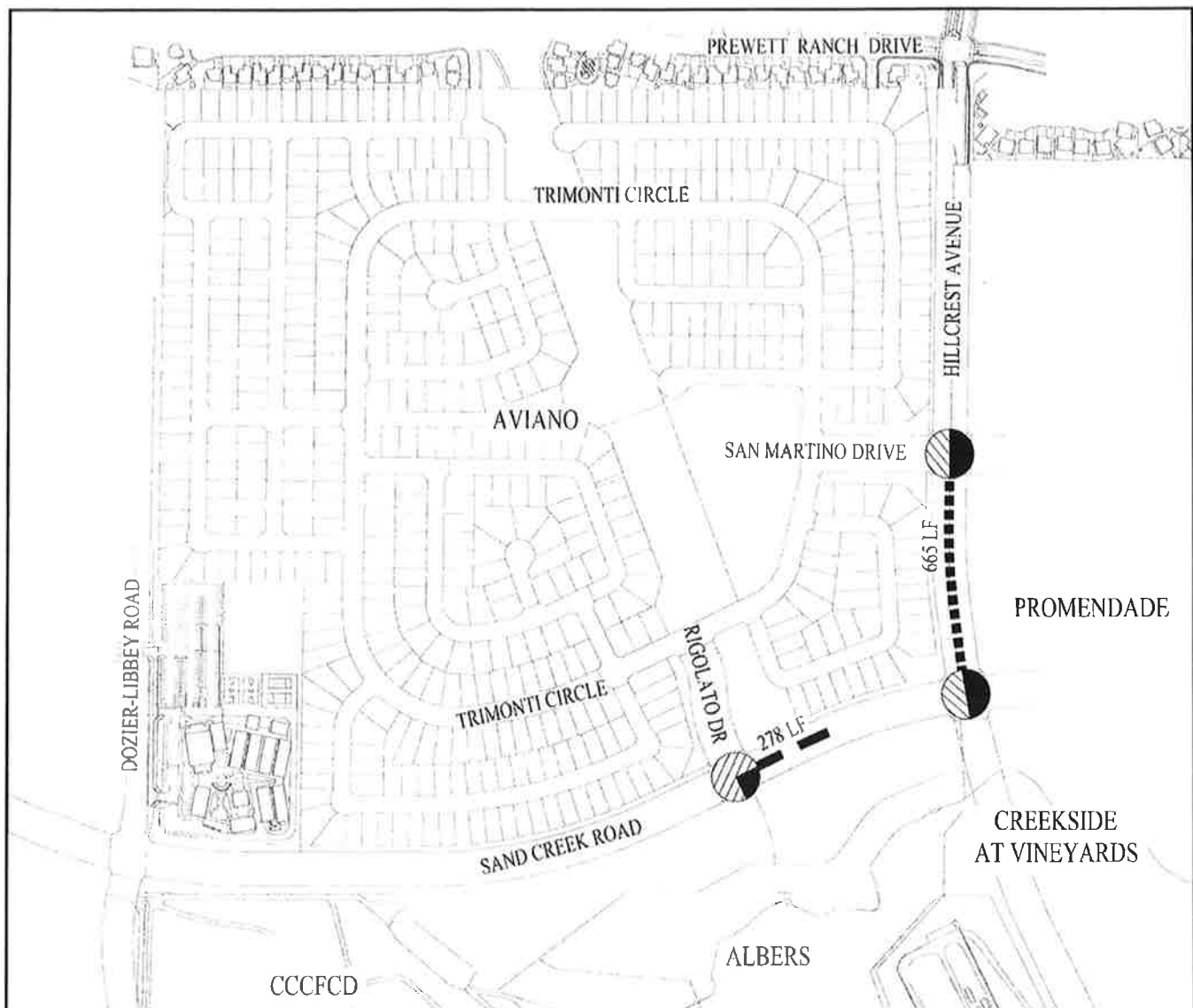


EXHIBIT C
FUTURE DEVELOPERS



SUPPLEMENTAL ROADWAY IMPROVEMENTS

LEGEND	FUTURE DEVELOPERS	DESCRIPTION
	FUTURE DEVELOPMENT TO SOUTH	25% OF TRAFFIC SIGNAL
	FUTURE DEVELOPMENT TO SOUTH	278 LF OF LEFT TURN POCKET*
	PROMENADE	50% OF TRAFFIC SIGNALS
	PROMENADE	665 LF OF IMPROVEMENTS EAST OF CENTERLINE

*LEFT TURN POCKET REIMBURSEMENT IS THE COST DIFFERENCE BETWEEN A STANDARD RAISED FULL WIDTH MEDIAN AND THE LEFT TURN POCKET IMPROVEMENTS.

AVIANO - EXHIBIT C FUTURE DEVELOPERS

CITY OF ANTIOCH CONTRA COSTA COUNTY CALIFORNIA

DATE: FEBRUARY 8, 2021 SCALE: 1" = 500'



SAN RAMON (925) 866-0322
SACRAMENTO (916) 375-1877
WWW.CBANDG.COM

CIVIL ENGINEERS • SURVEYORS • PLANNERS

EXHIBIT D

**EAST CONTRA COSTA COUNTY FEE AND FINANCING AUTHORITY
RESOLUTION 2020/01**

RESOLUTION NO. 2020/01

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST CONTRA COSTA REGIONAL FEE AND FINANCING AUTHORITY APPROVING THE SEPTEMBER 2020 EAST CONTRA COSTA REGIONAL FEE PROGRAM UPDATE REPORT TO ADD THE SAND CREEK EXTENSION PROJECT TO THE ECCRFFA PROJECT LIST AND TAKING RELATED ACTIONS ALL WITHOUT ANY CHANGE TO RTDIM FEE RATES

The Board of Directors of the East Contra Costa Regional Fee and Financing Authority hereby **FINDS** as follows:

1. Effective August 9, 1994, the Cities of Antioch, Brentwood, and Pittsburg, together with the County of Contra Costa, entered into an Agreement pursuant to California Government Code Section 6500 et seq., entitled "East Contra Costa Regional Fee and Financing Authority Joint Exercise of Powers Agreement" (referred to as the "Agreement"), which provided for the creation of a separate Joint Powers Agency ("ECCRFFA" or "Authority"), to assist in the establishment of a Uniform Regional Development Fee Program and the funding and implementation of transportation improvement projects in the East County area. The ECCRFFA area of jurisdiction is defined as "Region" in the Agreement. With the incorporation of the City of Oakley, effective July 1, 1999, the Parties amended the Agreement to add Oakley as an additional member of the Authority, pursuant to Sections 3C and 16 of the Agreement, effective October 4, 1999. The four (4) Cities listed above and the County are the "Member Agencies" of ECCRFFA.

2. In 2005, the ECCRFFA Board of Directors adopted Resolution No. 2005/06 to approve the June 2005 East Contra Costa Regional Fee Program Updated Report and recommended the adoption of Regional Transportation Development Impact Mitigation Fees ("RTDIM fees"). The findings and determinations in Resolution 2005/06 are incorporated into this resolution by reference.

3. Since Resolution No. 2005/06 was adopted, and following RTDIM fee approvals by the individual Member Agencies, ECCRFFA's RTDIM fees have remained unchanged. However, the RTDIM fees are subject to an annual adjustment to reflect the percentage change in the ENR Construction Cost Index – San Francisco Bay area. The Board of Directors also has adopted fee rebates to encourage development, the last of which was approved in December 2019 and provides a 15% rebate through December 31, 2021.

4. Over the past 15 years, a number of significant regional transportation projects on the ECCRFFA Project List have been completed using a combination of RTDIM fee revenues, Measure J funds, and other revenues. These projects include the following: 1) SR4 Freeway Widening; 2) SR4 Bypass

– Segment 1; 3) SR4 Bypass – Segment 3, excluding Widen to 4 lanes, Marsh Creek Road and Vasco Road Interchanges; and 4) Laurel Road Extension.

5. On December 13, 2018, the ECCRFFA Board of Directors directed the Program Manager to engage Fehr & Peers to prepare a new East Contra Costa Regional Fee Program Update that would add the Sand Creek Road Extension Project (from SR4 to Deer Valley Road) ("SCR extension") into the ECCRFFA Fee Program. As further described in the Fehr & Peers September 2020 Draft East Contra Costa Regional Fee Program Update ("2020 Program Update"), the purposes of the SCR extension include the following: 1) allowing access to the proposed new development areas adjacent to the new roadway; 2) improving east-west connectivity through this part of the East County sub region; and 3) accommodating some of the travel demand that would otherwise use Lone Tree Way and Balfour Road. The purposes of the SCR extension are consistent with the purposes of other regional transportation projects already included in the ECCRFFA Fee Program. For these reasons, the SCR extension is a regional transportation project that is appropriate for incorporation into the ECCRFFA Fee Program.

6. The 2020 Program Update was prepared to determine the amount of the fees necessary to fund new development's share of the estimated costs of the SCR extension, and to support nexus findings necessary to incorporate the SCR extension as a part of the ECCRFFA Fee Program to enable the regional share of the cost of the project to be funded with future RTDIM fees. As detailed in the 2020 Program Update, the regional share of the cost of the SCR extension is 31% of the overall project costs.

7. The 2020 Program Update proposes a fair and equitable method for allocating a portion of the costs of the SCR extension to new development within ECCRFFA's jurisdiction. The cost of the SCR extension in the 2020 Program Update has been developed by qualified professionals following standard practices. The total amount of revenue expected to be generated from RTDIM fees will not exceed the estimated cost of the SCR extension when combined with the other projects on the ECCRFFA project list attributable to new development within ECCRFFA's jurisdiction. ECCRFFA and its Member Agencies (Cities of Antioch and Brentwood) will rely on sources other than RTDIM fee revenue to pay SCR extension project costs not allocated to new development. The SCR extension is necessary and desirable within ECCRFFA's jurisdiction.

8. Pursuant to the Mitigation Fee Act, California Government Code Section 66000, et seq., a local agency is authorized to charge a fee to development applicants in connection with approval of a development project for the purpose of defraying all or a portion of the costs of public facilities related to the development project. Pursuant to Government Code section 66001, the Board of Directors finds:

A. As determined in the 2020 Program Update, one purpose of ECCRFFA RTDIM fees is to fund new development's share of the estimated costs of the SCR extension identified in the 2020 Program Update. The regional share is 31% of the SCR extension project cost.

B. As determined in the 2020 Program Update, there is a reasonable relationship between the use of revenue generated by the RTDIM fees and the type of new development projects on which those fees shall be imposed.

C. As determined in the 2020 Program Update, there is a reasonable relationship between the need for the SCR extension and the types of new development within ECCRFFA's jurisdiction on which RTDIM fees shall be imposed.

D. As determined in the 2020 Program Update, there is a reasonable relationship between the amount of the RTDIM fees imposed on each type of new development within ECCRFFA's jurisdiction, and the cost of the SCR extension to be funded from RTDIM fee revenue.

9. The purpose of the ECCRFFA Fee Program is to generate monies that will fund the projects on the ECCRFFA project list. The SCR extension will provide additional regional transportation capacity. By incorporating the SCR extension into the ECCRFFA Fee Program, RTDIM fee revenues may be used to pay the regional share of the project, including construction costs and support costs.

10. The addition of the SCR extension to the ECCRFFA Fee Program will increase the unfunded portion of ECCRFFA projects by only 1.6%. For these reasons, the addition of the SCR extension will not substantially increase the current funding shortfall.

11. The adoption of this resolution is statutorily exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 21080(b)(8) of the Public Resources Code and Section 15273(a)(4) of the CEQA Guidelines because the collection of RTDIM fees to fund the SCR extension and other ECCRFFA project is necessary to maintain an acceptable level of service within ECCRFFA's jurisdiction. Once sufficient funds are collected, and prior to approval of the final alignment and configuration of the SCR extension, ECCRFFA or the City of Antioch must comply with CEQA. Nothing in this resolution compels ECCRFFA or the City of Antioch to make any future discretionary decision with respect to the SCR extension.

NOW, THEREFORE, the Board of Directors of the East Contra Costa Regional Fee and Financing Authority resolves as follows:

1. The Board of Directors APPROVES the Fehr & Peers September 2020 Draft East Contra Costa Regional Fee Program Update (Attachment A) that adds the SCR extension into the East Contra Costa Regional Fee and Financing Authority Fee Program. The regional portion of the SCR extension can be funded from RTDIM fees following the approval of an amendment to the Agreement to add the project to the ECCRFFA project list, and following Member Agencies' amendments of their fee ordinance or resolution.

2. The Board of Directors APPROVES the Fourth Amendment to the Joint Exercise of Powers Agreement for ECCRFFA (Attachment B) to add the SCR extension to the ECCRFFA project list.

3. The Board of Directors RECOMMENDS that each Member Agency consider and approve the Fourth Amendment, which will be effective upon the approval of all Member Agencies.

4. The Board of Directors APPROVES maintaining the RTDIM fee rates established in the 2005 East Contra Costa Regional Fee Program Update at their current levels, in conjunction with the 15% rebate that was extended through December 21, 2021, at the ECCRFFA Board Meeting on December 12, 2019, and any future fee rebates approved by the Board. The RTDIM fee rates established in 2005 will continue to be subject to an annual adjustment to reflect the percentage change in the ENR Construction Cost Index – San Francisco Bay area.

5. The Board of Directors RECOMMENDS that each Member Agency amend its ECCRFFA fee ordinance or resolution to incorporate the SCR extension as part of the ECCRFFA projects that will be funded with RTDIM fees, with no change to the RTDIM Fees.

PASSED AND ADOPTED at a regular meeting of the Board of Directors held October 8, 2020, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Attest: _____
Chair

Secretary/Designee

ATTACHMENT A

September 2020 Draft East Contra Costa Regional Fee Program Update

Final Draft Report

East Contra Costa Regional Fee Program Update

Prepared for:

East Contra Costa Regional Fee &
Financing Authority

September 2020

1001-1655.02

FEHR  PEERS

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Appendix A: SCR Extension Project Costs

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1. Introduction

Background

The East Contra Costa Regional Fee and Financing Authority (ECCRFFA or the Authority) is a regional planning agency charged with funding regional transportation improvement projects in eastern Contra Costa County with revenue from the Authority's regional transportation demand impact mitigation (RTDIM) fees. The Authority's jurisdiction includes the eastern portion of the County, including unincorporated areas and the Cities of Antioch, Brentwood, Oakley, and Pittsburg. The Authority's boundaries are shown in **Figure 1**.

The Authority first implemented a transportation development impact fee program in 1994. The fee was calculated to reflect new development's proportional share of the cost of various regional transportation improvements, such as the State Route (SR) 4 Bypass and the widening of SR 4 through Pittsburg and Antioch. The Authority conducted an update of the fee program in 2001 to help fund an expanded list of regional transportation improvements. In the summer of 2005, the Authority completed a comprehensive update of its RTDIM fee program. In June 2005, the ECCRFFA Board approved the *East Contra Costa Regional Fee Program Update Final Report* (the "2005 Report") prepared by Fehr & Peers, and each of the five member jurisdictions adopted an updated set of fees pursuant to that report.

Since that time, the fees have been adjusted annually to reflect changes in construction costs. Beginning in 2008-2009, a fee rebate program was established in response to the economic downturn. The fee rebate has been reduced over time, but the Authority has continued to implement a 15% fee rebate since January 1, 2017. Periodic program assessments have been completed and documented over the past several years to evaluate the progress of the program in funding and delivering projects on the project list.

Purpose

Recently, there has been interest in expanding the ECCRFFA fee program to include a project that would involve the extension of Sand Creek Road westward, from its current terminus near SR 4, to a new intersection with Deer Valley Road in Antioch (the "SCR extension"). At its December 13, 2018 meeting, the ECCRFFA Board of Directors directed that a focused nexus study be conducted to evaluate the addition of the SCR extension to the fee program. The purpose of this report is to evaluate the addition of the SCR extension to the ECCRFFA project list, and to determine new development's proportional share of the cost of that project should it be added to the fee program.

Study Area

As shown on **Figure 1**, ECCRFFA's jurisdiction area includes certain unincorporated areas of eastern Contra Costa County, as well as the Cities of Antioch, Brentwood, Oakley, and Pittsburg.



Study Process

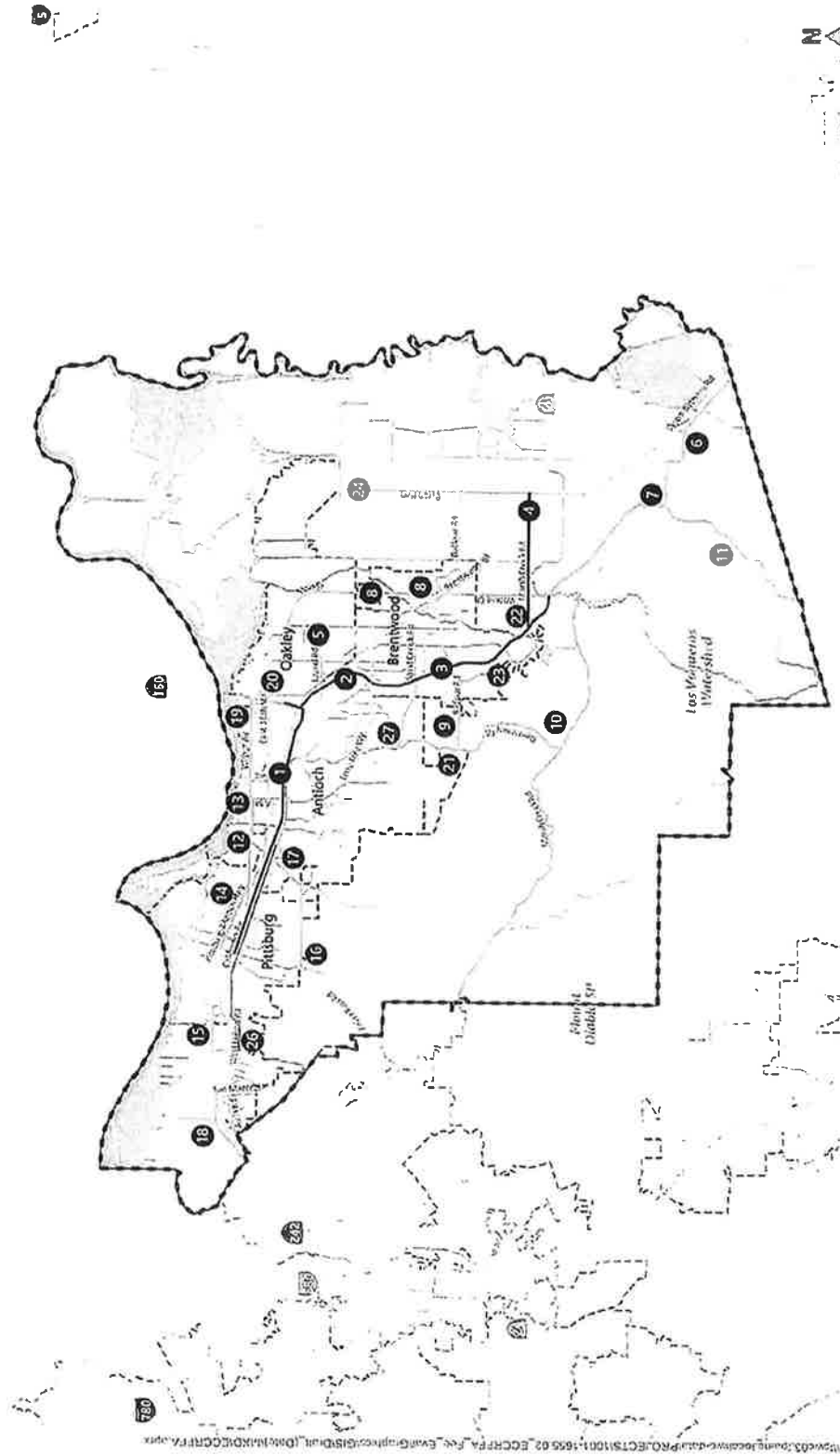
This study was developed under the direction of ECCRFFA staff and with input from staff from each of the member agencies. Because this is a focused nexus study, it follows the same technical methods and procedures as were used in the 2005 Report. The intent is to maintain the existing structure of the ECCRFFA program; therefore, the 2005 Report remains the best source of detailed information about the nexus analysis for the existing program. The focus of this current analysis is to determine new development's proportional share of the cost of the SCR extension should it be added to the fee program, as well as to incorporate updated cost information regarding all of the projects on the current ECCRFFA project list (i.e., the projects evaluated in the 2005 Report).

Organization of the Report

After this introductory section, the report contains three additional sections:

- *Section 2 – Program Information and Project List* describes the background of the fee program, the current fee amounts, and the list of projects included in the program.
- *Section 3 – Growth Projections* documents the amount of growth anticipated in East County over the next twenty years that would be subject to the fee.
- *Section 4 – Nexus Analysis and Fee Calculations* describes the results of the nexus analysis for the Sand Creek Road extension project and calculates the fee amounts using the updated information presented in the report.





Note: The East County Express Bus Project 26 is not mapped as its location is not defined.

Figure 1
ECCRFFA Area and Projects

2. Program Information and Project List

The existing ECCRFFA program authorizes ECCRFFA's member agencies to charge RTDIM fees on new development within ECCRFFA's jurisdiction. The current schedule of ECCRFFA RTDIM fees is shown in **Table 1**.

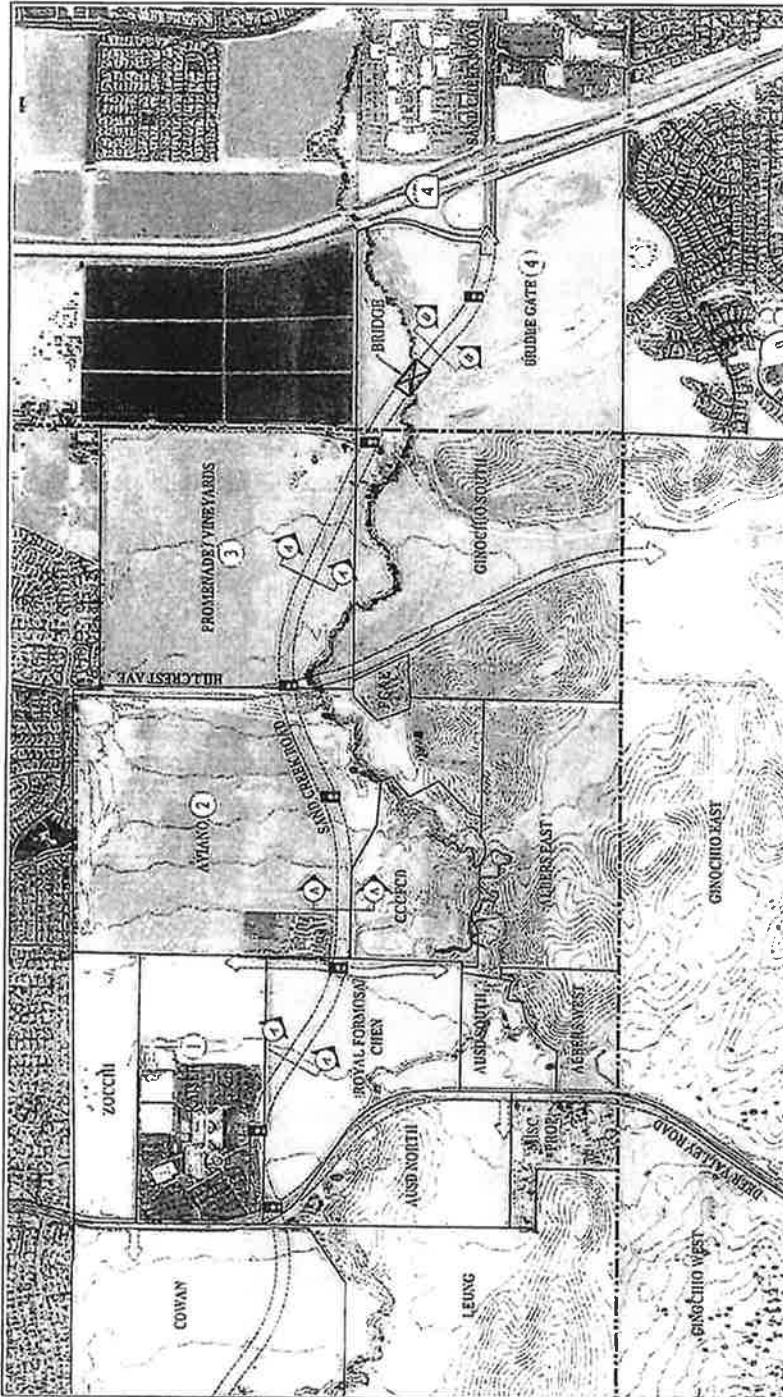
The existing ECCRFFA program generates RTDIM fee revenue that can be used to fund new development's proportional share of any of the 26 transportation improvement projects listed in the 2005 Report. Those projects include freeway and regional transit improvements as well as projects along major arterial roadways that connect different parts of the East County region. The proposed SCR extension has been temporarily added as project #27 for the purposes of this study. See Figure 1 for a map of the project locations, and **Table 2** contains a description of each project along with its current status and estimated cost.

For those projects that have been completed, the cost shown on Table 2 reflects the actual cost. For projects yet to be completed, the cost estimate from the 2005 Report has been indexed to current dollars by applying an annual construction cost index, consistent with the process used to index the ECCRFFA fee amounts each year. In a few cases, the project sponsors were able to provide a more recent cost estimate, which was then incorporated into Table 2. This was the case for project #16 (the James Donlon Boulevard extension) and proposed project #27 (the SCR extension).

The SCR extension project involves the extension of Sand Creek Road as a four-lane, east-west arterial from its current terminus at SR 4 in Brentwood westward to intersect with Deer Valley Road in Antioch. See **Figure 2** for an exhibit showing the conceptual alignment of the SCR extension. The SCR extension would provide access to several areas proposed for development, including the developments known as Bridle Gate in Brentwood, and Promenade and Aviano in Antioch. Near its western end, the SCR extension would connect to Deer Valley Road, near the existing Dozier-Libbey Medical High School and the Kaiser Permanente Medical Center.

The SCR extension will serve multiple purposes. Major functions of the road would include: 1) allowing access to the proposed new development areas described previously; and 2) filling a transportation gap in east-west connectivity between Antioch and Brentwood to serve the anticipated growth in regional travel without overburdening the existing parallel routes of Balfour Road and Lone Tree Way. The SCR extension would also allow more direct and efficient access to the Kaiser Medical Center and the Dozier-Libbey High School from Brentwood and points east. As described further in Section 4, the portion of the SCR extension project cost that is proposed to be included in the ECCRFFA program has been calculated to account for new development's proportional share of the cost of the project.





SAND CREEK ROAD REGIONAL ROADWAY COST SUMMARY

REGION	SECTION	APPROXIMATE LENGTH (FT)	EST. COST (\$)	EST. COST (\$/FT)
1	SECTION 1	1,000	1,000,000	1,000
2	SECTION 2	1,000	1,000,000	1,000
3	SECTION 3	1,000	1,000,000	1,000
4	SECTION 4	1,000	1,000,000	1,000
5	SECTION 5	1,000	1,000,000	1,000
6	SECTION 6	1,000	1,000,000	1,000
7	SECTION 7	1,000	1,000,000	1,000
8	SECTION 8	1,000	1,000,000	1,000
9	SECTION 9	1,000	1,000,000	1,000
10	SECTION 10	1,000	1,000,000	1,000
11	SECTION 11	1,000	1,000,000	1,000
12	SECTION 12	1,000	1,000,000	1,000
13	SECTION 13	1,000	1,000,000	1,000
14	SECTION 14	1,000	1,000,000	1,000
15	SECTION 15	1,000	1,000,000	1,000
16	SECTION 16	1,000	1,000,000	1,000
17	SECTION 17	1,000	1,000,000	1,000
18	SECTION 18	1,000	1,000,000	1,000
19	SECTION 19	1,000	1,000,000	1,000
20	SECTION 20	1,000	1,000,000	1,000
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22	SECTION 22	1,000	1,000,000	1,000
23	SECTION 23	1,000	1,000,000	1,000
24	SECTION 24	1,000	1,000,000	1,000
25	SECTION 25	1,000	1,000,000	1,000
26	SECTION 26	1,000	1,000,000	1,000
27	SECTION 27	1,000	1,000,000	1,000
28	SECTION 28	1,000	1,000,000	1,000
29	SECTION 29	1,000	1,000,000	1,000
30	SECTION 30	1,000	1,000,000	1,000
31	SECTION 31	1,000	1,000,000	1,000
32	SECTION 32	1,000	1,000,000	1,000
33	SECTION 33	1,000	1,000,000	1,000
34	SECTION 34	1,000	1,000,000	1,000
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40	SECTION 40	1,000	1,000,000	1,000
41	SECTION 41	1,000	1,000,000	1,000
42	SECTION 42	1,000	1,000,000	1,000
43	SECTION 43	1,000	1,000,000	1,000
44	SECTION 44	1,000	1,000,000	1,000
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68	SECTION 68	1,000	1,000,000	1,000
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70	SECTION 70	1,000	1,000,000	1,000
71	SECTION 71	1,000	1,000,000	1,000
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96	SECTION 96	1,000	1,000,000	1,000
97	SECTION 97	1,000	1,000,000	1,000
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99	SECTION 99	1,000	1,000,000	1,000
100	SECTION 100	1,000	1,000,000	1,000

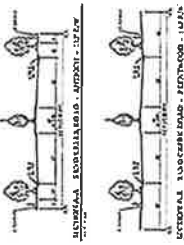
LEGEND

--- CITY LIMITS ---

--- REGIONAL ROADWAY ---

--- LOCAL ROADWAY ---

--- UNPAVED ROAD ---



PRELIMINARY
REGIONAL TRANSPORTATION
ROUTING EXHIBIT
SAND CREEK ROAD



NOTE: 1. DISTANCE TO BE CONSIDERED 100 FEET

Table 1: Current ECCRFFA Fees (as of January 2020)

Land Use Category	Unit	Fee per Unit	ECCRFFA Fee Rebate	Fee Less ECCRFFA Fee Rebate
Single-Family	DU	\$22,920	15%	\$19,482
Multi-Family	DU	\$14,070	15%	\$11,960
Commercial	Sq. Ft.	\$1.90		\$1.90
Office	Sq. Ft.	\$1.66		\$1.66
Industrial	Sq. Ft.	\$1.66		\$1.66
Other	Peak Hour Trip	\$22,920		\$22,920

Notes: DU = Dwelling Unit. For projects that do not fit in one of the general land use categories above, the fee is assessed on the basis of the number of peak hour vehicle trips estimated to be generated by that project.
Source: Contra Costa County.

Table 2: ECCRFFA Project List

Number	Project	Description/ Project Limits	Sponsor	Total Cost (\$ Million)	Status
Freeway Improvements					
1	SR 4 Freeway widening	Railroad Avenue to Loveridge Road, widen to 8 lanes	CCTA	\$ 101.0	Completed
		Loveridge interchange	CCTA	\$ 157.8	Completed
		Loveridge to Bypass (8 lanes to Hillcrest, 6 lanes to Bypass)	CCTA	\$ 374.7	Completed
		Hillcrest interchange expansion	CCTA	\$ 10.0	Completed
2	SR 4 Bypass Segment 1	Phase 1, 6 lanes to Laurel, interchanges at Laurel Rd and Lone Tree	Bypass Authority	\$ 113.7	Completed
		Phase 2, SR 160 interchange	Bypass Authority	\$ 50.1	Completed
		Laurel interchange, phase 2	Bypass Authority	\$ 1.0	Completed
3	SR 4 Bypass Segment 2	Phase 1, 2 lanes	Bypass Authority	\$ 33.3	Completed
		Phase 2, 4 lanes, Sand Creek Road to Balfour Road	Bypass Authority	\$ 16.0	Completed
		Widen to 6 lanes, Laurel Road to Sand Creek Road	Bypass Authority	\$ 29.0	
		Sand Creek interchange and 4 lanes, Laurel to Sand Creek	Bypass Authority	\$ 43.8	Completed
4	SR 4 Bypass Segment 3	Balfour to Marsh Creek (2 lanes) plus Marsh Creek east-west connector	Bypass Authority	\$ 77.8	Completed



Table 2: ECCRFFA Project List

Number	Project	Description/ Project Limits	Sponsor	Total Cost (\$ Million)	Status
		Marsh Creek to Vasco, 2 lanes	Bypass Authority	\$ 12.6	Completed
		Segment 3, widen to 4 lanes	Bypass Authority	\$ 58.9	
		Balfour interchange	Bypass Authority	\$ 58.0	Completed
		Marsh Creek interchange	Bypass Authority	\$ 37.2	
		Vasco Interchange	Bypass Authority	\$ 31.0	
Arterial Improvements					
5	Laurel Road extension	SR4 Bypass to Empire, 6 lanes	Bypass Authority	\$ 22.6	Completed
6	SR 239/84 Connector	Armstrong Road extension, 2 lanes (formerly Byron Airport Road)	County	\$ 9.5	
7	SR 239	Corridor study and preliminary design (no construction costs)	County	\$ 15.5	Study completed
8	SR 4 (Main St or Brentwood Blvd) widening	Vintage Pkwy in Oakley to Marsh Creek bridge in Brentwood and from Chestnut Street to Balfour Road in south Brentwood, 4 lanes	Oakley, Brentwood	\$ 48.0	Partially completed
9	Balfour Road widening	Deer Valley to Brentwood city limits, widen to 4 lanes	County	\$ 10.5	
10	Marsh Creek Road/Deer Valley Road Safety Enhancements	Marsh Creek: Walnut Boulevard to Clayton City Limits; Deer Valley: Balfour Road to Marsh Creek Road	County	\$ 22.0	
11	Route 84/Vasco Road	Widen to 4 lanes to County line	County	\$ 323.8	
12	Pittsburg-Antioch Highway	Widen to 4 lanes, Auto Center Drive to Loveridge	Antioch, Pittsburg	\$ 17.0	
13	Ninth and Tenth Streets	Couplet improvements, A St to L St	Antioch	\$ 7.0	
14	California Avenue	Widen to 4 lanes, Railroad to Loveridge	Pittsburg	\$ 25.9	
15	Willow Pass Road	Widen to 4 lanes, Range to Loftus and Bailey to city limits	Pittsburg, County	\$ 10.7	
16	James Donlon Blvd Extension (formerly Buchanan Bypass)	New 2- to 4-lane arterial, Somersville to Kirker Pass Road	Pittsburg	\$ 105.8	Design in progress
17	West Tregallas/Fitzuren	Widen to 4 lanes, Lone Tree to Buchanan	Antioch	\$ 38.7	
	West Leland Road	Extend, San Marco to Avila Road	Pittsburg		
18	or Evora Road	Willow Pass Rd (BP) to Willow Pass Rd (Concord), widen to 4 lanes	County	\$ 18.0	
19	Wilbur Avenue	Widen to 4 lanes, Minaker Drive to SR 160	Antioch, County	\$ 31.0	



Table 2: ECCRFFA Project List

Number	Project	Description/ Project Limits	Sponsor	Total Cost (\$ Million)	Status
20	Neroly Road	Widen to 4 lanes, Oakley Rd to Laurel Rd	Oakley	\$ 7.7	
21	Deer Valley Road	Widen to 4 lanes, Antioch city limits to Balfour Road	County	\$ 13.9	
22	Walnut Boulevard	Widen to 4 lanes, Brentwood city limits to SR 4 Bypass	County	\$ 18.6	
23	John Muir Parkway	New Roadway between Balfour Road and Fairview Avenue	Brentwood	\$ 17.7	Design in progress
24	Byron Highway	Safety Improvements between Delta Road and SR 4	County	\$ 5.6	
27	Sand Creek Road	Extension of 4-lane roadway between SR 4 and Deer Valley Road	Antioch	\$ 34.9	
Regional Transit Projects					
25	East County Express Bus		Tri-Delta Transit	\$ 8.3	
26	Commuter Rail		CCTA	\$ 513.0	Completed
TOTAL				\$2,531.5	

Note: Project #27, the Sand Creek Road Extension, is not currently part of the ECCRFFA program. As explained above, the SCR extension is being considered for incorporation into the program.
 Source: ECCRFFA.



3. Growth Projections

An important element of every fee calculation is the estimate of future growth in the fee area. As part of this update, the current land use files available from the Contra Costa Transportation Authority (CCTA) travel demand model were reviewed. These files contain projections of the amount of residential and employment growth that is anticipated to occur in East County. CCTA has just completed an update of the travel model and has developed a new set of land use files that reflect the totals from the Association of Bay Area Governments (ABAG) Projections 2017 publication, which is the most current set of regional growth projections available.

The first step in the process was to identify which of the model's traffic analysis zones (TAZs) are within ECCRFFA's jurisdiction. The ECCRFFA jurisdictional boundary was available as a GIS file, and was overlaid with the CCTA TAZ structure to identify the TAZs that are located within ECCRFFA's jurisdiction. For those TAZs that are only partially within ECCRFFA's jurisdiction, the TAZ was included in the calculation only if more than 50% of the TAZ land area was within ECCRFFA's jurisdiction.

The next step was to tabulate the total amount of households and employment in the ECCRFFA TAZs, as shown in **Table 3**. The year 2020 is used as the baseline and the year 2040 is the horizon year. The employment categories shown are those that have historically been used in prior nexus studies for the ECCRFFA program, and are used here for consistency with the existing fee program.

Table 3: Projected Land Use in East County

Jurisdiction	Year 2020 ¹					Year 2040				
	Employment			Residential Units		Employment			Residential Units	
	Service	Retail	Other	Single Family	Multi-family	Service	Retail	Other	Single Family	Multi-family
Antioch	6,055	7,819	8,105	27,956	7,326	7,587	9,923	10,280	31,808	10,425
Brentwood	2,160	2,883	3,134	15,565	1,880	2,901	3,321	3,833	20,037	2,555
Oakley	1,121	1,355	1,918	10,411	2,002	1,944	1,762	2,494	13,411	3,836
Pittsburg	4,232	4,472	7,463	14,573	7,039	5,952	5,660	8,129	18,953	11,557
Unincorporated East County	1,327	3,051	5,514	15,827	3,456	2,798	3,643	4,815	18,657	4,685
Total East County	14,895	19,580	26,134	84,332	21,703	21,182	24,309	29,551	102,866	33,058

Relationship between land use categories in the model and the fee program were assumed to be: Retail=Commercial; Service=Office; and Other=Industrial, Manufacturing, Agriculture and other land use categories included in the CCTA model.

1. 2020 land use was derived by a linear interpolation between the 2010 and 2040 land use data provided by CCTA in March 2019.

Source: ECCRFFA, CCTA, Fehr & Peers.



Dwelling Unit Equivalent Factors

It is common in many fee programs to convert the projected growth into a standard unit of measurement called the dwelling unit equivalent (DUE), in order to account for the fact that different types of development have different travel characteristics. The factors used to convert the future land use numbers into DUEs are shown in **Table 4**. These factors have been developed following the same structure established in the 2005 Report; the values in each column have been updated to reflect the most current data available. These DUE conversion factors involve the following elements: land use-specific PM peak hour trip rates from *ITE Trip Generation*, 10th Edition; estimates of the percent new trips from SANDAG *Brief Guide of Vehicular Traffic Generation Rates* (2002); and average trip lengths from the 2012 California Household Travel Survey for census tracts within ECCRFFA's jurisdiction.

Table 4: DUE Conversion Factors

Land Use Category	Unit	PM Peak Trip Rate ¹	% New Trips ²	Average Trip Length (miles) ³	PM Peak New Trip Length per Unit ⁴	DUE per Unit ⁵
Housing						
Single Family ^a	Dwelling Unit	0.99	100	9.0	8.9	1.00
Multi-Family ^b	Dwelling Unit	0.56	100	7.5	4.2	0.47
Employment						
Commercial ^c	1,000 square feet	3.81	45	5.0	8.6	0.96
Office ^d	1,000 square feet	1.15	75	14.0	12.1	1.36
Industrial ^e	1,000 square feet	0.63	80	14.0	7.1	0.79

- The average PM peak hour (between 4 and 6 PM) trip rate was taken from the *ITE Trip Generation Manual*, 10th Edition, for the following land use codes:
 - Single Family Detached - Code 210
 - Multifamily Housing (Low Rise) - Code 220
 - Shopping Center - Code 820
 - General Office - Code 710
 - General Light Industrial - Code 110
- Taken from the SANDAG Brief Guide of Vehicular Traffic Generation Rates, April 2002.
- Average trip lengths for the East County area as derived from 2012 California Household Travel Survey Data. For single family and multifamily housing, used travel survey data for all home-based trip purposes. For commercial uses, used data for home-based shopping purpose. For office and industrial uses, used data for all work-related trips.
- Calculated as: PM Peak Trip Rate * % New Trips * Average Trip Length.
- DUE per Unit is calculated by normalizing the PM Peak New Trip Length for each category such that the single-family residential category is assigned a DUE of 1.00. This is accomplished by dividing the PM Peak New Trip Length for each category by the PM Peak New Trip Length of the single-family residential category. So, for example, the DUE per Unit for the Multi-family category is calculated as 4.2 / 8.9 = 0.47.

Source: ECCRFFA, Fehr & Peers.



Projected Growth in East County

Forecasted growth in East Contra Costa County is shown in **Table 5** in absolute numbers of new jobs and residential units, and then those numbers are converted to DUEs. The total number of new DUEs projected in the 20 years from 2020 to 2040 is 29,808. As a point of comparison, in the 2005 Report the amount of growth projected over the 20-year period from 2005 to 2025 was approximately 42,000 DUEs. This result is an indication that the East County area is moving closer to a build-out condition, as the amount of future growth begins to moderate.

Table 5: Forecasted Growth in East Contra Costa County (2020 to 2040)

Jurisdiction	Estimated Growth (2020 to 2040)					Estimated Growth in DUEs (2020 to 2040)					Total DUEs
	Employment			Residential Units		Employment DUEs			Residential DUEs		
	Service	Retail	Other	Single Family	Multi-family ⁴	Office ¹	Commercial ²	Industrial ³	Single Family	Multi-family ⁴	
Antioch	1,532	2,104	2,175	3,852	3,099	571	1,012	689	3,852	1,461	7,585
Brentwood	741	438	699	4,472	675	276	211	221	4,472	318	5,498
Oakley	823	407	576	3,000	1,834	307	196	182	3,000	865	4,549
Pittsburg	1,720	1,188	666	4,380	4,518	641	572	211	4,380	2,130	7,933
Unincorporated East County	1,471	592	0	2,830	1,229	548	285	0	2,830	579	4,242
Total East County	6,287	4,729	4,116	18,534	11,355	2,343	2,275	1,304	18,534	5,353	29,808

Relationship between land use categories in the model and the fee program were assumed to be: Retail=Commercial; Service=Office; and

Other=Industrial, Manufacturing, Agriculture and other land use categories included in the CCTA model.

1. Office DUE conversion assumes 275 square feet per employee and a DUE per thousand square feet of 1.36. $DUE = EMP * 0.275 * 1.36$
2. Commercial DUE conversion assumes 500 square feet per employee and a DUE per thousand square feet of 0.96. $DUE = EMP * 0.500 * 0.96$
3. Industrial DUE conversion assumes 400 square feet per employee and a DUE per thousand square feet of 0.79. $DUE = EMP * 0.400 * 0.79$
4. The multifamily units were multiplied by a DUE of 0.47.

Source: ECCRFPA, Fehr & Peers.



4. Nexus Analysis and Fee Calculations

Existing Deficiencies

One of the key functions of a fee program is to charge fees to new development in order to fund new development's proportional share of transportation improvements needed to serve the demand and impacts generated by that new development. The purpose of an impact fee is not to correct existing deficiencies, which should be funded through other revenue sources. Therefore, it is necessary to determine whether there are existing deficiencies in the roadway network that may be related to or affected by the SCR extension.

Because the SCR extension would be a new east-west roadway that does not currently exist, the determination of existing deficiencies is done by addressing whether the existing roadways that currently serve east-west travel in this general vicinity are already experiencing deficient operations. The following intersections, which are parallel to, and roughly the same east-west extent as, the proposed SCR extension, were chosen for analysis:

- Lone Tree Way/Canada Valley Road
- Lone Tree Way/Hillcrest Avenue
- Lone Tree Way/Deer Valley Road
- Balfour Road/Cortona Way
- Balfour Road/Foothill Drive
- Balfour Road/Deer Valley Road

AM and PM peak period traffic counts were collected on a typical weekday with good weather conditions and when school was in session. The count data was used to calculate the peak hour Level of Service (LOS) at each study intersection. These results were compared to the applicable LOS standard for those facilities in order to identify existing deficiencies.

The City of Brentwood requires that "intersection levels of service should be maintained at LOS D or better" for Signalized Suburban Arterial Routes (City of Brentwood General Plan, July 2014). Similarly, the City of Antioch's requirement for signalized intersections is that they be maintained at LOS D (City of Antioch General Plan, 2003).

The results of the LOS analysis performed at each study intersection are presented in **Table 6**. The analysis identified one deficiency, at the intersection of Balfour Road and Cortona Way in Brentwood. During the PM peak hour, the results of the analysis indicate LOS E at that intersection with a total average delay of



78 seconds. The threshold for LOS D operations at a signalized intersection is 55 seconds of delay (Highway Capacity Manual, 2010).

The analysis indicated that the southbound approach at the Balfour Road/Cortona Way intersection has the highest reported delay, and reducing the volume of the southbound left-turn movement would have the greatest effect on level of service. To achieve LOS D, a reduction of southbound left-turning volume, from 176 vehicles to 123 vehicles, would be required. However, it should be noted that the southbound left-turn movement at this intersection is largely unrelated to the SCR extension. Cortona Way is a short north-south street that serves several commercial businesses, an assisted living facility, and a relatively small number of residences. The vehicles that are turning left from southbound Cortona Way onto Balfour Road in the PM peak hour will be heading either onto SR 4 or further eastward into southern Brentwood. These travel patterns would not be served or affected by the SCR extension. Therefore, while this intersection currently operates at a deficient level of service, the particular travel patterns involved lead to the conclusion that the Balfour Road/Cortona Way intersection does not represent an existing deficiency that would affect the nexus determination for the SCR extension.

Table 6: Existing Intersection Level of Service (LOS)

Intersection	Control Type ¹	Peak Hour ²	Delay ³	LOS ⁴
1 Lone Tree Way/Canada Valley Road	Signalized	AM PM	17.9 28.2	B C
2 Lone Tree Way/Hillcrest Avenue	Signalized	AM PM	19.5 21.6	B C
3 Lone Tree Way/Deer Valley Road	Signalized	AM PM	27.3 24.8	C C
4 Balfour Road/Cortona Way	Signalized	AM PM	43.9 78.0	D E
5 Balfour Road/Foothill Drive	Signalized	AM PM	48.9 32.3	D C
6 Balfour Road/Deer Valley Road	Side-Street Stop-Controlled	AM PM	13.8 (21.7) 9.9 (13.8)	B (C) A (B)

Notes:

- Existing intersection traffic control type
- AM = Weekday morning peak hour, PM = Weekday evening peak hour
- Whole intersection average delay reported for signalized intersections. Side-street stop-controlled delay presented as Whole Intersection Average Delay (Worst Movement Delay). Delay calculated per HCM 2010 methodologies.
- LOS designation per HCM 2010.

Bold indicates a LOS result lower than the relevant standard.

Source: Fehr & Peers, March 2019.

Proportional Cost Allocation

As described previously, the purpose of this study is to evaluate the incorporation of the proposed SCR extension into the ECCRFFA fee program. As such, the focus here is on defining the proportion of the SCR



extension project cost that could be included in the fee program. No changes are being made to the cost proportions included in the fee for all of the other projects that are already part of the ECCRFFA fee program. **Table 7** includes the total cost of each project, as well as the portion of that cost that is considered part of the ECCRFFA fee program.

Per the above discussion, there are no current existing deficiencies that would affect the determination about what proportion of the SCR extension cost should be included in the ECCRFFA fee program. If a facility is not subject to an existing deficiency, then the need for the improvement can be presumed to be generated by new development. As described in Section 2 of this report, the SCR extension is designed to serve multiple purposes, including access to the proposed new development areas in southern Antioch, and serving the anticipated increase in regional travel demand without overburdening the parallel routes. The extension would also provide a more direct connection to the existing Kaiser Medical Center and Dozier-Libbey High School.

The SCR extension would fill a gap in east-west connectivity between Balfour Road and Lone Tree Way. Balfour Road is approximately one mile south of the SCR extension while Lone Tree Way is about one mile north, and both are projected to serve relatively high levels of traffic demand in the future. For example, the transportation impact analysis recently completed for the project known as The Ranch, which would be located just west of the future SCR/Deer Valley Road intersection, assumed that the SCR extension would be constructed; even with that assumption, that study identified several future LOS issues at major intersections along both Lone Tree Way and Balfour Road. If the SCR extension were not constructed, traffic volumes and the associated LOS results along those roadways are expected to be even higher than were analyzed in The Ranch study. This is an indication that the SCR extension is needed to accommodate future demand for travel in the area around southern Antioch and Brentwood.

When a new roadway will serve both local access and regional travel needs, it is common practice to divide the responsibility for constructing the facility between local and regional entities. As described above, the need for the SCR extension is due entirely to the demands of new growth and is not related to an existing deficiency. The project designers have developed a detailed cost estimate for the SCR extension and have determined how each cost element reflects the road's purpose. The regional portion will include the center median and one lane of travel on either side of the median, while the local portion will include all other cost elements (e.g., outside lanes, retaining walls, landscaping, most of the cost of grading and utilities). The logic is that a two-lane road would be necessary in order to provide local access to the new development areas, so only the cost elements required to expand the road's capacity to four lanes should be considered a regional responsibility. A detailed breakdown of the SCR extension's costs is attached as **Appendix A**. As shown, the division between local and regional responsibility is approximately a 70%/30% split: the total project cost is estimated to be \$34.9 million, of which approximately \$24.1 million would be the responsibility of the local developers, while approximately \$10.8 million is the regional share that will be included in the ECCRFFA program.



Table 7: Projects and Fee Contribution Amounts

Number	Project	Description/Project Limits	Sponsor	Total Cost (\$ million)	Fee Contribution (\$ million)
Freeway Improvements					
1	SR 4 Freeway widening	Railroad Avenue to Loveridge Road, widen to 8 lanes	CCTA	\$ 101.0	\$ 2.0
		Loveridge interchange	CCTA	\$ 157.8	
		Loveridge to Bypass (8 lanes to Hillcrest, 6 lanes to Bypass)	CCTA	\$ 374.7	
		Hillcrest interchange expansion	CCTA	\$ 10.0	
2	SR 4 Bypass Segment 1	Phase 1, 6 lanes to Laurel, interchanges at Laurel Rd and Lone Tree	Bypass Authority	\$ 113.7	\$ 88.7
		Phase 2, SR 160 interchange	Bypass Authority	\$ 50.1	\$ 0.2
		Laurel interchange, phase 2	Bypass Authority	\$ 1.0	\$ 1.0
3	SR 4 Bypass Segment 2	Phase 1, 2 lanes	Bypass Authority	\$ 33.3	\$ 33.3
		Phase 2, 4 lanes, Sand Creek Road to Balfour Road	Bypass Authority	\$ 16.0	
		Widen to 6 lanes, Laurel Road to Sand Creek Road	Bypass Authority	\$ 29.0	\$ 4.0
		Sand Creek interchange and 4 lanes, Laurel to Sand Creek	Bypass Authority	\$ 43.8	\$ 5.8
4	SR 4 Bypass Segment 3	Balfour to Marsh Creek (2 lanes) plus Marsh Creek east-west connector	Bypass Authority	\$ 77.8	\$ 77.8
		Marsh Creek to Vasco, 2 lanes	Bypass Authority	\$ 12.6	\$ 12.6
		Segment 3, widen to 4 lanes	Bypass Authority	\$ 58.9	\$ 58.9
		Balfour interchange	Bypass Authority	\$ 58.0	\$ 28.0
		Marsh Creek interchange	Bypass Authority	\$ 37.2	\$ 37.2
		Vasco interchange	Bypass Authority	\$ 31.0	\$ 31.0
Arterial Improvements					
5	Laurel Road extension	SR4 Bypass to Empire, 6 lanes	Bypass Authority	\$ 22.6	\$ 22.6



Table 7: Projects and Fee Contribution Amounts

Number	Project	Description/Project Limits	Sponsor	Total Cost (\$ million)	Fee Contribution (\$ million)
6	SR 239/84 Connector	Armstrong Road extension, 2 lanes (formerly Byron Airport Road)	County	\$ 9.5	\$ 9.5
7	SR 239	Corridor study and preliminary design (no construction costs)	County	\$ 15.5	\$ 15.5
8	SR 4 (Main St or Brentwood Blvd) widening	Vintage Pkwy in Oakley to Marsh Creek bridge in Brentwood and from Chestnut Street to Balfour Road in south Brentwood, 4 lanes	Oakley, Brentwood	\$ 48.0	\$ 48.0
9	Balfour Road widening	Deer Valley to Brentwood city limits, widen to 4 lanes	County	\$ 10.5	\$ 10.5
10	Marsh Creek Road/Deer Valley Road Safety Enhancements	Marsh Creek: Walnut Boulevard to Clayton City Limits; Deer Valley: Balfour Road to Marsh Creek Road	County	\$ 22.0	\$ 7.3
11	Route 84/Vasco Road	Widen to 4 lanes to County line	County	\$ 323.8	\$ 323.8
12	Pittsburg-Antioch Highway	Widen to 4 lanes, Auto Center Drive to Loveridge	Antioch, Pittsburg	\$ 17.0	\$ 17.0
13	Ninth and Tenth Streets	Couplet improvements, A St to L St	Antioch	\$ 7.0	\$ 7.0
14	California Avenue	Widen to 4 lanes, Railroad to Loveridge	Pittsburg	\$ 25.9	\$ 25.9
15	Willow Pass Road	Widen to 4 lanes, Range to Loftus and Bailey to city limits	Pittsburg, County	\$ 10.7	\$ 10.7
16	James Donlon Blvd Extension (formerly Buchanan Bypass)	New 2- to 4-lane arterial, Somersville to Kirker Pass Road	Pittsburg	\$ 105.8	\$ 72.0
17	West Tregallas/Fitzuren	Widen to 4 lanes, Lone Tree to Buchanan	Antioch	\$ 38.7	\$ 38.7
18	West Leland Road or Evora Road	Extend, San Marco to Avila Road Willow Pass Rd (BP) to Willow Pass Rd (Concord), widen to 4 lanes	Pittsburg County	\$ 18.0	\$ 18.0
19	Wilbur Avenue	Widen to 4 lanes, Minaker Drive to SR 160	Antioch, County	\$ 31.0	\$ 31.0
20	Neroly Road	Widen to 4 lanes, Oakley Rd to Laurel Rd	Oakley	\$ 7.7	\$ 7.7
21	Deer Valley Road	Widen to 4 lanes, Antioch city limits to Balfour Road	County	\$ 13.9	\$ 13.9
22	Walnut Boulevard	Widen to 4 lanes, Brentwood city limits to SR 4 Bypass	County	\$ 18.6	\$ 18.6
23	John Muir Parkway	New Roadway between Balfour Road and Fairview Avenue	Brentwood	\$ 17.7	\$ 3.6



Table 7: Projects and Fee Contribution Amounts

Number	Project	Description/Project Limits	Sponsor	Total Cost (\$ million)	Fee Contribution (\$ million)
24	Byron Highway	Safety Improvements between Delta Road and SR 4	County	\$ 5.6	\$ 1.9
27	Sand Creek Road	Extension of 4-lane roadway between SR 4 and Deer Valley Road	Antioch	\$ 34.9	\$ 10.8
Regional Transit Projects					
25	East County Express Bus		Tri-Delta Transit	\$ 8.3	\$ 2.7
26	Commuter Rail		CCTA	\$ 513.0	\$ 38.0
TOTAL				\$2,531.5	\$1,135.1

Note: Project #27, the Sand Creek Road Extension, is not currently part of the ECCRFFA program. As explained above, the SCR extension is being considered for incorporation into the program.

Fee Calculations

Table 8 displays the calculated maximum impact fees based on this nexus analysis. These fees have been calculated based on the complete list of projects as shown in Table 7. The total fee contribution toward all the projects shown in Table 7 (\$1,135.1 million) has been divided by the total number of future Dwelling Unit Equivalent (DUEs) expected in East County as shown in Table 5 (29,808 DUEs), to calculate the resulting maximum fee per DUE of \$38,080. These calculations represent new development's proportional share of the cost of projects on the project list, including the SCR extension, as determined by this study.

Table 8: New Maximum Fee Calculations

Land Use Category	New Maximum Fee
Single-Family Residential (dwelling unit)	\$38,080
Multi-Family Residential (dwelling unit)	\$17,950
Commercial (square foot)	\$36.64
Office (square foot)	\$51.61
Industrial (square foot)	\$30.16
Other (per peak hour trip)	\$38,080

Source: Fehr & Peers.



Appendix A:

SCR Extension Project Costs

ATTACHMENT B

Fourth Amendment to the Joint Exercise of Powers Agreement for ECCRFFA

**FOURTH AMENDMENT TO JOINT EXERCISE
OF POWERS AGREEMENT FOR EAST
CONTRA COSTA REGIONAL FEE AND
FINANCING AUTHORITY**

1. EFFECTIVE DATE AND PARTIES

Effective _____, 2020, the CITY OF ANTIOCH, a municipal corporation duly organized and existing under the laws of the State of California ("Antioch"), the CITY OF BRENTWOOD, a municipal corporation duly organized and existing under the laws of the State of California ("Brentwood"), the CITY of OAKLEY, a municipal corporation duly organized and existing under the laws of the State of California ("Oakley"), the CITY OF PITTSBURG, a municipal corporation duly organized and existing under the laws of the State of California ("Pittsburg"), and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the "County"), mutually agree as follows:

2. PURPOSE

Effective August 9, 1994, Antioch, Brentwood, Pittsburg, and the County formed the East Contra Costa Regional Fee and Financing Authority (ECCRFFA), a separate joint powers agency, by entering into a written agreement entitled "EAST CONTRA COSTA REGIONAL FEE AND FINANCING AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT" (referred to as the "Agreement"). ECCRFFA was formed to assist in establishing and administering a uniform regional development fee program and in funding and implementing regional road improvement projects in the East County area. The Agreement has previously been amended as follows: a First Amendment, dated October 4, 1999, added Oakley as additional party; a Second Amendment, dated July 11, 2005, coordinated activities of ECCRFFA and East County Transportation Improvement Authority (ECTIA) and revised ECCRFFA regional fee schedule; and a Third Amendment dated September 10, 2013, readmitted Pittsburg after its withdrawal, revised provisions for withdrawal, provided for appointment of ECCRFFA Board members, and provided uniformity of ECCRFFA fees collected by member agencies, among other changes. Antioch, Brentwood, Oakley, Pittsburg, and the County now wish to enter into this Fourth Amendment to the Agreement ("Fourth Amendment") to add the Sand Creek Road Extension to Deer Valley Road project ("Sand Creek Extension Project") to the list of ECCRFFA projects in Attachment 2 to the Agreement, as previously amended. Attachment 1 to the Agreement also will be amended to refer to the nexus study for the Sand Creek Extension Project with no change to ECCRFFA's Regional Transportation Development Impact Mitigation ("RTDIM") fees.

3. AMENDMENTS TO AGREEMENT

- A. Attachment 1 (2013 Amendment) is replaced in its entirety with Attachment 1 (2020 Amendment) attached to this Fourth Amendment, with no changes to the fees in the

RTDIM fee schedule. Other changes included in Attachment 1 make it current and bring it up to date.

- B. Attachment 2 (2013 Amendment) is replaced in its entirety with Attachment 2 (2020 Amendment) attached to this Fourth Amendment, to add the Sand Creek Extension Project to the list of ECCRFFA projects.

4. **REMAINING PROVISIONS**

Subject to the changes made by this Fourth Amendment and all previous amendments, all provisions of the Agreement shall remain in full force and effect. If this Fourth Amendment is determined by a court to be invalid or unenforceable, the Agreement, as previously amended through the Third Amendment, shall remain unchanged and in full force and effect.

5. **COUNTERPARTS**

This Fourth Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original instrument.

6. **SIGNATURES**

These signatures attest the parties' agreement to this Fourth Amendment.

[Remainder of page left blank. Signatures on next page.]

CITY OF ANTIOCH

FORM APPROVED:
Thomas Lloyd Smith, City Attorney

By: _____
Ron Bernal, City Manager

By: _____

CITY OF BRENTWOOD

FORM APPROVED:
Damien Brower, City Attorney

By: _____
Tim Ogden, City Manager

By: _____

CITY OF OAKLEY

FORM APPROVED:
Cota Cole LLP, City Attorney

By: _____
Bryan H. Montgomery, City
Manager

By: _____

CITY OF PITTSBURG

FORM APPROVED:
Donna Mooney, City Attorney

By: _____
Garrett Evans, City Manager

By: _____

COUNTY OF CONTRA COSTA

FORM APPROVED:
Sharon L. Anderson, County Counsel

By: _____
David J. Twa, County
Administrator

By: _____
Thomas L. Geiger, Assistant
County Counsel

Attachment 1 – 2020 Amendment
to
East Contra Costa Regional Fee and Financing Authority
Joint Exercise of Powers Agreement

IMPLEMENTATION OF REGIONAL TRANSPORTATION-DEVELOPMENT IMPACT
MITIGATION (RTDIM) FEE PROGRAM

A. Imposition of RTDIM Fees by Antioch, Brentwood, Oakley, and County. In order to fund the Program and Projects of the Authority, the parties agree that the following Regional Transportation Development Impact Fees ("RTDIM Fees"), which were originally adopted in 2005, shall continue to be implemented by Antioch, Brentwood, Oakley, and the County (each agency and Pittsburg is sometimes referred to as a "Member Agency" and, together, as the "Member Agencies").

Regional Transportation-Development Impact Mitigation (RTDIM) Fees			
Type of Use	Fee Units	Fee Schedule	
		2005	2020*
Single family residential units, duet homes, and residential condominiums	Per dwelling unit	\$15,000	\$22,920 (\$19,482)
Multiple family residential	Per dwelling unit	\$9,207.92	\$14,070 (\$11,960)
Commercial	Per square foot of gross floor area	\$1.25	\$1.90
Office	Per square foot of gross floor area	\$1.10	\$1.66
Industrial	Per square foot of gross floor area	\$1.10	\$1.66
Other	Per peak hour trip as determined	\$15,000	\$22,920

* The 2020 fee schedule includes the annual adjustments specified in the Authority's Resolution No. 2005/06. The figures in parentheses reflect the net residential fee amounts payable after the Authority's fee rebate last approved December 2019, which provides for a rebate applicable to residential fee rates, as further described in Section B, below. ECCRFFA fees for senior housing shall be calculated in accordance with ECCRFFA's "Policy on Reduced Fees for Age-Restricted Senior Housing." ECCRFFA fees for Accessory Dwelling Units (ADUs) shall be calculated in accordance with Government Code section 65852.2 and ECCRFFA's "Policy for Accessory Dwelling Units."

The above fee schedule is based on the June 2005 East Contra Costa Regional Fee Program Update (referred to as the "2005 Report") prepared by Fehr & Peers, which has been approved by the Authority's Board. The above fees are unchanged and are below the maximum fee rates calculated in the "East Contra Costa Regional Fee Program Update," dated September 2020,

prepared by Fehr & Peers ("2020 Report"). The 2005 Report was previously adopted as the governing program of the Authority and is incorporated in this Agreement by reference. The 2020 Report was approved to add the Sand Creek Extension Project to the ECCRFFA project list, with no changes to the RTDIM Fees in the above fee schedule. The RTDIM fees in the above fee schedule are subject to annual adjustment, as provided below and as provided in the fee ordinances and/or resolutions adopted by the Member Agencies. In addition to the listed amounts, each Member Agency may collect and retain an administrative charge up to 1% of the listed amounts.

B. Adoption of Revised RTDIM Fees by the Authority. The Authority established an RTDIM Fee rebate program in 2013. The fee rebate program does not change the RTDIM Fees last adopted in 2005. Rather, the fee rebate program provides a rebate on the amount of the RTDIM Fees that are collected by the Member Agencies. Since 2013, the Authority Board of Directors has approved continuing the fee rebate. The Authority Board last approved to continue an RTDIM Fee rebate on December 12, 2019, when the Authority Board authorized a 15% rebate to all applicants who pay RTDIM Fees for residential uses (*i.e.*, single family residential units, duet homes, residential condominiums, and multi-family residential) during the period from January 1, 2020, through December 31, 2021. The fee rebate program is subject to reevaluation at any time by the Authority Board, and the Authority Board has sole discretion to terminate or modify the fee rebate program.

C. Imposition of PRTDIM Fees by Pittsburg. In order to fund the Program and Projects of the Authority, the Member Agencies agree that the following Pittsburg Regional Transportation Development Impact Fees ("PRTDIM Fees"), which were originally adopted in 2010, shall continue to be implemented by Pittsburg as follows:

Beginning October 10, 2013, Pittsburg shall ensure its commercial, office, and industrial fee rates match the Authority's commercial, office, and industrial fee rates listed in Section A above, including the annual adjustment specified in Section F below.

Should a valid Memorandum of Understanding (MOU) signed prior to September 11, 2010, prevent Pittsburg from collecting commercial, office, or industrial fees at the rates listed above, Pittsburg shall make up the shortfall from its own separate funds and shall forward the full amount to the Authority per the terms of this Agreement.

(1) Beginning September 10, 2013, Pittsburg shall ensure its residential fee rates are collected as follows:

(a) At the same time as the other Authority Members, Pittsburg shall apply fee rebates to match and collect the same net residential fee amounts collected by the other Member Agencies under the ECCRFFA fee rebate program (see Section B, above).

- (b) In the event that the Authority approves a revised fee schedule, or a new or revised fee rebate program pursuant to Section D below, at the same time as the other Member Agencies, Pittsburg shall adopt and collect the revised fee schedule, or shall apply the new or revised fee rebates, to match and collect the same net residential fee amounts as the other Member Agencies, including the annual adjustment specified in Section F below.
- (c) The residential fees collected by Pittsburg under this Subsection C(1) shall apply uniformly to all development in Pittsburg, except as provided otherwise for MOUs between Pittsburg and developers.
- (2) Pittsburg shall defend (with counsel selected by Pittsburg), indemnify, save, and hold harmless the Authority, the other Member Agencies, and their officers, agents, and employees from any litigation, claims, costs, expenses, or liability arising from or in any way related to Pittsburg's fee rebate program or Pittsburg's collection of different fee rates pursuant to Subsection C(1) above. The Authority and the other Member Agencies shall not be required to defend, indemnify, save, or hold harmless Pittsburg under Section B of Attachment 2, or otherwise, for claims related to the Pittsburg fee rebate program or Pittsburg's collection of different fee rates pursuant to Subsection C(1) above.

D. Subsequent Approval of Revised Fee Schedule or New or Revised Fee Rebate Program by the Authority. Between January 1, 2016, and December 31, 2030, the Authority Board may, from time to time, approve revised fee schedules, or new or revised fee rebate programs, which shall be subject to the following limitations unless otherwise approved unanimously by the full Authority Board, with all Board members present:

- (1) Any revised residential fees shall not exceed the following maximum rates, subject to the annual adjustment specified in Section F below: Single family residential \$16,176/dwelling unit; Multiple family residential \$9,934/dwelling unit; Other \$16,176/peak hour trip.
- (2) Any new or revised residential fee rebates shall result in net residential fee amounts of at least 50% of the maximum rates listed in Subsection D(1) above.

Within 60 days after such approval, each Member Agency (Antioch, Brentwood, Oakley, Pittsburg, and the County) shall consider adopting a fee ordinance or resolution implementing the

revised fee schedule, or shall promptly consider applying the new or revised fee rebates. This procedure does not apply to annual fee adjustments, which are automatic and do not require further approval or action.

E. Fees for Uses Not Listed. The fees for uses not listed shall be determined by the Member Agency with land use authority through information generated by appropriate traffic studies conducted in accordance with ITE standards and applicable Authority policies. These traffic studies shall be approved by the Authority Board before the Member Agency imposes the fees.

F. Annual Fee Adjustment. Every January 1, the fee rates listed above, including any maximum fee rates, shall be automatically adjusted by the amount of the increase or decrease in the Engineering News-Record Construction Cost Index for the San Francisco Bay Area for the one-year period ending September 30 of the preceding year.

G. Credit for Construction Costs or Land Acquisition. Subject to the priority order set forth in Section E of Attachment 2, with prior approval of the Authority Board, credit may be granted against the payment of the fee for a usable portion of any Project. The amount of credit shall be limited to the regional component of the Project, as determined by the Authority Board in its sole discretion. Notwithstanding anything to the contrary, no fee credit shall be granted for any lands that are required to be dedicated as specified in Attachment 2, Section B.

H. Fee Collection and Management. Except for approximately \$5.5 million of PRTDIM fees used by Pittsburg as described in the last paragraph of Section E of Attachment 2, all fee revenues received or collected by the Member Agencies, together with any separate funds and increased fees to eliminate a shortfall, shall be disbursed monthly by the Member Agencies to the Authority. Fees and other revenues shall be held by the Authority in a general fund account; bond proceeds shall be held in accordance with the applicable indenture and may be invested, consistent with the provisions of the applicable indenture, in accounts such as the CAMP or LAIF fund. Subject to any provision in an applicable indenture, interest accruing on funds held in such accounts and accrued interest on funds held in the general fund account shall be deemed general funds available for any lawful purpose of the Authority. Unless otherwise agreed by the Member Agencies, the total obligation of each Member Agency shall be the contribution of fees collected by that Member Agency from owners seeking issuance of building permits as provided for in this Section. The obligation to contribute fees to the Authority shall terminate on December 31, 2030 (*i.e.*, the termination date specified in Section 3 of the Agreement).

Attachment 2 – 2020 Amendment
to
East Contra Costa Regional Fee and Financing Authority
Joint Exercise of Powers Agreement

PROJECTS; FUNDING COMMITMENTS AND ELIGIBLE COSTS;
IMPLEMENTATION SCHEDULE

A. **Current List of Projects.** The fees provided for in the above fee schedule shall be used for project development, right-of-way acquisition, and construction for the following regional Projects:

- (1) State Route 4 freeway widening from Railroad Avenue to the State Route 4 Bypass, including reconstruction of interchanges as necessary.
- (2) State Route 4 Bypass, Segment 1 from State Route 4 to Lone Tree Way, including interchanges at Laurel Road and Lone Tree Way.
- (3) State Route 4 Bypass, Segment 2 from Lone Tree Way to Balfour Road, including an interchange at Sand Creek Road.
- (4) State Route 4 Bypass, Segment 3 from Balfour Road to Vasco Road, including interchanges at Balfour Road, Marsh Creek Road, and Vasco Road.
- (5) Laurel Road Extension from State Route 4 Bypass to Empire Avenue.
- (6) State Route 239/84 Connector, consisting of the Armstrong Road extension (formerly Byron Airport Road).
- (7) State Route 239 corridor study and preliminary design.
- (8) State Route 4 (Main Street or Brentwood Boulevard) widening from Vintage Parkway in Oakley to Marsh Creek bridge in Brentwood and Chestnut Street to Balfour Road in south Brentwood.
- (9) Balfour Road widening from Deer Valley Road to Brentwood city limits.
- (10) Marsh Creek Road and Deer Valley Road safety enhancements from Walnut Boulevard to Clayton and from Balfour Road to Marsh Creek Road.
- (11) Route 84/Vasco Road widening to County line.

Northern Parallel Arterials

- (12) Pittsburg-Antioch Highway from Somersville Road to Loveridge Road.

- (13) Ninth and Tenth Streets couple improvements from A Street to L Street.
- (14) California Avenue from Railroad Avenue to Loveridge Road.
- (15) Willow Pass Road from Range Road to Loftus Road and Bailey Road to city limits.

Southern Parallel Arterials

- (16) Buchanan Bypass (new arterial) or Buchanan Road from Railroad Avenue to Somersville Road.
- (17) West Tregallas Road/Fitzuren Road from Lone Tree Way to Buchanan Road.
- (18) West Leland Road or Evora Road from San Marco to Avila Road and from Willow Pass Road (Bay Point) to Willow Pass Road (Concord).

New Regional Arterial Projects

- (19) Wilbur Avenue from Minaker Drive to State Route 160.
- (20) Neroly Road from Oakley Road to Laurel Road.
- (21) Deer Valley Road from Antioch city limits to Balfour Road.
- (22) Walnut Boulevard from Brentwood city limits to State Route 4 Bypass.
- (23) John Muir Parkway (new roadway between Balfour Road and Fairview Avenue).
- (24) Byron Highway safety enhancements from Delta Road to State Route 4.
- (25) Sand Creek Road Extension from SR4 to Deer Valley Road project.

Regional Transit Projects

- (26) East County express bus.
- (27) Commuter rail (eBART).

B. Funding Commitments and Eligible Costs. Program revenues shall be available for necessary Project costs through completion of construction. Subject to prior approval by the Authority Board, Project costs paid from program revenues may include environmental clearance, conceptual engineering, traffic studies, design, right-of-way acquisition, utility relocation, litigation and settlement costs, and costs of construction. The commitment to each Project shall be considered complete when the Project is accepted by the sponsor or sponsors.

The Authority's administrative costs shall not exceed 1% of program revenues. Administrative costs include the development of the JPA as well as the administration of duties included in this Agreement.

Eligible Project costs will be determined by the Authority based on cost guidelines and other criteria to be developed by the Authority. Where the Authority deems it advisable in order to avoid undue burdens on Project sponsors, the Authority may advance fund Project expenses on a monthly, quarterly, or other basis. Project costs otherwise will be reimbursed pursuant to procedures to be determined by the Authority.

Project sponsors, as a condition of Project funding through regional fees, commit to protect Project rights-of-way, by, among other things, requiring dedication of right-of-way as a condition of land use entitlement approval or otherwise, pending Project commencement. Project sponsors further commit not to take actions that could adversely impact the cost of Projects, including, but not limited to, utility location or relocation, public development, and the granting of easements in a proposed right-of-way.

The right-of-way dedication policy for the State Route 4 Bypass is as follows. Properties along or fronting the Projects identified in this Agreement shall be required to dedicate right-of-way up to 110 feet wide as measured from the centerline of the adopted precise alignment with no credit or compensation from the regional fee. Any additional right-of-way in excess of the 110-foot width may be either credited toward the regional fee or compensated. However, in circumstances where the allowable density has been transferred off the right-of-way area, then no compensation or credit will be granted for the right-of-way dedicated. The Authority shall develop policies that will encourage the early dedication of lands that are required under this provision.

Any costs of defense and any liability incurred in connection with implementation of the regional fee proposal shall be borne by the Authority. The Authority agrees to the fullest extent permitted to indemnify and hold harmless the parties to this Agreement from any liability, loss, costs, and claims related to the adoption or implementation of the regional fee program. Fee revenues and any other revenues transferred to the Authority by the parties pursuant to this Agreement may be used for this purpose.

C. **Implementation Schedule.** Subject to environment clearance, right-of-way acquisition and dedication, utility relocation, and other factors, the timing of which may be beyond the control of the Authority, and subject to the availability of regional fee and other funding sources as may be required, the following implementation guidelines shall apply to Project development:

(i) The parties intend that funding will be provided to support steady progress in construction of the State Route 4 Bypass.

(ii) The Authority shall prepare, adopt, and periodically update a Strategic Plan for implementation of the Projects, reflecting current information on Project costs and schedules, the Project sponsor(s) for the various Projects, the availability of other

revenue sources, the pace of fee collection, the schedule for and the costs associated with the sale of bonds to advance funds, and other relevant factors.

D. Indemnification. As a condition of funding for Projects in this Program, Project sponsors shall enter into an agreement with the Authority that shall provide indemnification and insurance coverage for the Authority and the parties to this Agreement during design and construction. The indemnification and insurance shall be subject to approval by the Authority.

E. Project and Funding Priorities. The following priority order shall hereafter apply to funding and implementation of the Authority's regional Projects:

First Priority:

Initial projects and ECCRFFA existing commitments:

- (a) SR4 East widening (for project description, see CCTA's Measure J Strategic Plan);
- (b) eBART extension to Hillcrest Avenue, which excludes Railroad Avenue station, with ECCRFFA to provide \$1.2 million to BART by 12/31/2013 (for project description, see CCTA's Measure J Strategic Plan);
- (c) SR4 Bypass projects, including the following:
 - (1) SR4/SR160 Connector Ramps (project involves constructing direct connectors between SR4 Bypass and SR160);
 - (2) Sand Creek Road Interchange (project includes a partial cloverleaf configuration on west side and a tight diamond on east side);
 - (3) Balfour Road Interchange – Phase 1 (project includes partial cloverleafs on both east and west sides and a single bridge over Balfour Road with two-directional traffic);
 - (4) 4-Laning between Lone Tree Way and Balfour Road; and
- (d) Outstanding ECCRFFA commitments (\$13.0 million), consisting of the following:
 - (1) Reimburse Contra Costa County Proposition 1B funds – \$3.0 million;
 - (2) John Muir Parkway – Brentwood: \$2.9 million;
 - (3) Vasco Road – Alameda County: up to \$3.0 million (final amount to be determined based on actual bids received); and
 - (4) Old SR4 relinquishment costs: \$4.1 million.

Second Priority:

eBART extension beyond Hillcrest Avenue – environmental review for the eBART extension (up to \$3.0 million).

Third Priority:

James Donlan Extension (JDE; project includes a 2.7-mile (approximate) extension from Somersville Road to Kirker Pass Road, consisting of a four-lane

road for approximately 0.72 mile through Black Diamond Estates and Sky Ranch II Subdivisions (western edge), then a two-lane road for approximately 1.7 miles through an undeveloped area, then expanded to four lanes for the remaining 0.28 mile (approximate) near Kirker Pass Road (east end), and realignment of a portion of Kirker Pass Road to match project grades and to conform the project to existing topography).

Other Projects:

The priority and funding for all other ECCRFFA Projects will be determined by the Authority Board.

The above priority order cannot be changed unless both of the following conditions are met: (1) there are extenuating circumstances regarding regional priorities or difficulties in implementing one of the priority projects listed above, and (2) there is a unanimous vote by the full Authority Board, with all Board members present, to change the above priority order.

Pittsburg shall use PRTDIM fees collected between September 7, 2010 and the effective date of the Third Amendment to the Agreement (approximately \$5.5 million) as follows: approximately \$5.3 million for JDE (i.e., environmental clearance, right-of-way acquisition, and project design) and the Railroad Avenue eBART station; and up to \$196,000 for legal fees incurred by Pittsburg in the TRANSPLAN/ECCRFFA lawsuit."

F. Cooperation among ECCRFFA Member Agencies. ECCRFFA and each of its Member Agencies agree to cooperate so as to maximize all regional, state, and federal funding available to complete construction of the Priority Projects, as set forth in Section E above, as soon as reasonably possible, unless the Priority Projects would not compete as well as other candidate projects in East County, due to project readiness or other funding criteria required for project selection. For clarity, the intent is to ensure that the Priority Projects receive priority for available outside funding, while balancing the goal of maximizing funding/delivery of all transportation projects in East County.

Attachment 2

Summary of Program Effects
of
Expanding ECCRFFA Program
to
Include the SCR

Memorandum

Date: May 1, 2020
To: Dale Dennis, ECCRFFA
From: Julie Morgan, Fehr & Peers
Subject: **Summary of program effects of expanding ECCRFFA program to include the Sand Creek Road extension project**

1001-1655.02

The East Contra Costa Regional Fee and Financing Authority (ECCRFFA or the Authority) is a regional planning agency charged with funding regional transportation improvement projects in eastern Contra Costa County with revenue from the Authority's regional transportation demand impact mitigation (RTDIM) fees. The Authority's jurisdiction includes the eastern portion of the County, including unincorporated areas and the Cities of Antioch, Brentwood, Oakley, and Pittsburg.

The Authority recently commissioned a focused nexus study to evaluate the addition of one project, the Sand Creek Road extension (SCR extension), to the fee program. A draft nexus study has been completed that evaluates the addition of the SCR extension to the ECCRFFA project list, and determines new development's proportional share of the cost of that project should it be added to the fee program.

The draft nexus study concluded that, if the SCR extension were added to the ECCRFFA project list, the maximum fee that would represent new development's proportional share of the cost of all the projects on the project list, including the SCR extension, would be as shown in Table 1. The new maximum fee is higher than the fees currently charged in the ECCRFFA program. The fee amounts that can be charged in the ECCRFFA program are limited per the terms of the Joint Exercise of Powers Agreement (JEPA) and its subsequent amendments, which establish the Authority and define the legal relationships and responsibilities among the member agencies.

The fee revenues generated by the ECCRFFA program are one of several funding sources that are used to support regional transportation improvements. A comprehensive ECCRFFA nexus report completed in 2005 included a discussion of the broader funding picture for the full ECCRFFA



program, and concluded that while the ECCRFFA program had identified funding for the majority of the project costs, there remained a shortfall of approximately \$390 million (in 2005 dollars).

Subsequent status assessments of the ECCRFFA program have been undertaken periodically, the most recent of which was completed in September 2017. That assessment concluded that the ECCRFFA program continues to have a funding shortfall of approximately the same magnitude as was identified in 2005; the amount of the shortfall was estimated at approximately \$552 million in 2017 dollars.

If the Authority Board chooses to adopt the SCR extension into the ECCRFFA program and does not modify the fee amounts that are currently being charged, the effect would be a slight increase in the funding shortfall. More specifically, the draft nexus study addressing the SCR extension concluded that \$10.8 million of the SCR extension's cost was eligible for inclusion in the ECCRFFA program. If the SCR extension were added to the program and no change were made to the fee amounts, then that \$10.8 million would be added to the program's shortfall. A shortfall of \$552 million in 2017 dollars would have escalated to approximately \$677 million in 2019 dollars; an additional \$10.8 million would represent an increase in the shortfall of approximately 1.6%.

Table 1: New Maximum Fee Calculations

Land Use Category	Current ECCRFFA Fees ¹	New Maximum Fee
Single-Family Residential (dwelling unit)	\$19,482	\$38,080
Multi-Family Residential (dwelling unit)	\$11,960	\$17,950
Commercial (square foot)	\$1.90	\$36.64
Office (square foot)	\$1.66	\$51.61
Industrial (square foot)	\$1.66	\$30.16
Other (per peak hour trip)	\$22,920	\$38,080

1. Current as of January 1, 2020. Accounts for the 15% ECCRFFA Rebate.

EXHIBIT E
APPROVED PLANS

ATTACHMENT "H"

REIMBURSEMENT AGREEMENT FOR SANITARY SEWER IMPROVEMENTS

This REIMBURSEMENT AGREEMENT FOR SANITARY SEWER IMPROVEMENTS ("**Agreement**") by and between by and between the CITY OF ANTIOCH, a municipal corporation ("**City**"), and CIVIC AVIANO, LLC, a California limited liability company ("**Developer**") for reimbursement of costs associated with supplemental capacity improvements made by Developer in relation to the Aviano Subdivision project (the "**Project**"). The City and Developer are collectively referred to within as the "**Parties**." This agreement is made with respect to the following facts:

RECITALS

A. Developer owns the real property described in Exhibit A, attached hereto, and incorporated herein by this reference (the "**Property**").

B. Developer and Developer's predecessor-in-interest obtained various approvals and entitlements for development of the Property, including the Revised Vesting Tentative Map for Subdivision 9249 approved by the City Council on September 8, 2015, the EIR Addendum approved by the City Council on September 8, 2015, and the Development Agreement between the City of Antioch and Aviano Farms, LLC, with an effective date of September 22, 2015, and recorded on February 28, 2017 as document no. 2017-0036178-00 in the Official Records of Contra Costa County, California (the "**Approvals**," or more specifically, the "**Development Agreement**" or "**Conditions of Approval**").

C. The Approvals provide that Developer shall install all infrastructure for the Project. In addition, the Approvals require Developer to install oversized infrastructure to accommodate future development of the parcels in the Sand Creek Focus Area. The oversized infrastructure to be installed by Developer includes background infrastructure (including the sanitary sewer mains shown on Exhibit B) (the "**Sanitary Sewer Improvements**"), depending upon the timing of development of the Project relative to that of the property owners identified in Exhibit C ("**Future Developers**"). The Conditions of Approval (Utilities, Condition of Approval 10) provide that Developer may be reimbursed for some or all of the background infrastructure costs, including the sewer mains and stormwater system installed in connection with the Project.

D. Developer has approved improvement plans dated April 1, 2019, July 30, 2019 and January 14, 2020 that include the background infrastructure, including the Sanitary Sewer Improvements with oversized capacity (the "**Approved Plans**").

E. As set forth more fully below, the City will benefit from the Sanitary Sewer Improvements. The City has found that this Agreement is in accordance with the requirements of its Municipal Code and with California Government Code Sections 66485 through 66489.

F. The City is authorized, under the Subdivision Map Act and other applicable law, to enter into a reimbursement agreement with a developer for that portion of the cost of public improvements, including an amount attributable to interest, in excess of the construction required for the development and to require owners of property benefitted by the public improvements to reimburse the developer for their fair share of the cost thereof as a condition of approval of development.

G. The City has determined that a fair and equitable method of allocating the share of the cost of the Sanitary Sewer Improvements among the Property Owners as shown and described on **Exhibit B**.

H. On [date], the City Council held a public hearing regarding approval and execution of this Agreement, of which written notice was provided by mail to the record owners of the Future Developers, all of whom are adjacent property owners as shown on the latest County Assessor's secured real property assessment roll.

I. This Agreement is intended to be the agreement or mechanism referenced in the Development Agreement and/or Conditions of Approval for reimbursement of the Developer for the Sanitary Sewer Improvements of the background infrastructure.

NOW, THEREFORE, in view of the foregoing recitals and in consideration of the following terms, conditions, and covenants, the Parties agree as follows:

AGREEMENT

SECTION 1. DESIGN AND CONSTRUCTION OF SANITARY SEWER IMPROVEMENTS

1.1 Sanitary Sewer Improvements. The Sanitary Sewer Improvements shall be designed and constructed as described and depicted on **Exhibit B** and in accordance with the Conditions of Approval and Approved Plans.

1.2 Consistency with Conditions of Approval. If any provision in paragraph 1.1 conflicts with the Conditions of Approval for the Project, it is the intent of the Parties that the Approved Plans shall apply.

1.3 Improvement Costs. The costs of the Sanitary Sewer Improvements for which Developer shall be entitled to reimbursement ("**Improvement Costs**") consist of all costs of the design and construction thereof and all costs incidental to such design and construction including, without limitation, the following:

(a) **Design, Engineering, Inspection and Environmental.** All design, planning, engineering, environmental analysis and mitigation, and inspection services and costs, including all associated fees, charges and permits.

(b) Easements and Rights of Way. Cost of acquisition of easements and rights of way for infrastructure and utilities as they relate to the Sanitary Sewer Improvements, including appraisal and title insurance costs and actual costs of acquisition.

(c) Construction Costs. The sum of all costs incurred for the construction of the Sanitary Sewer Improvements in accordance with the Approved Plans including, without limitation, the direct costs of construction labor, materials, equipment, and services.

(d) Overhead and Management. An amount equal to 8% of the direct cost of construction of the Sanitary Sewer Improvements for overhead, construction management, and supervision costs.

(e) Bonds and Insurance. The cost of premiums paid for insurance coverage and any surety bonds required for the Sanitary Sewer Improvements.

(f) Interest. Interest at the lower of 6% or the Prime Rate of interest, as published in the Wall Street Journal, plus 1% from the date the Improvement Costs are incurred to the date of payment pursuant to Section 2, compounded quarterly.

SECTION 2. REIMBURSEMENT AND DEVELOPMENT CONDITIONS

2.1 Determination of Reimbursement. Upon completion and acceptance of the Sanitary Sewer Improvements, the City Engineer shall calculate the amount of reimbursement, including all Improvement Costs per Section 1.3, to which Developer is entitled (“**Reimbursement Amount**”) from Future Developers for their fair share of the cost of such improvements, determined in accordance with Recital G.

2.2 Development Condition. The City shall condition the approval of development of the Future Developers by requiring the owners or developers thereof to pay to the City their fair share of the Reimbursement Amount, plus the City's reasonable costs of administering the collection and disbursement of the Reimbursement Amount, prior to recordation of the first final map for such property. If a subdivision map is not required for development of the property, the City shall require payment of the Reimbursement Amount and any related City costs prior to issuance of the first permit or approval for development of such property.

2.3 Remittance to Developer. The City shall remit to Developer the Reimbursement Amount collected pursuant to Section 2.2 within thirty days of receipt thereof.

SECTION 3. MISCELLANEOUS

3.1 Defined Terms. Unless defined in this Agreement, the capitalized terms used in this Agreement shall have the meaning given them in the Approvals. Defined terms in the singular form include the plural and vice versa

3.2 Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement.

3.3 Construction. All references to this Agreement shall be deemed to refer to this Agreement as it may be amended from time to time. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

3.4 Attorneys' Fees. If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party or parties shall pay the prevailing party's or parties' actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post-judgment motion, and any action to enforce or collect the judgment including without limitation contempt, garnishment, levy, discovery and bankruptcy. For this purpose, "expenses" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "prevailing party" shall mean the party which is determined in the proceeding to have prevailed or which prevails by dismissal, default or otherwise.

3.5 No Agency, Joint Venture or Partnership. The City and Developer disclaim the existence of any form of agency relationship, joint venture or partnership between the City and Developer. Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as creating any relationship other than a contractual relationship between the City and Developer.

3.6 No Third-Party Beneficiary. This Agreement is made solely and specifically among and for the benefit of the Parties, and their respective successors and assigns.

3.7 Notice. Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party, upon receipt of confirmation of overnight delivery by a commercial carrier, or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City:

City of Antioch
Attention: City Attorney
200 H Street
Antioch, CA 94509

Developer:

Dave B. Sanson
Civic Aviano, LLC
1500 Willow Pass Court
Concord, CA 94520

Dana C. Tsubota, General Counsel
DeNova Homes, Inc.
1500 Willow Pass Court
Concord, CA 94520

3.8 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

3.9 Governing Law; Venue. This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Contra Costa, State of California.

3.10 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by both Parties.

3.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one instrument.

WHEREFORE, this Agreement has been entered into by and between Developer and the City as of _____, 2021.

[Signatures on following page]

Signature page to Reimbursement Agreement
For Sanitary Sewer Improvements

CITY:

CITY OF ANTIOCH, a municipal corporation

By: _____
Ron Bernal, City Manager

Attest:

By: _____
Ellie Householder, City Clerk

Approved as to Form:

By: _____
Thomas Lloyd Smith, City Attorney

DEVELOPER:

CIVIC AVIANO, LLC, a California limited liability company

By: Civic Property Group, Inc., a California corporation
Its authorized signer

By: _____
David B. Sanson, President [or] Dana C Tsubota, Vice President and General
Counsel

e]

EXHIBIT A

Legal Description of the Overall Property

AUGUST 18, 2020
JOB NO.: 0514-072

LEGAL DESCRIPTION
SUBDIVISION 9249 (542 M 34)
ANTIOCH, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF
ANTIOCH, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS
FOLLOWS:

BEING ALL OF LOTS 1 THROUGH 127, INCLUSIVE, PARCELS A, B, D, E, F, H,
I, J, K, L, M, AND N, AS SAID LOTS AND PARCELS ARE SHOWN AND SO
DESIGNATED ON THE FINAL MAP FOR SUBDIVISION 9249, FILED APRIL 28,
2020, IN BOOK 542 OF MAPS, AT PAGE 34, IN THE OFFICE OF THE COUNTY
RECORDER OF CONTRA COSTA COUNTY.

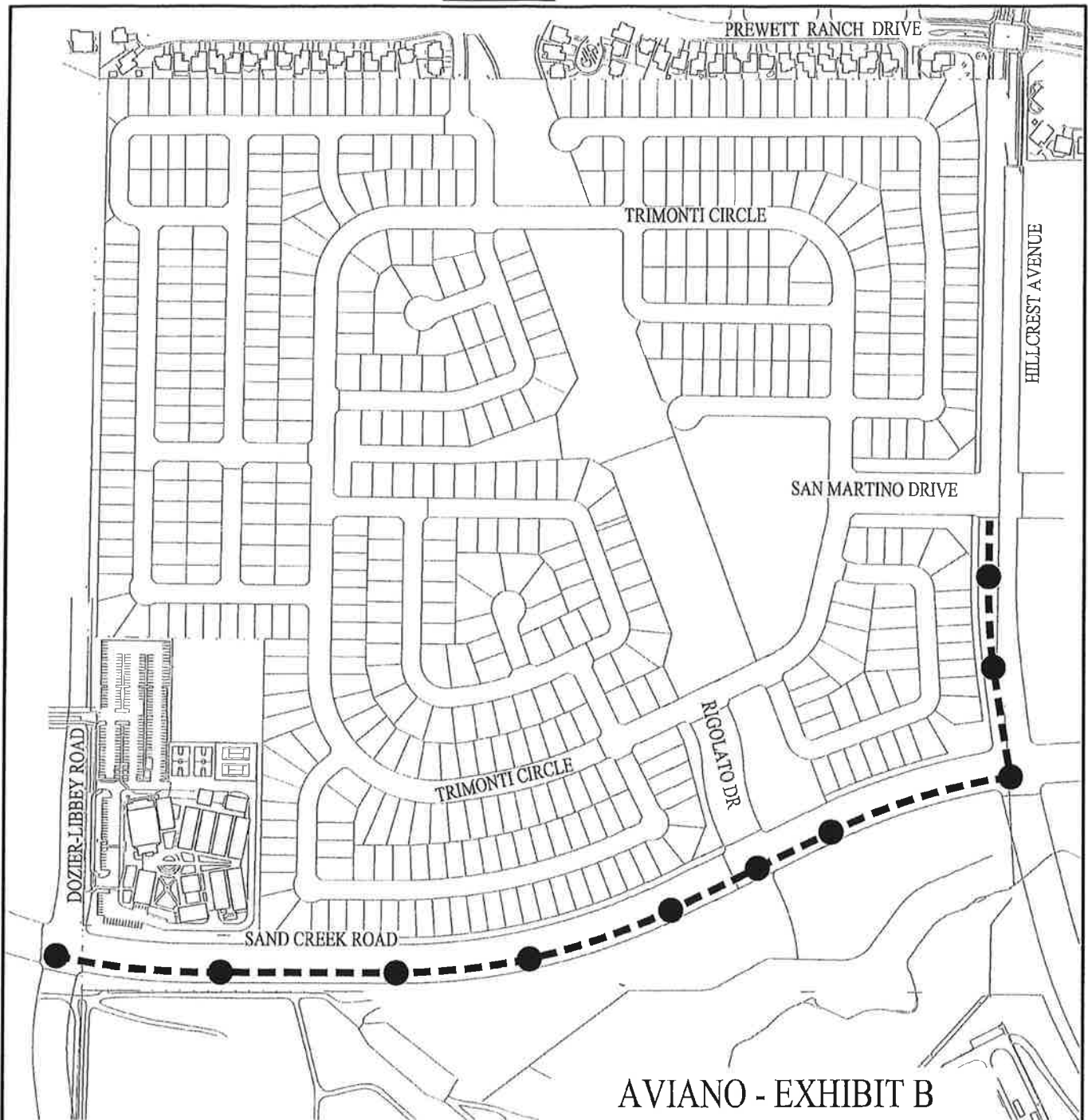


END OF DESCRIPTION

S. Kyle Pack

SABRINA KYLE PACK, P.L.S.
L.S. NO. 8164

EXHIBIT B



AVIANO - EXHIBIT B
SANITARY SEWER
IMPROVEMENTS

LEGEND



18" SANITARY SEWER



SANITARY SEWER MANHOLES

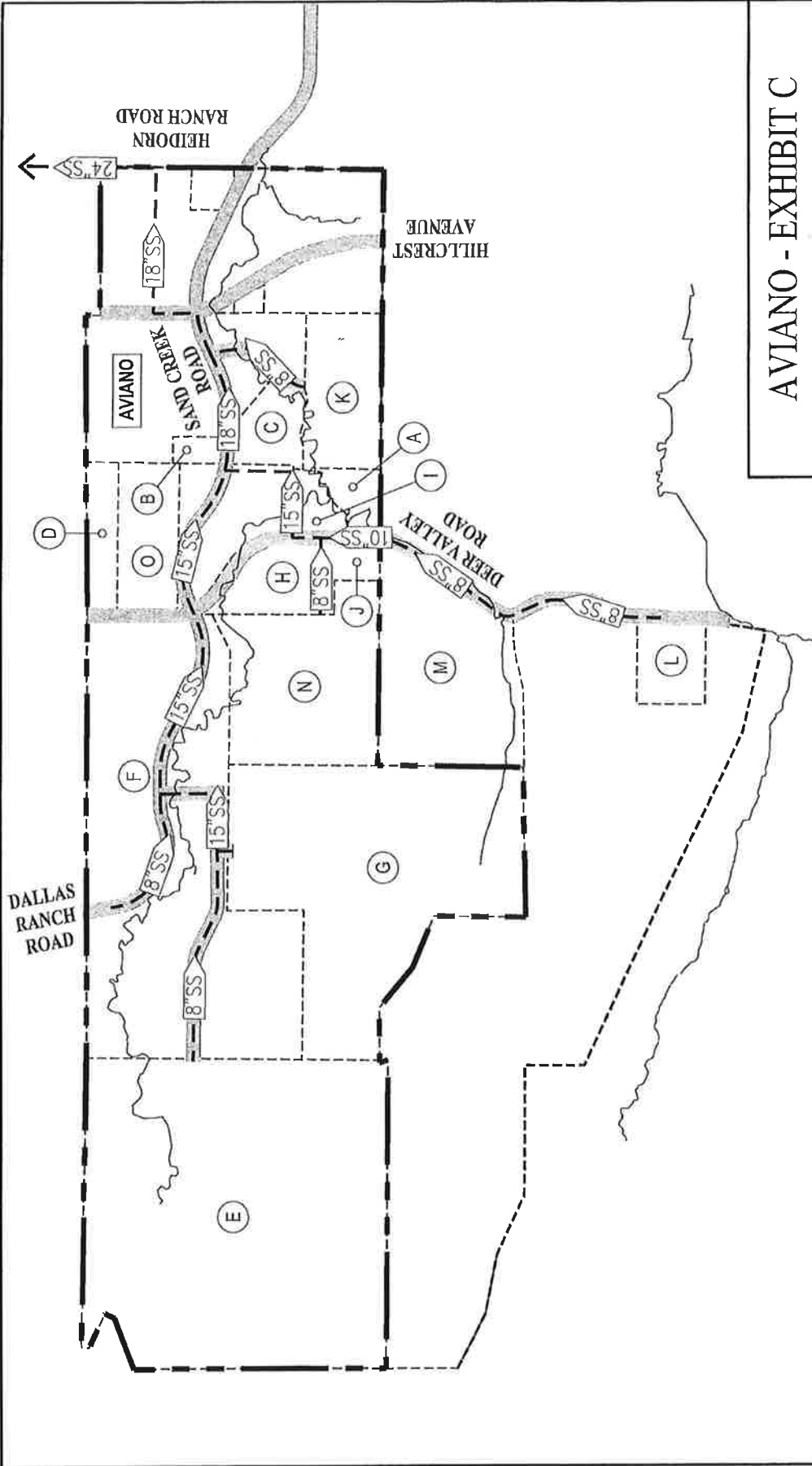
CITY OF ANTIOCH CONTRA COSTA COUNTY CALIFORNIA

DATE: AUGUST 17, 2020 SCALE: 1" = 400'



CIVIL ENGINEERS • SURVEYORS • PLANNERS

SAN RAMON (925) 866-0322
SACRAMENTO (916) 375-1877
WWW.CBANDG.COM



AVIANO - EXHIBIT C FUTURE DEVELOPERS

CITY OF ANTIOCH CONTRA COSTA COUNTY CALIFORNIA
DATE: AUGUST 17, 2020 SCALE: 1" = 2,500'

SAN RAMON (925) 866-0322
SACRAMENTO (916) 375-1877
WWW.CBANDG.COM



CIVIL ENGINEERS • SURVEYORS • PLANNERS

FUTURE DEVELOPERS KEY

- | | | |
|--------------------------|----------------------|-------------------|
| (A) ALBERS EAST | (F) THE RANCH/COWAN | (K) ALBERS WEST |
| (B) AUDS DOZIER - LIBBEY | (G) RICHFIELD | (L) SMITH |
| (C) CCCFCD | (H) AUDS NORTH | (M) GINOCHIO WEST |
| (D) ZOCCHI | (I) AUDS SOUTH | (N) LEUNG |
| (E) HIGGINS | (J) MISC. PROPERTIES | (O) KAISER |

LEGEND


- SS --- SEWER
- MAIN ROADS
- FUA 1 BOUNDARY
- CREEK
- PROPERTY LINES

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Rosanna Bayon Moore, Assistant City Manager 

APPROVED BY: Ron Bernal, City Manager

SUBJECT: Resolution Approving Amendment No. 3 to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors and Authorizing the City Manager to Execute the Agreement

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution to:

- 1) Approve Amendment No. 3 to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors, which extends the term of the Agreement for two months to May 15, 2021 and increases the value of the Agreement by \$16,000 for a total amount not to exceed \$160,000; and
- 2) Authorize the City Manager to execute Amendment No. 3 to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors.

FISCAL IMPACT

Voler Strategic Advisors cost is \$8,000 per month. This does not include the cost for any media advertising buying and printing.

DISCUSSION

At the June 25, 2019 City Council Meeting, the City Council adopted a two-year Operating Budget for Fiscal Years 2019 – 2021. The Fiscal Year 2019-20 budget for the City Manager's Department allocated \$100,000 for a Public Information Officer. The City Manager decided to go to bid for a consulting firm for these services. The bid release date was July 19, 2019 and the closing date and time for submitting proposals was August 19, 2019. Voler Strategic Advisors was the only firm to submit a proposal before the deadline. Interviews were held August 29, 2019, then references were checked.

On September 16, 2019, the City entered into a 6-month contract with Voler Strategic Services ("Agreement") \$48,000 to provide Public Information and Communication Officer

Services including Account Management, Community Outreach, Public Relations and Crisis Management Services.

At the March 10, 2020 City Council meeting, the City Council adopted Resolution No. 2020/33 approving Amendment No. 1 to the Agreement. This extended the term of the Agreement by six months to September 15, 2020 and increased the contract value by \$48,000 bringing the total amount to \$96,000.

At the September 8, 2020 City Council meeting, the City Council adopted Resolution No. 2020/148 approving Amendment No. 2 to the Agreement. This extended the term of the Agreement by six months to March 15, 2021 and increased the contract value by \$48,000 for a total amount not to exceed \$144,000.

The City continues to have a need for such services and the City and Consultant desire to extend the term of services of the original agreement until May 15, 2021, which will increase the value of the Agreement by \$16,000 for a total amount not to exceed \$160,000. Staff anticipates returning to the City Council before the term ending date with an action item for further consideration.

ATTACHMENTS

- A. Resolution and Exhibit A to Resolution – Amendment No. 3 to the Consulting Services Agreement
- B. Resolution No. 2020/148 adopted September 8, 2020
- C. Resolution No. 2020/33 adopted March 10, 2020
- D. Original Consulting Services Agreement
- E. Volar Strategic Advisors Proposal
- F. Request for Proposal for Public Information / Communications Officer Services

RESOLUTION NO. 2021/

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING AMENDMENT NO. 3 TO THE CONSULTING SERVICES AGREEMENT
BETWEEN THE CITY OF ANTIOCH AND VOLER STRATEGIC ADVISORS AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

WHEREAS, on September 16, 2019, the City of Antioch and Voler Strategic Advisors entered a Consulting Services Agreement for public information and communication officer services ("Agreement");

WHEREAS, on March 10, 2020, the City of Antioch and Voler Strategic Advisors executed Amendment No. 1 extending the term of services in the Agreement to September 15, 2020 and increasing the contract value by \$48,000 for a total contract amount not to exceed \$96,000; and

WHEREAS, on September 8, 2020, the City of Antioch approved Amendment No. 2 extending the term of the Agreement for 6 months to March 15, 2021 and increasing the contract value by \$48,000 for a total amount not to exceed \$144,000; and

WHEREAS, the City continues to have a need for such services and the City and Consultant desire to extend the term of services of the original agreement until May 15, 2021, which would increase the value of the Agreement by \$16,000 for a total amount not to exceed \$160,000.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch does hereby:

1. Approve Amendment No. 3 ("Exhibit A") to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors, which extends the term of the Agreement for 2 months to May 15, 2021 and increases the value of the Agreement by \$16,000 for a total amount not to exceed \$160,000.
2. Authorize the City Manager to execute Amendment No. 3 to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors in substantially the form attached as "Exhibit A" subject to approval of form by the City Attorney.

* * * * *

(all signatures are on the next page)

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

AMENDMENT NO.3

**CONSULTING SERVICES AGREEMENT
Between the City of Antioch and
Voler Strategic Advisors**

THIS THIRD AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES is entered into and effective this 9th day of March, 2021, by and between the CITY OF ANTIOCH, a municipal corporation ("**City**") and VOLER STRATEGIC ADVISORS, their address is 1671 The Alameda, Suite 301 San Jose, CA 95126 ("**Consultant**").

R E C I T A L S

WHEREAS, on September 16, 2019, the City of Antioch and Voler Strategic Advisors entered into a Consulting Services Agreement for public information and communication officer services;

WHEREAS, on March 10, 2020, the City of Antioch and Voler Strategic Advisors executed Amendment No. 1 to the Agreement extending the term of service to September 15, 2020 and increasing the total amount of the Agreement to \$96,000; and

WHEREAS, on September 8, 2020, the City of Antioch approved Amendment No. 2 extending the term of service March 15, 2021 and increasing the total amount of the Agreement to \$144,000; and

WHEREAS, the City and Consultant desire to extend the term of service of the original agreement until May 15, 2021, which would increase the value of the Agreement by \$16,000 for a total amount not to exceed \$160,000.

NOW, THEREFORE, THE PARTIES DO MUTUALLY AGREE AS FOLLOWS:

1. Section 1.1 "Term of Services" shall be amended to read as follows:

The term of this Agreement shall begin on the date first noted above and shall end on May 15, 2021 and Consultant shall complete the work described in the Request for Proposal ("RFP") 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.

2. Section 2 "COMPENSATION" the first two paragraphs shall be amended to read as follows:

EXHIBIT A

City hereby agrees to pay Consultant a sum not to exceed \$8,000 per month, for a total contract amount not to exceed \$160,000, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. 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.

Except as modified herein, all other terms and conditions of the Consulting Services Agreement dated September 16, 2019 shall remain in full force and effect.

(all signatures are on the next page)

CITY OF ANTIOCH:

By: _____
Rowland E. Bernal, Jr.,
City Manager

ATTEST:

By: _____
Elizabeth Householder
City Clerk

APPROVED AS TO FORM:

By: _____
Thomas Lloyd Smith,
City Attorney

VOLER STRATEGIC
ADVISORS:

By: _____
Rolando Bonilla,
Chief Strategic Officer

By: _____
Peria Rodrigues,
Chief Executive Officer

RESOLUTION NO. 2020/148

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING AMENDMENT NO. 2 TO THE CONSULTING SERVICES AGREEMENT
BETWEEN THE CITY OF ANTIOCH AND VOLER STRATEGIC ADVISORS AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

WHEREAS, on September 16, 2019, the City of Antioch and Voler Strategic Advisors entered a Consulting Services Agreement for public information and communication officer services ("Agreement");

WHEREAS, on March 10, 2020, the City of Antioch and Voler Strategic Advisors executed Amendment No. 1 extending the term of services in the Agreement to September 15, 2020 and increasing the contract value by \$48,000 for a total contract amount not to exceed \$96,000; and

WHEREAS, the City continues to have a need for such services and the City and Consultant desire to extend the term of services of the original agreement until March 15, 2021, which would increase the value of the Agreement by \$48,000 for a total amount not to exceed \$144,000.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch does hereby:

1. Approve Amendment No.2 ("Exhibit A") to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors, which extends the term of the Agreement for 6 months to March 15, 2021 and increases the value of the Agreement by \$48,000 for a total amount not to exceed \$144,000; and
2. Authorize the City Manager to execute Amendment No.2 to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors in substantially the form attached as "Exhibit A" subject to approval of form by the City Attorney.

* * * * *

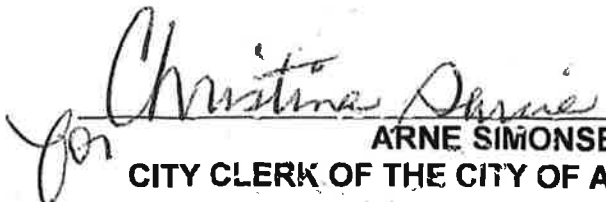
I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 8th day of September 2020, by the following vote:

AYES: Council Members Wilson, Motts, Thorpe, Ogorchock and Mayor Wright

NOES: None

ABSTAIN: None

ABSENT: None


ARNE SIMONSEN, MMC
CITY CLERK OF THE CITY OF ANTIOCH

AMENDMENT NO.2

**CONSULTING SERVICES AGREEMENT
Between the City of Antioch and
Voler Strategic Advisors**

THIS SECOND AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES is entered into and effective this 8th day of September, 2020, by and between the CITY OF ANTIOCH, a municipal corporation ("**City**") and VOLER STRATEGIC ADVISORS, their address is 1671 The Alameda, Suite 301 San Jose, CA 95126 ("**Consultant**").

R E C I T A L S

WHEREAS, on September 16, 2019, the City of Antioch and Voler Strategic Advisors entered into a Consulting Services Agreement for public information and communication officer services;

WHEREAS, on March 10, 2020, the City of Antioch and Voler Strategic Advisors executed Amendment No. 1 to the Agreement extending the term of service to September 15, 2020 and increasing the total amount of the Agreement to \$96,000; and

WHEREAS, the City and Consultant desire to extend the term of service of the original agreement until March 15, 2021, which would increase the total compensation under the Agreement.

NOW, THEREFORE, THE PARTIES DO MUTUALLY AGREE AS FOLLOWS:

1. Section 1.1 "Term of Services" shall be amended to read as follows:

The term of this Agreement shall begin on the date first noted above and shall end on March 15, 2021 and Consultant shall complete the work described in the Request for Proposal ("RFP") 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.

2. Section 2 "COMPENSATION" the first two paragraphs shall be amended to read as follows:

City hereby agrees to pay Consultant a sum not to exceed \$8,000 per month, for a total contract amount not to exceed \$144,000, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this

EXHIBIT A

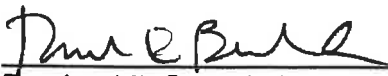
Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth below. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Except as specifically authorized by City, 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.

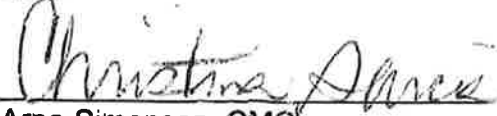
Except as modified herein, all other terms and conditions of the Consulting Services Agreement dated September 16, 2019 shall remain in full force and effect.

(all signatures are on the next page)

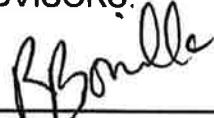
CITY OF ANTIOCH:

By: 
Rowland E. Bernal, Jr.,
City Manager

ATTEST:

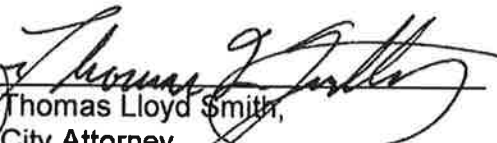
By: 
Arne Simonsen, CMC
City Clerk

VOLER STRATEGIC
ADVISORS:

By: 
Rolando Bonilla,
Chief Strategic Officer

By: 
Perla Rodriguez,
Chief Executive Officer

APPROVED AS TO FORM:

By: 
Thomas Lloyd Smith,
City Attorney

RESOLUTION NO. 2020/33

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE
AMENDMENT NO. 1 TO THE CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF ANTIOCH AND VOLER STRATEGIC ADVISORS**

WHEREAS, on September 16, 2019, the City of Antioch and Voler Strategic Advisors entered a Consulting Services Agreement for public information and communication officer services ("Agreement");

WHEREAS, the term of services in the Agreement was set to expire on March 15, 2020, but the City continues to have a need for such services; and

WHEREAS, the City and Consultant desire to extend the term of services of the original agreement until September 15, 2020, which would increase the total compensation under the Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch does hereby:

1. Approves Amendment No.1 ("Exhibit A") to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors; and
2. Authorizes the City Manager to execute Amendment No.1 to the Consulting Services Agreement between the City of Antioch and Voler Strategic Advisors ("Exhibit A") in a form approved by the City Attorney.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 10th day of March 2020, by the following vote:

AYES: Council Members Wilson, Motts, Thorpe, Ogorchock and Mayor Wright

NOES: None

ABSTAIN: None

ABSENT: None



**ARNE SIMONSEN, CMC
CITY CLERK OF THE CITY OF ANTIOCH**

AMENDMENT NO.1

**CONSULTING SERVICES AGREEMENT
Between the City of Antioch and
Voler Strategic Advisors**

THIS FIRST AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES is entered into and effective this 10th day of March, 2020, by and between the CITY OF ANTIOCH, a municipal corporation ("**City**") and the VOLER STRATEGIC ADVISORS, their address is 1671 The Alameda, Suite 301 San Jose, CA 95126 ("**Consultant**").

R E C I T A L S

WHEREAS, on September 16, 2019, the City of Antioch and Voler Strategic Advisors entered a Consulting Services Agreement for public information and communication officer services;

WHEREAS, the term of services in the Agreement was set to expire on March 15, 2020, but the City continues to have a need for such services; and

WHEREAS, the City and Consultant desire to extend the term of services of the original agreement until September 15, 2020, which would increase the total compensation under the Agreement.

NOW, THEREFORE, THE PARTIES DO MUTUALLY AGREE AS FOLLOWS:

1. Section 1.1 "Term of Services" shall be amended to read as follows:

The term of this Agreement shall begin on the date first noted above and shall end on September 15, 2020 and Consultant shall complete the work described in the Request for Proposal (RFP) 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.

2. Section 2 "COMPENSATION" the first two paragraphs shall be amended to read as follows:

City hereby agrees to pay Consultant a sum not to exceed \$8,000 per month, for a total contract amount not to exceed \$96,000, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this

EXHIBIT A

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.

Except as modified herein, all other terms and conditions of the Consulting Services Agreement dated September 16, 2019 shall remain in full force and effect.

(all signatures are on the next page)

CITY OF ANTIOCH:

By: _____
Rowland E. Bernal, Jr.,
City Manager

ATTEST:

By: _____
Arne Simonsen, CMC
City Clerk

APPROVED AS TO FORM:

By: _____
Thomas Lloyd Smith,
City Attorney

VOLER STRATEGIC
ADVISORS:

By: _____
Rolando Bonilla,
Chief Strategic Officer

By: _____
Peria Rodrigues,
Chief Executive Officer

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF ANTIOCH AND
VOLER STRATEGIC ADVISORS**

THIS AGREEMENT for consulting services is made by and between the City of Antioch ("City") and Voler Strategic Advisors ("Consultant") as of September 16, 2019.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to the City the services described in the Scope of Work attached as the Request for Proposal (RFP) 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 the Request for Proposal (RFP), 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 March 15, 2020, the date of completion specified in the Request for Proposal (RFP) and Consultant shall complete the work described in the Request for Proposal (RFP) 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 the services identified in the scope of work to public clients and is familiar with the plans and needs of City. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$8,000 per month, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. 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:

- The beginning and ending dates of the billing period
- Detailed accounting of service billing elements and volume and Total Services Fees

2.2 Payment Schedule.

- 2.2.1 The City shall make payments monthly, based on accounts received, according to the Request for Proposal (RFP).

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

- 2.5 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 and 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.
- 5.5 **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 Ron Bernal, City Manager ("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:

Rolando Bonnilla
Chief Strategy Officer
Voler Strategic Advisors
84 W. Santa Clara St., Suite 760
San Jose, CA 95113

Any written notice to City shall be sent to:

Ron Bernal
City Manager
City of Antioch
PO Box 5007
Antioch, CA 94531-5007

Copy to:

Thomas Lloyd Smith
City Attorney
City of Antioch
PO 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.

(all signatures are on the next page)

CITY:

CITY OF ANTIOCH

Rowland E. Bernal Jr.
Rowland E. Bernal Jr., City Manager

Attest:

Arne Simonsen
Arne Simonsen, CMC, City Clerk

Approved as to Form:

Thomas Lloyd Smith
Thomas Lloyd Smith, City Attorney

CONSULTANT

VOLTER STRATEGIC ADVISORS

By:

Polando A. Bonilla
Name: Polando A. Bonilla

Chief strategy officer
Title: Chief strategy officer

By:

Peter A. Rodriguez
Name: Peter A. Rodriguez

Chief executive officer
Title: Chief executive officer

[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]



**CITY OF ANTIOCH
REQUEST FOR PROPOSAL**

For

Public Information/Communications Officer Services

RELEASE DATE:

July 19, 2019

CLOSING DATE:

August 19, 2019



August 19, 2019

Ms. Nickie Mastay
Administrative Services Director
City of Antioch
200 H Street
Antioch, CA 94509

Dear Ms. Mastay:

Attached for your consideration is Voler Strategic Advisor's official response to the City of Antioch's Request for Proposal: Public Information Officer/ Communications Officer Services.

Given our extensive track record of success, and our personal connection to the City of Antioch, we are best positioned to serve the City with its communications needs.

Additionally, as former city official in both San Francisco and San Jose, my firm is extremely knowledgeable in the intricacies of local government.

We thank you for your consideration and look forward to the possibility of working with the City of Antioch.

Respectfully,

A handwritten signature in blue ink that reads "Rolando Bonilla".

Rolando A. Bonilla
Chief Strategy Officer



Our Firm

Voler Strategic Advisors is a full-service strategic communications firm offering public relations, crisis management, and communications strategies that help organizations achieve their maximum potential.

At Voler, we believe that great communications drive great results. We offer solutions that are client-inspired, success-driven and always inclusive of the communities that you serve.

In 2015, Voler Strategic Advisors merged with Ford & Bonilla in order to provide partners with a better experience. In total, the organization has been in existence for nine years.

Located in San Jose, the firm has a total of ten team members, and growing, which handle various disciplines of communications/marketing. Additionally, the firm has bi-lingual (English/Spanish) capabilities. We are proudly a minority-owned, and woman-owned business.

Principal Service Providers

All Voler's principal service providers have bachelor's degrees in a related field. More importantly, our team members have public sector experience, either working for an agency directly or through working in close collaboration with government agencies.

If selected to serve the City of Antioch, Rolando A. Bonilla would serve as the principal service provider for the account with support from various team members (some of whom are featured here).

About Rolando Bonilla, Chief Strategy Officer

Serving as Voler Strategic Advisor's Chief Strategy Officer, Rolando A. Bonilla brings to the organization over 20 years of experience working as a communications strategist.

Bonilla has been frequently quoted in publications, such as the *San Francisco Chronicle*, and *The Mercury News*. Additionally, he provides commentary for television both locally and nationally, offering expert opinion on political and communications issues.

Having begun his career in the rough and tumble of San Francisco politics beginning his service as a Public Service Aide for the Director of the San Francisco Department of Public Health, Bonilla was appointed by then San Francisco Supervisor Gavin Newsom and Mayor Willie L. Brown, Jr. to serve on several city commissions, including serving as the Chairman of the Finance Committee of the San Francisco Juvenile Probation Commission where he oversaw a \$30+ million budget. Additionally, during his time serving in the City and County of San Francisco, Bonilla was elected as a California Democratic Convention delegate.

After serving in San Francisco, Bonilla moved to the Silicon Valley where he advised San Jose Council member Nora Campos as her Communications Director. During his time at San Jose City Hall, Bonilla was responsible for developing the Council member's public safety agenda, which became one of the most high-profile political agendas coming out of San Jose City Hall.

In 2010, after having served in government, Bonilla entered the private sector and founded a public relations firm that developed clientele in various industry sectors. From crisis communications to political strategy for publicly traded companies, Bonilla established his reputation as an expert that organizations turn to whether when dealing with crisis, when establishing a public relations campaign, or seeking to achieve an organizational goal.

Today, as Voler Strategic Advisor's Chief Strategy Officer, Bonilla is responsible for developing and implementing client communications strategies and is also the organization's lead strategist for crisis communications.

Bonilla is also active in the community serving as a board member for the Healthier Kids Foundation-Santa Clara County, a non-profit focused on ensuring that uninsured children receive access to healthcare. Additionally, he sponsors three scholarships at the Bay Area Gardeners Foundation, a Bay Area non-profit focused on providing college scholarships for high school students seeking to attend college but that lack the resources.

Bonilla has a BA in Politics from the University of San Francisco and a JD from San Francisco Law School.

About Perla A. Rodriguez, CEO

With over 20 years of corporate leadership experience, Perla A. Rodriguez, Chief Executive Officer, has assembled a phenomenal team of professionals, trained by the best universities around the world. Together with her team members, distinguished leaders in their fields, Voler Strategic Advisors is providing innovative strategies and solutions to help clients achieve their objectives.

Well-known throughout corporate and media circles for her broad range of expertise and high level of professionalism, Rodriguez has worked for many of the biggest brands beyond the region, including Intel, Univision, PG&E, and the Public Policy Institute of California.

Previously, Rodriguez served as the Vice President of Public Affairs for Mi Pueblo Foods, where she was instrumental in building the company's first ever public affairs department. She and her department were critical in earning the political and grassroots support to fuel the company's rapid expansion from 10 to 21 locations throughout Northern California within a two-year period. Under her leadership, Mi Pueblo created innovative philanthropic programs that engaged thousands of customers and invested over two million dollars benefiting students, families and numerous nonprofit organizations.

Among her many accomplishments, Rodriguez has been recognized by her peers as a leader in the public relations industry. She has been recognized by the Silicon Valley Business Journal twice; in 2019 she was awarded a Latino Business Leadership Award, and in 2011 was recognized as one of the 100 most influential women in the Silicon Valley. The National Grocer's Association highlighted her for developing the Best Public Service campaign in the supermarket industry in 2011. In 2005, while working as a Community Affairs Manager for Univision 14, she was nominated for an Emmy Award as executive producer of the Exito Escolar education program.

Rodriguez holds a BA in international relations from Stanford University and an MPA from the University of San Francisco, with an emphasis in Health Services Administration. She is also a recent graduate of the Stanford Latino Entrepreneurship Initiative by the Stanford Graduate School of Business.

About Fatima Rodriguez, SVP and Public Health Expert

Fátima M. Rodríguez is Senior Vice President, Diversity Policy and System Transformation at Voler Strategic Advisors. Rodríguez brings a wealth of experience in health care communications, research, policy, and operations.

For over 10 years, Rodríguez worked at Kaiser Permanente's National Diversity and Inclusion office, where she served as a thought leader and subject matter expert operationalizing policy and collaborating with executive leadership, management, and frontline staff across the organization to transform care delivery.

Fátima M. Rodríguez earned a BA in Human Biology with honors from Stanford University and a Master's degree in Public Health from the Community Health Sciences Program at University of California, Los Angeles. Rodríguez completed her doctoral studies at the School of Public Health at University of California, Berkeley. In addition, she has advanced training in global migration and health



equity from the Disparities Solutions Center at Massachusetts General Hospital and Harvard University School of Medicine; University of California, Berkeley; and the European Union Public Health Association.

About Diego Barragan, Operations Director and Government Relations Expert

Having served in government for the last decade, at both the federal and local levels, Diego Barragan brings a deep understanding of how government works, and how it can be utilized to move an agenda forward.

At San Jose City Hall, as both a Legislative Director and Chief of Staff, Diego was called upon to develop complex strategy to successfully move policy and critical budget priorities in the third largest city in California.

Currently, Diego serves as a Commissioner on the Santa Clara County Airport Land Use Commission, appointed by the Santa Clara County Board of Supervisors, where he is responsible for administering federal and state land use regulations around property situated near Santa Clara County airports.

With his experience, Barragan is an expert in strategy, messaging, policy development, policy analysis, budgets, and communications. Most recently, Barragan led the Santa Clara Valley Water District's communication efforts on critical infrastructure projects.

Barragan received a BA in Political Science from San Jose State University and a MBA from Santa Clara University.

About María Espinosa-Peña, Creative Director

With over 25 years of experience in network television, María Espinosa-Peña joined Voler Strategic Advisors as the company's Creative Director. Most recently, she served as a News Producer at KTVU Fox 2.

Prior to her tenure at KTVU Fox 2, Espinosa-Peña was an Executive Producer at Univision Television Group where she produced over 200 episodes of a two-hour live weekday and weekend morning news program, as well as, thousands of television hours career wide in a top 10 media market (San Francisco Bay Area). Espinosa-Peña has also been nominated for an Emmy for her work in the Cultural and Public Affairs Programming category.

As an active professional in media, Espinosa-Peña is a member of the National Association of Television Arts and Sciences, Northern California Chapter, the National Association of Professional Women, and the National Association of Hispanic Journalists.



Espinosa-Peña holds a Bachelor of Arts in Radio and Television from San Francisco State University, and a Certificate in Non-Profit Leadership and Management from the Center for Excellence in Non-Profits.

Yadira Quintero, Public Relations Specialist and Social Media Expert

Yadira Quintero in her role as Public Affairs Specialist is instrumental in developing social media strategies for Voler's partners with the ultimate goal of impactful engagement with social media users. She is a major driver of content-gathering strategies and the development of interesting storylines and visuals. Quintero is keen on leveraging the latest technologies and being at the forefront of social media trends.

Previously, Quintero served as an aide at San Jose City Hall where she coordinated community activities and constituent outreach. Some of her areas of expertise in that role included outreach to schools, community organizations, and support to underserved communities. She also brings a strong track record in Latino community outreach and bilingual communications.

Quintero was part of the Kaiser Permanente's Public Affairs team where she planned, wrote, produced, and oversaw the distribution of quarterly communications. Additionally, she coordinated community relations projects on behalf of Kaiser Permanente.

Quintero holds a BS in Public Relations with an emphasis in Communications from San Jose State University.

Active in Public Information/Communication Organizations

Our staff are members of the National Association of Television Arts and Sciences, Northern California Chapter, the National Association of Professional Women, and the National Association of Hispanic Journalists.

Voler Strategic Advisors is a member of the Public Relations Society of America. Our CEO, Perla A. Rodriguez, as a former member of the media has been part of Public Affairs groups that have judged Emmy's entries and Bay Area Public Affairs Director's meetings, where collectively they reached out to non-profit and governmental agencies on a wide variety of issues. We subscribe to leading public relations publications and participate in on-going training and support through a global PR software/technology partner that we contract with.

Verifiable Knowledge

Our Chief Executive Officer has won numerous awards in the communications field, including having been nominated for an Emmy award. She has also been selected as one of the *100 Women of Influence* in the Silicon Valley by the Silicon Valley Business Journal, and most recently, was selected by the same publication as one of the Silicon Valley's top Latina CEO's for her work at our firm.

With our roster of experienced professionals, they have all established a reputation in the public information/media/communications space.

Our firm can easily demonstrate our understanding of these skills if presented with the opportunity to do so.

Experience

Regardless of industry, when it comes to earned media, it does not exist without having earned a positive reputation with the media outlets and professionals.

Our company has been built on being an open and transparent extension of the agencies that we represent in order to allow the media the opportunity to write their stories in a timely manner.

Our firm works with media throughout the Bay Area on a daily basis. We are experienced with handling a wide-range issues, from the most sensitive, to complex, to the positive and heartwarming. Here are examples of the kinds of headlines/issues we manage 365 days of the year:

- Government agencies dealing with growing crime rate or loss of police resources
- Company struck with I-9 audit and ICE raid
- Labor negotiations
- Hunger strikes
- Budget cuts; closing of programs/sites
- Work-site deaths
- Employee/s arrested
- Social media threats
- Leaders driving important public policy changes
- Grand openings of new facilities
- New program launches
- Success stories – people who are improving their lives and empowering themselves

- Making a difference – people and organizations doing amazing things for their communities

Methods and Examples

Achieving your organization's specific goals and objectives will require a customized approach. We will work with your team to evaluate what strategies will best serve your needs. This is not an all-inclusive list of methods.

- Stakeholder analysis – This is process wherein we come to understand who your stakeholders are, their needs and priorities, etc.
- We will evaluate your media footprint and come to understand your strengths, weaknesses, opportunities and threats.
- We will conduct an inventory of the communications tools and platforms your organization is using to reach the public to determine their effectiveness.
- We will identify initiatives/resources of most interest to the public. Based on this research we will identify story ideas and content for media outreach and social media.
- Given our extensive knowledge and relationships with Bay Area media outlets and media professionals, we will determine which outlets and individuals we will pitch stories to.
- Video production – We will produce original video content highlighting your best stories of impact. These videos will be used across a variety of communications platforms.
- Effective use of social media – We will monitor attitudes, engage you're your stakeholders, and provide them with engaging and impactful content that earns their interest.
- Crisis management and prevention – We will work with your team to respond quickly to issues that may threaten your organization's reputation. We will provide support and strategy in managing issues before they escalate. At the core of this work is being responsive, transparent, and listening to stakeholder concerns.
- Media Monitoring – Our team will monitor coverage of your organization and will be able to identify any issues that require attention. As part of our monitoring we will be able to obtain clips of TV coverage and links to other media coverage. These will also be shared throughout your communications platforms.
- Measurement of Impact – Using state of the art PR monitoring software/technology, we will be able to report on the impact of our work, including audience measurements and monetary value of media coverage.

Our firm can provide samples of work upon request.



Additional Services Provided

Voler Strategic Advisors is a full-service communications firm. Although not an exhaustive list, we offer the following services:

- Public Information Officer for government agencies
- Communications strategy and planning
- Crisis communications
- Social media management
- Press conference coordination
- Marketing
- Video production
- Graphic design
- Community outreach/relations
- Coordination of public relations activities/initiatives
- Speech writing
- Communications training
- Individual spokesperson training and on-site support

Fee Schedule

Our median monthly to cities is \$8,000 per month.

Items not covered by this fee are media advertising buying, and printing.

References

Michael McHatten
City Manager
City of Soledad
(831) 223-5072

Our firm has provided communications and marketing expertise to the City of Soledad for many years. We were the drivers behind developing Soledad's new identity, "Gateway to the Pinnacles", earning regional media coverage and helping to launch a national media blitz. Our sustained campaign generated news coverage throughout the Central Coast and Bay Area, attracting visitors and potential customers for local businesses. At the same time, our local media push, coupled with our success on social media, generated intrigue from national media outlets,



earning weekend coverage in LA Times and USA Today featuring Soledad as the gateway to the country's newest national park.

Dr. Hilaria Bauer
Superintendent
Alum Rock Union School District
(408) 928-6800

Our company provides Public Information Officer services to this organization, overseeing all communications strategy and functions. Those services include crisis communication, media outreach, social media, video production, graphic design, etc. Our firm can provide services in both English and Spanish to capture a very important part of their community. Public school districts have a tremendous responsibility in keeping their parents and community informed on all aspects of their child's education and the resources available to them.

Leslay Choy
Executive Director
San Pablo Economic Development Corporation
(510) 215-3200

Through media outreach and social media support, Voler Strategic Advisors has been a partner of the San Pablo Economic Development Corporation for more than 5 years. By working together, we have helped City of San Pablo residents with accessing valuable services including job training, business development, tattoo removal, and much more. Through our storytelling to the media, social media management, and our original video production capabilities, we have been able to help this organization raise their profile and carry forth their mission.



REQUEST FOR PROPOSAL

For

Public Information/Communications Officer Services

PROPOSAL DUE DATE: MONDAY, AUGUST 19, 2019 AT 5:00 PM

**CITY OF ANTIOCH
REQUEST FOR PROPOSAL**

For

Public Information/Communications Officer Services

RELEASE DATE: July 19, 2019

CLOSING DATE: Proposals must be received by Monday, August 19, 2019
at 5:00 p.m. PST at the address listed below.

CONTACT PERSON: Nickie Mastay, Administrative Services Director
925-779-7021
925-779-7002 (fax)
nmastay@ci.antioch.ca.us

Mailing address:

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

Delivery Address:

City of Antioch/Human Resources Department
200 H St
Antioch, CA 94509

Office Hours: M-F 8:30 a.m. – 4:30 p.m.

NOTICE TO BIDDERS

Notice is hereby given that the City of Antioch invites sealed bids for Public Information/Communications Officer Services. Each proposal shall be in accordance with the conditions and specifications on file in the Office of the Finance Department, City Hall, 200 H St, Antioch, California 94509, where copies of said conditions and specifications may be inspected or obtained. All bids must be in the format specified, enclosed in a sealed envelope and clearly identified with bid title, name of bidder and date of bid opening.

Sealed bids shall be delivered to the Human Resources Department at the above indicated address on or before 5:00 p.m., Monday, August 19, 2019. It is the bidder's responsibility to ensure that bids are received prior to the 5:00 p.m. bid closing time as late bids will not be accepted. The City of Antioch reserves the right to award or reject bids in part or in whole and on any basis it deems in the best interest of the City. Reference is hereby made to said specifications for further details which specifications, general conditions, and this "Notice to Bidders" shall be considered part of any contract made pursuant thereto.

If you downloaded this document from the City of Antioch's website, <https://antiochca.gov/rfps/>, it is the vendor's responsibility to check back with the website for any addenda that may have been issued, prior to the proposal due date.

I. INTRODUCTION

The City of Antioch is seeking proposals for public information officer/communication services from qualified individuals or firms to assist the City with public information and public relations activities. The goal of the request for proposal will be to have an appointment by September 1, 2019.

II. BACKGROUND

The City of Antioch was incorporated in 1872 as a general law city operating under the City Council/City Manager form of government. The City Council is responsible for adopting ordinances, resolutions, the budget, appointing commissions and committees, and hiring the City Manager and City Attorney. Antioch is a suburban city providing quality police, water, streets, parks, engineering, planning, and administrative services. The City has approximately 290 employees and an annual operating budget in excess of \$128 million.

III. SCOPE OF WORK

The following shall act only as a preliminary Scope of Work to generally communicate the City's expectations. The successful individual or firm should identify any additional services required to meet the City's expectations, price them and explain them in their response. The successful individual or firm will be expected, at a minimum, to perform the following:

Account Management

- Work with the City's branding firm, to develop, implement, and maintain an effective public information program and coordinate public relations activities for City Council, City Manager and City departments.
- Execute a weekly, in person strategy discussion with the City Manager and City departments.
- Monitor local and national publications and online alerts for stories about Antioch.
- Monitor and report on communications metrics on a monthly basis. Metrics may include, but are not limited to: hits per page; most visited page, total views; total time spent on website and social media pages; bait clicking; and other performance measures as determined.
- Develop and manage a 12-month calendar for City communications and a related plan for executing that plan.
- Provide leadership and direction for the implementation and maintenance of a citywide strategic communication plan that keeps the public and the workforce highly informed, engages the public in local government and manages media relations.
- Champion, manage, and monitor the use of all forms of communication including social media platforms, the City's media channels, print materials, and other communication methods that are available or might become available in the future.

Community Outreach

- Coordinate and administer the City's message across all communication platforms to portray a concerted, organized and clear message.
- Work with the City Managers department on the Weekly Update to educate and advise subscribers on City issues, meetings, events, programs, services and/or projects on a weekly basis.
- Work with City Manager, City Departments, City partners and influencers to gather news

about Antioch for distribution via social media, e-news platforms or City website.

- Evaluate and provide recommendations to the City Manager on an emergency communications platform (examples: Nixle/Everbridge) to support strong community outreach.
- Develop a plan to reach target audiences with all types of City communication platforms.
- Develop and administer survey platforms to gain public input on key issues.

Public Relations

- Enhance the City's public media outlets to include providing strategic support for communications projects, initiatives, and campaigns designed to advance the City's vision, mission, image and branding.
- Create messaging to drive interaction and build excitement through sharing relevant content. Draft and edit news releases, media advisories, informational matter and distributing to designated media outlets upon direction and approval by the City Manager or designee.
- Act as City's official spokesperson with the media.
- Create content for press releases.
- Manager media inquiries and interview requests.
- Facilitate broadcast and telephone interviews with the media as well as responses to email inquiries.
- Develop media relations strategy.
- Proactive media relations, through writing, reviewing and editing of news releases, emails, articles, postings and publications.
- Facilitate news conferences and prepare all necessary materials as needed.
- Work with the City's branding and marketing firms, to develop, implement, and maintain an effective public information program and coordinate public relations activities for City Council, City Manager and City departments.
- Proactively promote City accomplishments and activities.
- Provide and coordinate media training to management and employees as requested or needed.
- Presentations and staff reports at City Council meetings and other public meeting is required.
- Assist and counsel elected officials, City Manager and department heads concerning public relations (a 24/7 function).

Crisis Management

- Develop crisis strategy and training to Department Heads and City Council.
- Provide 24/7 crisis response.
- Develop messaging and communications tools.
- Coordinate press conferences.
- Prepare and distribute news releases and communications.
- Provide spokesperson training and support.
- Provide post-crisis evaluation and debriefing.

This is a six (6) month assignment which may be extended on a month-to-month basis. The City Manager would like to remain flexible during the process; the process may change as the candidate pool or other circumstances require.

IV. PROPOSAL REQUIREMENTS

Each proposal shall include the following information:

- A. Principal service providers(s) must have a Bachelor's degree in public relations, journalism, and mass communications or related field; recent experience in responsible public relations positions. Minimum of five (5) years' experience in professional level work. Previous related public sector experience desired.
- B. Active in public information/communication organizations.
- C. Must have verifiable knowledge of current principles, techniques and objectives of public information, communication and public relations programs; Council-Manager form of government; media tactics, including interview techniques and preparation; and professional applications of research and writing skills.
- D. List years in business with a description of your firm including size of firm, location, number and nature of the professional staff to be assigned to provide services; with a resume for each key person listed.
- E. Describe experience (minimum five-years previous experience with proven effectiveness) your firm or organization has in pertinent public information/press relations services.
- F. Describe the methods of providing proactive media relations and sample writing, reviewing and editing of news releases, newsletters, emails, articles, postings and publications.
- G. Additional services offered through your firm.
- H. Fee schedule:
 - State your proposed method of compensation for providing the City services as described above.
 - State any other costs the City may anticipate relating to the public information/press relations services to be provided and reimbursable expenses.
- I. References: Provide a list of three applicable references, include name, title, and contact information for each reference as well as a brief description of the specific services provided.
- J. Be aware that the City of Antioch City Managers schedule books quickly and City Council meetings are the second and fourth Tuesdays of the month.

V. SELECTION PROCESS

The City Manager may appoint a selection committee to perform the evaluation. Each proposal will be analyzed to determine overall responsiveness and qualifications under the Request for Proposal. Criteria to be evaluated may include, at a minimum, the following:

- Background and Qualifications.
- Relevant Experience.
- Responsiveness to this Request for Proposal.
- Qualifications and experience of the individuals assigned to the project.
- Experience from within and outside California.
- Regional reputation.
- Schedule and availability.
- Cost of Services.
- Reference contact results.
- Willingness to think “outside the box” and present innovative ideas for providing the services outlined above.

VI. CONTRACT REQUIREMENTS

1. Robbins-Rosenthal Fair Debt Collection Practices Act
The successful contractor(s) must operate in accordance with ethical collection practices and obey all laws, including the Robbins-Rosenthal Fair Debt Collection Practices Act.
2. Insurance requirements: The successful contractor(s) will maintain in force, during the full term of the contract, insurance as indicated starting on page 10.
3. Indemnification Agreement: To the full extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorney fees incurred by City, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever incurred in relation to, as a consequence of or arising out of or in any way attributable in whole or in part to the performance of this agreement. All obligations under this provision are to be paid by the Contractor as the City incurs them.

Without affecting the rights of City under any provision of this agreement or this section, Contractor shall not be required to indemnify and hold harmless City as set forth above for liability attributable to the sole fault of City, provided such sole fault is determined by agreement between the parties of the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely at fault and not in instances where City's fault accounts for only a percentage of the liability involved. In those instances, the obligation of Contractor will be all-inclusive, and City will be indemnified for all liability incurred, even though a percentage of the liability is attributable to conduct of the City.

Contractor acknowledges that its obligation pursuant to this section extends to liability attributable to City, if that liability is less than the sole fault of the City.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-contractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this agreement or section.

Remittance and Reporting Requirements: The successful contractor(s) will be required to submit to the City of Antioch regular monthly remittances and statements no later than thirty (30) days following the month of collection

VII. PROPOSAL SUBMISSION INFORMATION

- a. Inquiries concerning the RFP must be submitted via email to Nickie Mastay, Administrative Services Director, at the following email address: nmastay@ci.antioch.ca.us.
- b. Responses will not be made to telephone inquiries.
- c. Proposal Submittal: An original and three copies of complete proposals are required. The original must be clearly marked and contain original signatures and must be easily reproducible. Failure to clearly mark the original and provide original signatures will result in a proposal being found non-responsive and given no consideration.

The proposal should be submitted no later than **5:00pm on Monday, August 19, 2019** to:

Mailing address:

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

Delivery Address:

City of Antioch
Human Resources Department
200 H St
Antioch, CA 94509

- d. The City reserves the right to reject any and all proposals submitted, to request clarifications of services submitted, to request additional information from competitors, and to waive any irregularity in the proposal. Finalist candidates or firms may be asked to present their qualifications to the City Manager. Following proposal evaluations, interviews and reference calls, the award of a contract to the successful candidate or firm will be at the sole discretion of the City Manager.

- e. The City reserves the right to cancel the awarded contract with a 30-day written notice for non-compliance of agreed upon proposed specifications.
- f. The firm chosen by the City will be required to obtain a City business license prior to starting services.
- g. The candidate or firm chosen by the City will be required to execute a Consulting Services Agreement, a template of which is attached as Exhibit A. If the candidate or firm chosen has any questions or proposed deviations to the provisions in this Agreement, those must be set forth in writing in the proposal. Otherwise, the firm shall be deemed to have accepted all provisions of the Agreement.

City of Antioch Insurance Requirements for Consultants

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.

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.

Automotive 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.

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.

Professional Liability (Errors and Omissions) Insurance:

Insurance appropriate to Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) *Additional Insured Status.* The City, its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

- (2) *Primary Coverage.* For any claims related to the services provided by the Consultant, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- (3) *Notice of Cancellation.* Each insurance policy required above shall provide that coverage shall not be cancelled except with notice to the City.
- (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.
- (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.
- (6) *Claims made policies.* If any of the required policies provide claims-made coverage:
 - (i) *The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.*
 - (ii) *Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract work.*
 - (iii) *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 work.*

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.

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.

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.

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.

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.

City of Antioch
Indemnification and Consultant's Responsibilities

1. CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend (with council 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.
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.
3. Acceptance by City of insurance certificates or 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.
4. By execution of this Agreement, Consultant acknowledges and agrees to the provision of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

Legal Requirements

1. *Governing Law.* The laws of the State of California shall govern this Agreement
2. *Compliance with Applicable Laws.* Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
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.
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 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 additions to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
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 the Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

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.

EXHIBIT 'A'

**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 _____ ("Consultant") as of _____.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to the City the services described in the Scope of Work attached as the Request for Proposal (RFP) 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 the Request for Proposal (RFP), 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 _____, the date of completion specified in the Request for Proposal (RFP) and Consultant shall complete the work described in the Request for Proposal (RFP) 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 agrees to pay Consultant a sum not to exceed bid pricing in the Request for Proposal (RFP). Total charges for services will be on a price times volume basis, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. 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:

- The beginning and ending dates of the billing period;
- Detail accounting of service billing elements and volume and Total Services Fees

2.2 Payment Schedule.

2.2.1 The Consultant shall make payments monthly, based on accounts received, according to the Request for Proposal (RFP).

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

2.5 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 insured's 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 coverage's for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insured's.
- 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.
- 5.5 **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 B 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 B 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 Lisa Saunders, Finance Services Supervisor ("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:

Nickie Mastay
Administrative Services Director
City of Antioch
PO BOX 5007
Antioch, CA 94531-5007

Any written notice to City shall be sent to:

City Manager
City of Antioch
PO Box 5007
Antioch, CA 94531-5007

10.11 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit B, 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.

(all signatures are on the next page)

CITY:

CITY OF ANTIOCH

Ron Bernal, City Manager

Attest:

Arne Simonsen, City Clerk of City of Antioch

Approved as to Form:

Thomas Lloyd Smith, City Attorney

CONSULTANT:

[NAME OF CONSULTANT]

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

[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]



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

APPROVED BY: John Samuelson, Public Works Director/City Engineer *JS*

SUBJECT: Resolution Authorizing the Execution of a Financing Agreement with the State Water Resources Control Board for a Drinking Water State Revolving Fund Loan up to \$55,000,000 for the Brackish Water Desalination Project (P.W. 694)

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution:

1. Approving the State Water Resources Control Board (SWRCB) Financing Agreement (Agreement) for a Drinking Water State Revolving Fund Loan (DWSRF) up to \$55,000,000 for the Brackish Water Desalination Project ("Project").
2. Authorizing the City Manager or designee to execute the Agreement (Attachment B).

FISCAL IMPACT

The Project budget is \$110,000,000 and is included in the adopted 2020-2025 Capital Improvement Program. Approval of this Resolution will secure a \$55,000,000 SWRCB DWSRF low interest loan. Additional funding for this Project includes a California Department of Water Resources Desalination Grant (\$10,000,000), a SWRCB DWSRF Planning Loan (\$1,000,000), California Department of Water Resources Settlement Agreement funds (\$27,000,000) and City of Antioch Water Enterprise Funds (\$17,000,000).

The interest rate on the DWSRF loan is 1.4%. The loan will be used to reimburse the City for design and construction costs. The loan repayment schedule is included as Attachment "D". The cost of loan repayment will be included in future Water Enterprise Fund budgets.

DISCUSSION

Previous Actions

On June 26, 2018 by Resolution No. 2018/79, the City Council authorized the City Manager to submit an application to the State Water Resources Control Board for a Drinking Water State Revolving Fund Loan up to \$55,000,000.

On July 25, 2018 by Resolution No. 2018/88, the City Council authorized the City Manager to submit the Reimbursement Resolution pertaining to the loan application with the State Water Resources Control Board for a Drinking Water State Revolving Fund Loan for the Brackish Water Desalination Project.

On December 18, 2020 by Resolution No. 2020/187, the City Council authorized the City Manager to execute a construction agreement for the Project to the lowest, responsive, and responsible bidder, Shimmick Construction Company, Inc. in the amount of \$86,689,000 plus a 5% contingency of \$4,334,450 for a total amount of \$91,023,450.

Background

This Project is the culmination of seven years of work 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 as a result of climate change. This Project will allow the City to preserve its pre 1914 water rights and stay in the Delta by allowing the City to use water from its river intake year-round, even when the salinity is above levels normally treated at the existing conventional Water Treatment Plant.

This Project will generally consist of the construction of a brackish water desalination facility located within the fence line of the City's existing Water Treatment Plant ("WTP") with a capacity of 6 million gallons per day ("mgd"). The project also includes relocation and replacement of the City's existing San Joaquin River intake pump station with a new pump station including state of the art fish screens and construction of approximately 3,000 feet of new raw water pipeline connecting the new river pump pipeline to the City's WTP. In addition, the Project includes the construction of a 4.3 mile long brine disposal pipeline from the new desalination facility to the existing Delta Diablo Wastewater Treatment Plant (Delta Diablo) outfall to convey approximately 2 mgd of brine for discharge from Delta Diablo's existing wastewater outfall.

Antioch's application has since been approved by the SWRCB and Antioch's legal counsel has reviewed the Agreement.

Following is the project schedule provided in the Agreement:

- Eligible Work Start Date: January 1, 2019
- Eligible Construction Start Date: November 15, 2020
- Estimated Construction Completion Date: July 31, 2023
- Estimated Final Disbursement Request Date: January 31, 2024
- Estimated Final Payment Date: July 31, 2053
- Estimated Records Retention End Date: July 31, 2059

ATTACHMENTS

- A. Resolution
- B. SWRCB Agreement
- C. City Attorney Opinion
- D. Project Loan Schedule

ATTACHMENT "A"

RESOLUTION NO. 2021/**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AUTHORIZING THE EXECUTION AND DELIVERY OF AND APPROVING A FINANCING AGREEMENT WITH THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Antioch, a public agency duly organized and existing under and pursuant to the Constitution and laws of the State of California (the "City"), is authorized under provisions of the Constitution and laws of the State of California, and in accordance therewith, to incur indebtedness;

WHEREAS, the City owns and operates a water system (such system, including all additions, improvements and extensions thereto, is referred to herein as the "Water System");

WHEREAS, the City has determined that it is in the best interests of its constituents to construct a brackish water desalination facility (the "Project") for the Water System;

WHEREAS, the City has applied for and obtained a loan from the California State Water Resources Control Board (the "State Water Board") under the State Revolving Fund Program (the "SRF Loan") to provide the funds needed to pay for the Project;

WHEREAS, in connection with the SRF Loan, the City must enter into a Financing Agreement with the State Water Board (the "Financing Agreement");

WHEREAS, there has been presented to this meeting the following for approval:

(1) Financing Agreement for Project No. P.W. 694 between the City and the State Water Board;

WHEREAS, the Financing Agreement is necessary to accomplish the completion and funding of the SRF Loan and eventual distribution of loan proceeds to the City to fund the Project; and

WHEREAS, all acts, conditions and things required by the Constitution and laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the entering into of the documents described above.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Antioch as follows:

1. The City hereby specifically finds and declares that the statements, findings and determinations of the City set forth in the preambles of the documents approved herein are true and correct.
2. The Financing Agreement is hereby approved and the City Manager, and his written designees (each an "Authorized Officer" and together, the

RESOLUTION NO. 2021/**

March 9, 2021

Page 2

“Authorized Officers”), acting alone, is hereby authorized and directed to execute and deliver the Financing Agreement in the name of and on behalf of the City, in substantially the form now before this meeting, but with such changes, modifications, additions and deletions therein as shall be deemed necessary, desirable or appropriate by the City Attorney and the Authorized Officer or Authorized Officers. Approval of any such changes, modifications, additions and deletions shall be conclusively evidenced by the execution and delivery of the Financing Agreement by one or more Authorized Officers.

3. Each Authorized Officer is hereby appointed as an authorized officer of the City for all purposes required by the Financing Agreement, and such Authorized Officers are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the foregoing actions.
4. The Authorized Officers are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this Resolution and to effectuate the SRF Loan and the Financing Agreement. Such actions heretofore taken by an Authorized Officer are hereby ratified, confirmed and approved.
5. This Resolution shall take effect immediately upon its passage.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**



State Water Resources Control Board

February 11, 2021

City of Antioch
Attn: Ron Bernal – City Manager
200 H Street
Antioch, CA 94509

Agreement Number: SWRCB0000000000D2002028
Project Number: 0710001-002C

Enclosed is your Agreement for your approval and signature. This Agreement cannot be considered binding by either party until executed by the State Water Resources Control Board (State Water Board).

If you are in agreement with all terms and conditions of the Agreement, please sign and date **two (2) signature** pages; return only the two (2) signature pages – it is not necessary to send the entire Agreement - **no later than thirty (30) calendar days from the date of this letter to:**

Overnight Mail

David Bruglia
State Water Resources Control Board
Division of Financial Assistance
1001 I Street, 16th Floor
Sacramento, CA 95814

US Mail

David Bruglia
State Water Resources Control Board
Division of Financial Assistance
P. O. Box 944212
Sacramento, CA 94244-2120

In order for the Funding Agreement to be executed by the State Water Board, the following items must also be returned with the signed signature pages:

1. Opinion of General Counsel.

Be aware that all projects receiving funding must comply with all applicable implementing guidelines and regulations adopted by California Department of Industrial Relations (DIR), regarding state prevailing wage requirements. You must contact DIR for guidance on how to comply. Information can be found at: <http://www.dir.ca.gov/lcp.asp>.

Additional Compliance Requirements:

Davis Bacon Compliance:

https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/davisbacon.shtml

Disadvantaged Business Enterprise (DBE)

https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/policy0513/dbecompliance_guidelines_instructions.pdf

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Mr. Bruglia may be contacted at (916) 449-5640 or David.Bruglia@waterboards.ca.gov

Once the Agreement is signed by both parties, we will forward an executed copy to you for your records.

Enclosures



DRINKING WATER

CITY OF ANTIOCH

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



CONSTRUCTION
INSTALLMENT SALE AGREEMENT

PROJECT NO. 0710001-002C
BRACKISH WATER DESALINATION PROJECT

AGREEMENT NO. SWRCB0000000000D2002028

PROJECT FUNDING AMOUNT: \$55,000,000.00
ESTIMATED REASONABLE PROJECT COST: \$92,000,000.00

ELIGIBLE WORK START DATE: JANUARY 1, 2019
ELIGIBLE CONSTRUCTION START DATE: NOVEMBER 15, 2020
CONSTRUCTION COMPLETION DATE: JULY 31, 2023
FINAL DISBURSEMENT REQUEST DATE: JANUARY 31, 2024
FINAL PAYMENT DATE: JULY 31, 2053
RECORDS RETENTION END DATE: JULY 31, 2059

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AGREEMENT

1. AUTHORITY.

- (a) The State Water Resources Control Board (State Water Board) is authorized, and implements its authority, to provide financial assistance under this Agreement pursuant to Section 116760 et seq. of the Health and Safety Code, and Resolution Nos. 2019-0065 and 2020-0022.
- (b) The Recipient is authorized to enter into this Installment Sale Agreement (Agreement) pursuant to Authorized Resolution No. 2018/79.

2. INTENTION.

- (a) The Recipient desires to receive financial assistance for and undertake work required for the drinking water construction Project according to the terms and conditions set forth in this Agreement.
- (b) The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project in the amount set forth in Exhibit B, according to the terms and conditions set forth in this Agreement, with the expectation that the Recipient shall repay all of the financial assistance to the State Water Board.
- (c) The Recipient intends to evidence its obligation to submit Payments to the State Water Board and secure its obligation with Net Revenues of its water enterprise, as set forth in Exhibit B, according to the terms and conditions set forth in this Agreement.
- (d) The Recipient intends to certify and evidence its compliance with the Tax Covenants set forth in Exhibit F.

3. AGREEMENT, TERM, DOCUMENTS INCORPORATED BY REFERENCE.

In consideration of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement.

- (a) The Recipient hereby sells to the State Water Board and the State Water Board hereby purchases from the Recipient the Project. Simultaneously therewith, the Recipient hereby purchases from the State Water Board, and the State Water Board hereby sells to the Recipient, the Project in accordance with the provisions of this Agreement. All right, title, and interest in the Project shall immediately vest in the Recipient on the date of execution and delivery of this Agreement by both parties without further action on the part of the Recipient or the State Water Board.
- (b) Subject to the satisfaction of any condition precedent to this Agreement, this Agreement shall become effective upon the signature of both the Recipient and the State Water Board. Conditions precedent are not limited to the following:
- i. The Recipient must deliver to the Division a resolution authorizing this Agreement.
 - ii. The Recipient must deliver an opinion of general counsel satisfactory to the State Water Board's counsel dated on or after the date that the Recipient signs this Agreement.
- (c) Upon execution, the term of the Agreement shall begin on the Eligible Work Start Date and extend through the Final Payment Date.
- (d) This Agreement includes the following exhibits and attachments thereto:

- i. EXHIBIT A – SCOPE OF WORK
- ii. EXHIBIT B – FUNDING TERMS
- iii. EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS
- iv. EXHIBIT D – SPECIAL CONDITIONS
- v. EXHIBIT E – PAYMENT SCHEDULE
- vi. EXHIBIT F – TAX CERTIFICATE

(e) This Agreement includes the following documents incorporated by reference:

- i. Reserved;
- ii. the Drinking Water System Permit No. 02-04-95P-0710001;
- iii. the Recipient's Reimbursement Resolution No. 2018/88 dated July 24, 2018;
- iv. the Recipient's Tax Questionnaire dated October 15, 2019;
- v. the Davis-Bacon requirements found at:
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/davisbac/2020_dwsrf_governmental_entities.pdf;

4. PARTY CONTACTS

State Water Board		City of Antioch	
Section:	Division of Financial Assistance		
Name:	Tatiana Guillen, Project Manager	Name:	Ron Bernal, City Manager
Address:	1001 I Street, 16 th Floor	Address:	200 H Street
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Antioch, CA 94509
Phone:	(916) 449-5295	Phone:	(925) 779-7011
Fax:		Fax:	
Email:	Tatiana.Guillen@waterboards.ca.gov	Email:	rbernal@ci.antioch.ca.us

The Recipient may change its contact upon written notice to the Division, which notice shall be accompanied by authorization from the Recipient's Authorized Representative. The State Water Board will notify the Recipient of any changes to its contact.

While the foregoing are contacts for day-to-day communications regarding Project work, the Recipient shall provide official communications and events of Notice as set forth in Exhibit C to the Division's Deputy Director.

5. DEFINITIONS.

Unless otherwise specified, each capitalized term used in this Agreement has the following meaning:

"Additional Payments" means the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, staff, contractors, consultants, costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

"Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.

"Agreement" means this agreement, including all exhibits and attachments hereto.

"Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.

"Bank" means the California Infrastructure and Economic Development Bank.

"Bond Funded Portion of the Project Funds" means any portion of the Project Funds which was or will be funded with Bond Proceeds.

"Bond Proceeds" means original proceeds, investment proceeds, and replacement proceeds of Bonds.

"Bonds" means any series of bonds issued by the Bank, the interest on which is excluded from gross income for federal tax purposes, all or a portion of the proceeds of which have been, are, or will be applied by the State Water Board to fund all or any portion of the Project Costs or that are secured in whole or in part by Payments paid hereunder.

"Charge In Lieu of Interest" means any fee or charge in lieu of some or all of, but not to exceed, the interest that would otherwise be owed under this Agreement, as set forth in Exhibit E.

"Code" as used in Exhibit F of this Agreement means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

"Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is identified in Exhibit A of this Agreement.

"Cover Page" means the front page of this Agreement.

"Days" means calendar days unless otherwise expressly indicated.

"Debt Service" means, as of any date, with respect to outstanding System Obligations and, in the case of the additional debt tests in Exhibit B of this Agreement, any System Obligations that are proposed to be outstanding, the aggregate amount of principal and interest scheduled to become due (either at maturity or by mandatory redemption), together with any Charge In Lieu of Interest on this Obligation or other System Obligations to the State Water Board, calculated with the following assumptions:

- a. Principal payments (unless a different subdivision of this definition applies for purposes of determining principal maturities or amortization) are made in accordance with any amortization schedule published for such principal, including any minimum sinking fund payments;
- b. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a tax-exempt obligation under federal law, is the average of the SIFMA Municipal Swap Index, or its successor index, during the 24 months preceding the date of such calculation;
- c. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a taxable obligation under federal law, is the average of LIBOR, or its successor index, during the 24 months preceding the date of such calculation;
- d. Interest on a variable rate System Obligation that is subject to a swap agreement is the fixed swap rate or cap strike rate, as appropriate, if the variable rate has been swapped to a fixed rate or capped pursuant to an interest rate cap agreement or similar agreement;

e. Interest on a fixed rate System Obligation that is subject to a swap agreement such that all or a portion of the interest has been swapped to a variable rate shall be treated as variable rate debt under subdivisions (b) or (c) of this definition of Debt Service;

f. Payments of principal and interest on a System Obligation are excluded from the calculation of Debt Service to the extent such payments are to be paid from amounts then currently on deposit with a trustee or other fiduciary and restricted for the defeasance of such System Obligations;

g. If 25% or more of the principal of a System Obligation is not due until its final stated maturity, then principal and interest on that System Obligation may be projected to amortize over the lesser of 30 years or the Useful Life of the financed asset, and interest may be calculated according to subdivisions (b)-(e) of this definition of Debt Service, as appropriate.

"Deputy Director" means the Deputy Director of the Division.

"District Office" means District Office of the Division of Drinking Water of the State Water Board.

"Division" means the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer this Agreement.

"Division of Drinking Water" means the Division of Drinking Water of the State Water Board.

"Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.

"Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.

"Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.

"Event of Default" means the occurrence of any of the following events:

- a) Failure by the Recipient to make any payment required to be paid pursuant to this Agreement, including Payments;
- b) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
- c) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
- d) Failure by the Recipient to comply with the additional debt test or reserve fund requirement, if any, in Exhibit B or Exhibit D of this Agreement;
- e) Failure to operate the System or the Project without the Division's approval;
- f) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
- g) The occurrence of a material breach or event of default under any System Obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption;
- h) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law; the appointment of or taking possession of the

Recipient's property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; the Recipient's entering into a general assignment for the benefit of creditors; the initiation of resolutions or proceedings to terminate the Recipient's existence, or any action in furtherance of any of the foregoing;

i) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code; or

j) Loss of the Recipient's rights, licenses, permits, or privileges necessary for the operation of the System or the Project, or the occurrence of any material restraint on the Recipient's enterprise by a government agency or court order.

"Final Disbursement Request Date" means the date set forth as such on the Cover Page of this Agreement, after which date, no further Project Funds disbursements may be requested.

"Final Payment Date" is the date by which all principal and accrued interest due under this Agreement is to be paid in full to the State Water Board and is specified on the Cover Page of this Agreement.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year, or any other annual period selected and designated by the Recipient as its Fiscal Year in accordance with applicable law.

"Force Account" means the use of the Recipient's own employees, equipment, or resources for the Project.

"GAAP" means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.

Listed Event" means, so long as the Recipient has outstanding any System Obligation subject to Rule 15c2-12, any of the events required to be reported with respect to such System Obligation pursuant to Rule 15c2-12(b)(5).

"Material Obligation" means an obligation of the Recipient that is material to this transaction, including System Obligations.

"Maximum Annual Debt Service" means the maximum amount of Debt Service due on System Obligations in a Fiscal Year during the period commencing with the Fiscal Year for which such calculation is made and within the next five years in which Debt Service for any System Obligations will become due.

"Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make Payments (including Additional Payments) as provided herein, as evidenced by the execution of this Agreement, proceeds of such obligations being used to fund the Project as specified in the Project Description in Exhibit A and Exhibit B and in the documents thereby incorporated by reference.

"Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and

preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

"Parity Obligation" means a debt obligation of the Recipient on parity with this Obligation. The Recipient's Parity Obligations are these:

- Drinking Water State Revolving Fund Planning Loan, by and between the State Water Resources Control Board and the City of Antioch, Agreement No. D16-02050, executed February 13, 2017.

"Payment" means any payment due to the State Water Board from the Recipient pursuant to this Agreement.

"Policy" means the State Water Board's "Policy for Implementing the Drinking Water State Revolving Fund," as amended from time to time, including the Intended Use Plan in effect as of the execution date of this Agreement.

"Project" means the Project financed by this Agreement as described in Exhibits A and B and in the documents incorporated by reference herein.

"Project Completion" means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first.

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance under this Agreement, which are allowable costs as defined under the Policy, and which are reasonable, necessary and allocable by the Recipient to the Project under GAAP, and may include capitalized interest.

"Project Funds" means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to this Agreement.

"Recipient" means the City of Antioch.

"Records Retention End Date" means the last date that the Recipient is obligated to maintain records and is set forth on the Cover Page of this Agreement.

"Regional Water Quality Control Board" or "Regional Water Board" means the appropriate Regional Water Quality Control Board.

"Reimbursement Resolution" means the Recipient's reimbursement resolution identified and incorporated by reference in this Agreement.

"Reserve Fund" means the reserve fund required pursuant to Exhibit B of this Agreement.

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on

the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

"Rule 15c2-12(b)(5)" means Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended.

"Senior Obligation" means a debt obligation of the Recipient that is senior to this Obligation. There are no Senior Obligations.

"SRF" means the Drinking Water State Revolving Fund.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board.

"Subordinate Obligation" means a debt obligation of the Recipient that is subordinate to this Obligation. There are no Subordinate Obligations.

"System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

"System Obligation" means any obligation of the Recipient payable from the Revenues, including but not limited to this Obligation, any Parity Obligation, any Subordinate Obligation, and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations and this Agreement.

"Useful Life" means the economically useful life of the Project beginning at Completion of Construction and is set forth in Exhibit A.

"Year" means calendar year unless otherwise expressly indicated.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CITY OF ANTIOCH:

By: _____
Name: Ron Bernal
Title: City Manager

Date: _____

STATE WATER RESOURCES CONTROL BOARD:

By: _____
Name: Leslie Laudon
Title: Deputy Director
Division of Financial Assistance

Date: _____

EXHIBIT A – SCOPE OF WORK

A.1. PROJECT DESCRIPTION, USEFUL LIFE, AND SCOPE OF WORK.

- (a) The Project is the project set forth on the Cover Page of this Agreement.
- (b) The Useful Life of this Project is at least 50 years.
- (c) Scope of Work.

The Recipient agrees to do the following: Construct a desalination facility with a finished water capacity of 6 million gallons per day. The treatment system will be constructed near the Recipient's existing Plant A and will include a new reverse osmosis (RO) treatment system, two new chemical storage tanks, filter replacement for Plant A, pump stations, electrical upgrade, associated piping, and equipment/appurtenances to support the RO system.

A.2. STANDARD PROJECT REQUIREMENTS.

A.2.1 Acknowledgements.

The Recipient shall include the following acknowledgement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California's Drinking Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

A.2.2 Reports

A.2.2.1 Progress Reports.

- (a) The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement.
- (b) The Recipient must provide a progress report with each disbursement request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibit B.
- (c) A progress report must contain the following information:
 - i. A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
 - ii. A description of compliance with environmental requirements;
 - iii. A listing of change orders including amount, description of work, and change in contract amount and schedule; and

- iv. Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

A.2.2.2 Project Completion Report.

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

(b) If the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.

A.2.2.3 As Needed Reports.

The Recipient must provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

A.2.2.4 DBE Reports for SRF Projects.

The Recipient must report Disadvantaged Business Enterprise (DBE) utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient must comply with 40 CFR § 33.301 and require its contractors and subcontractors on the Project to comply.

A.2.3 Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain the sign in good condition for the duration of the construction period. The sign must include the following disclosure statement and color logos (available from the Division):



- b. "Funding for this Antioch Brackish Water Desalination project has been provided in full or in part by the Drinking Water State Revolving Fund through an agreement with the State Water Resources Control Board. California's Drinking Water State Revolving Fund is capitalized

through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds.”

c. The Project sign may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner.

A.2.4 Commencement of Operations.

Upon Completion of Construction of the Project, the Recipient must expeditiously initiate Project operations.

A.3 DATES & DELIVERABLES.

(a) Time is of the essence.

(b) The Recipient must expeditiously proceed with and complete construction of the Project.

(c) The following dates are established as on the Cover Page of this Agreement:

- i. Eligible Work Start Date
- ii. Eligible Construction Start Date
- iii. Completion of Construction Date
- iv. Final Disbursement Request Date
- v. Records Retention End Date
- vi. Final Payment Date

(d) The Recipient must award the prime construction contract timely.

(e) The Recipient agrees to start construction no later than March 31, 2021.

(f) The Recipient must deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date.

(g) The undisbursed balance of this Agreement will be deobligated if the Recipient does not provide its final Disbursement Request to the Division on or before the Final Disbursement Request Date, unless prior approval has been granted by the Division.

EXHIBIT B – FUNDING TERMS

B.1. FUNDING AMOUNTS AND DISBURSEMENTS

B.1.1 Funding Contingency and Other Sources.

(a) If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount.

(b) If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient must notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's share of Project Costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board to be applied to Payments due hereunder, if any.

B.1.2 Estimated Reasonable Cost.

The estimated reasonable cost of the total Project, including associated planning and design costs is ninety-two million dollars and no cents (\$92,000,000.00).

B.1.3 Project Funding Amount.

Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

B.1.4 Reserved.

B. 1.5 Budget Costs.

(a) Estimated budget costs are contained in the Summary Project Cost Table below:

LINE ITEM	TOTAL ESTIMATED COST	PROJECT FUNDING AMOUNT
Construction	\$70,000,000.00	\$33,345,322.00
Pre-Purchased Material/Equipment	\$0.00	\$0.00
Purchase of Land	\$0.00	\$0.00
Contingency	\$7,000,000.00	\$7,000,000.00
Allowances (Soft Costs)	\$15,000,000.00	\$14,654,678.00
TOTAL	\$92,000,000.00	\$55,000,000.00

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division's Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the Summary Project Cost Table that are due to a change in scope of work will require an Agreement amendment. The sum of adjusted line items in both the Summary Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

(b) Under no circumstances may the sum of line items in the budget approved through the Final Budget Approval process exceed the Project Funding Amount. Any increase in the Project Funding Amount will require an Agreement amendment.

B.1.6 Contingent Disbursement.

(a) The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

(b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other entity. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

(c) Construction costs and disbursements are not available until after the Division has approved the final budget form submitted by the Recipient.

(d) No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.

(e) Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.

(f) Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.

(g) The Recipient agrees to ensure that its final Disbursement Request is received by the Division no later than the Final Disbursement Request Date, unless prior approval has been granted by the Division. If the final Disbursement Request is not received timely, the undisbursed balance of this Agreement will be deobligated.

(h) The Recipient is not entitled to interest earned on undisbursed funds.

B.1.7 Disbursement Procedure.

Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance costs through submission to the State Water Board of the Disbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.
2. The Recipient must submit a disbursement request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late disbursement requests may not be honored.

3. The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts approved by the Division in the Final Budget Approval.
4. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.
5. The Recipient must not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request. Supporting documentation (e.g., receipts) must be submitted with each Disbursement Request. The amount requested for administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Disbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Disbursement Request. Disbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
6. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future disbursements.
7. The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
8. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
9. No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. Failure to comply with this restriction may result in termination this Agreement, pursuant to Exhibit C. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>, as of the date costs are incurred by the Recipient.

B.1.8 Withholding of Disbursements.

Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:

- (a) The Recipient's failure to maintain reasonable progress on the Project as determined by the Division;
- (b) Placement on the ballot or passage of an initiative or referendum to repeal or reduce the Recipient's taxes, assessments, fees, or charges levied for operation of the System or payment of debt service on System Obligations;
- (c) Commencement of litigation or a judicial or administrative proceeding related to the Project, System, or Revenues that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
- (d) Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or

- federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- (e) A material adverse change in the condition of the Recipient, the Revenues, or the System, that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
 - (f) The Recipient's material violation of, or threat to materially violate, any term of this Agreement;
 - (g) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents regarding the Project or the System;
 - (h) An event requiring Notice as set forth in Exhibit C;
 - (i) An Event of Default or an event that the Division determines may become an Event of Default.

B.1.9 Fraud and Misuse of Public Funds.

All requests for disbursement submitted must be accurate and signed by the Recipient's Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the repayment of all Project Funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.

B.2 RECIPIENT'S PAYMENT OBLIGATION, PLEDGE, AND RESERVE

B.2.1 Project Costs.

The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs and Additional Payments. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

B.2.2 Estimated Principal Payment Due.

The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is fifty-five million dollars and no cents (\$55,000,000.00).

B.2.3 Interest Rate and In-Lieu of Interest Charges.

(a) The Recipient agrees to make all Payments according to the schedule in Exhibit E, and as otherwise set forth herein, at an interest rate of one and four tenths percent (1.4%) per annum.

(b) Interest will accrue beginning with each disbursement.

(c) In lieu of, and not to exceed, interest otherwise due under this Agreement, the Recipient agrees to pay the following charge(s), as further set forth in Exhibit E:

- an Administrative Service Charge
- a Drinking Water Small Community Emergency Grant Fund Charge

B.2.4 Reserved.

B.2.5 Obligation Absolute.

The obligation of the Recipient to make the Payments and other payments required to be made by it under this Agreement, from the Net Revenues and/or other amounts legally available to the Recipient therefor, is absolute and unconditional, and until such time as the Payments and Additional Payments have been paid in full, the Recipient must not discontinue or suspend any Payments or other payments required to be made by it hereunder when due, whether or not the Project, or any related part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Payments and other payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

B.2.6 Payment Timing.

(a) The Recipient must pay interest annually, by July 31 of each year, until one year after Completion of Construction. Beginning no later than one year after Completion of Construction, the Recipient must make annual Payment of the principal of the Project Funds, together with all interest accruing thereon by July 31. The Recipient must make Payments fully amortizing the total principal of the Project by the Final Payment Date. Payments are based on a standard fully amortized assistance amount with equal annual payments.

(b) The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, plus any Charge In Lieu of Interest, less the Payment. Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit E is a payment schedule based on the provisions of this Exhibit and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

(c) Upon Completion of Construction and submission of necessary reports by the Recipient, the Division will prepare an appropriate payment schedule and supply the same to the Recipient. The Division may amend this schedule as necessary to accurately reflect amounts due under this Agreement. The Division will prepare any necessary amendments to the payment schedule and send them to the Recipient. The Recipient must make each Payment on or before the due date therefor. A ten (10) day grace period will be allowed, after which time a penalty in the amount of costs incurred by the State Water Board will be assessed for late payment. These costs may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, if any, and other related costs. For purposes of penalty assessment, payment will be deemed to have been made if payment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added to the assistance amount balance, but will be treated as a separate account and obligation of the Recipient. The interest penalty will be assessed from the payment due date.

(d) The Recipient is obligated to make all payments required by this Agreement to the State Water Board, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient must provide for the punctual payment to the State Water Board of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be

levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

(e) Each Payment must be paid in lawful money of the United States of America by check or other acceptable form of payment set forth at www.waterboards.ca.gov/make_a_payment. The Recipient must pay Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor.

B.2.7 Pledged Revenues.

B.2.7.1 Establishment of Enterprise Fund and Reserve Fund.

In order to carry out its System Obligations, the Recipient covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in this Exhibit, the Recipient must establish and maintain a Reserve Fund.

B.2.7.2 Pledge of Net Revenues, Enterprise Fund, and Reserve Fund.

The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund on parity with the Parity Obligations and subordinate to the Senior Obligations. The Recipient hereby pledges and grants such lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund to secure the Obligation, including payment of Payments and Additional Payments hereunder. The Enterprise Fund, Net Revenues in the Enterprise Fund, and any Reserve Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.

B.2.7.3 Application and Purpose of the Enterprise Fund.

Subject to the provisions of any outstanding System Obligation, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the System Obligations in order of priority. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Recipient.

B.2.8 No Prepayment.

The Recipient may not prepay any portion of the principal and interest due under this Agreement without the written consent of the Deputy Director of the Division.

B.2.9 Reserve Fund.

Prior to Completion of Construction, the Recipient must establish a restricted Reserve Fund, held in its Enterprise Fund, equal to one year's Debt Service on this Obligation. The Recipient must maintain the Reserve Fund throughout the term of this Agreement. The Reserve Fund is subject to lien and pledged as security for this Obligation, and its use is restricted to payment of this Obligation during the term of this Agreement.

B.3 RATES, FEES AND CHARGES.

(a) The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are equal to the sum of (i) at least 120% of the Maximum Annual Debt Service with respect to all outstanding System Obligations senior to and on parity with the Obligation and (ii) at least 100% of the Maximum Annual Debt Service with respect to all outstanding System Obligations subordinate to the Obligation, so long as System Obligations other than this Obligation are outstanding. Upon defeasance of all System Obligations other than this Obligation, this ratio must be at least 120%, except where System Obligations are defeased pursuant to refunding obligations.

(b) The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.

(c) Upon consideration of a voter initiative to reduce Revenues, the Recipient must make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in this Section. The Recipient must make its findings available to the public. The Recipient's Authorized Representative must request, if necessary, the authorization of the Recipient's decision-maker or decision-making body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in this Agreement and its obligation to operate and maintain the Project for its Useful Life. The Recipient must diligently pursue and bear any and all costs related to such challenge. The Recipient must notify and regularly update the State Water Board regarding the status of any such challenge.

B.4 ADDITIONAL DEBT.

(a) The Recipient's future debt that is secured by Revenues pledged herein may not be senior to this Obligation.

(b) The Recipient may issue additional parity or subordinate debt only if all of the following conditions are met:

- i. Net Revenues in the most recent Fiscal Year, excluding transfers from a rate stabilization fund, if any, meet the ratio for rate covenants set forth in this Exhibit with respect to any outstanding and proposed additional obligations;
- ii. The Recipient is in compliance with any reserve fund requirement of this Obligation.

B.5 NO LIENS.

The Recipient must not make any pledge of or place any lien on the Project, System, or Revenues except as otherwise provided or permitted by this Agreement.

EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS

C.1 REPRESENTATIONS & WARRANTIES.

The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement.

C.1.1 Application and General Recipient Commitments.

The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application a material fact that makes the statements in its application not misleading.

The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.

The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.

C.1.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

C.1.3 No Violations.

The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the Cover Page.

C.1.4 No Litigation.

There are, as of the date of execution of this Agreement by the Recipient, no pending for which the Recipient has been served or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the System, the Revenues, and/or the Project.

There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain the System or any of the real or personal property related to or necessary for the Project.

C.1.5 Property Rights and Water Rights.

The Recipient owns or has sufficient property rights in the Project property for the longer of the Useful Life or the term of this Agreement, either in fee simple or for a term of years that is not subject to third-party revocation during the Useful Life of the Project.

The Recipient possesses all water rights necessary for this Project.

C.1.6 Solvency and Insurance.

None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.

C.1.7 Legal Status and Eligibility.

The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. The Recipient acknowledges that changes to its legal or financial status may affect its eligibility for funding under this Agreement and commits to maintaining its eligibility. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.

C.1.8 Financial Statements and Continuing Disclosure.

The financial statements of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.

The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.

C.1.9 System Obligations

The Recipient has no System Obligations other than those defined in this Agreement.

C.1.10 No Other Material Debt.

The Recipient has no Material Obligations except as set forth in this paragraph:

- Joint Powers Agreement Between Delta Diablo Sanitation District and the City of Antioch for Recycled Water Purveyorship, dated November 18, 2003, as amended.

C.1.11 Compliance with State Water Board Funding Agreements.

The Recipient represents that it is in compliance with all State Water Board funding agreements to which it is a party.

C.2 DEFAULTS AND REMEDIES

In addition to any other remedy set forth in this Agreement, the following remedies are available under this Agreement.

C.2.1 Return of Funds; Acceleration; and Additional Payments.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, immediately to do each of the following:

- i. return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement;
- ii. accelerate the payment of any principal owed under this Agreement, all of which shall be immediately due and payable;
- iii. pay interest at the highest legal rate on all of the foregoing; and
- iv. pay any Additional Payments.

C.2.2 Reserved.

C.2.3 Judicial remedies.

Whenever the State Water Board determines that an Event of Default shall have occurred, the State Water Board may enforce its rights under this Agreement by any judicial proceeding, whether at law or in equity. Without limiting the generality of the foregoing, the State Water Board may:

- i. by suit in equity, require the Recipient to account for amounts relating to this Agreement as if the Recipient were the trustee of an express trust;
- ii. by mandamus or other proceeding, compel the performance by the Recipient and any of its officers, agents, and employees of any duty under the law or of any obligation or covenant under this Agreement, including but not limited to the imposition and collection of rates for the services of the System sufficient to meet all requirements of this Agreement; and
- iii. take whatever action at law or in equity as may appear necessary or desirable to the State Water Board to collect the Payments then due or thereafter to become due, or to enforce performance of any obligation or covenant of the Recipient under this Agreement.

Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the State Water Board under this Agreement, the State Water Board may make application for the appointment of a receiver or custodian of the Revenues, pending such proceeding, with such power as the court making such appointment may confer.

C.2.4 Termination.

Upon an Event of Default, the State Water Board may terminate this Agreement. Interest shall accrue on all amounts due at the highest legal rate of interest from the date that the State Water Board delivers notice of termination to the Recipient.

C.2.5 Damages for Breach of Tax-Exempt Status.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient must immediately reimburse the

State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

C.2.6 Damages for Breach of Federal Conditions.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

C.2.7 Remedies and Limitations.

None of the remedies available to the State Water Board shall be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. The State Water Board may exercise any remedy, now or hereafter existing, without exhausting and without regard to any other remedy.

Any claim of the Recipient is limited to the rights and remedies provided to the Recipient under this Agreement and is subject to the claims procedures provided to the Recipient under this Agreement.

C.2.8 Non-Waiver.

Nothing in this Agreement shall affect or impair the Recipient's Obligation to pay Payments as provided herein or shall affect or impair the right of the State Water Board to bring suit to enforce such payment. No delay or omission of the State Water Board in the exercise of any right arising upon an Event of Default shall impair any such right or be construed to be a waiver of any such Event of Default. The State Water Board may exercise from time to time and as often as shall be deemed expedient by the State Water Board, any remedy or right provided by law or pursuant to this Agreement.

C.2.9 Status Quo.

If any action to enforce any right or exercise any remedy shall be brought and either discontinued or determined adversely to the State Water Board, then the State Water Board shall be restored to its former position, rights and remedies as if no such action had been brought.

C.3 STANDARD CONDITIONS

C.3.1 Access, Inspection, and Public Records.

The Recipient must ensure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Agreement. The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, disbursement requests, and supporting documentation submitted hereunder.

C.3.2 Accounting and Auditing Standards; Financial Management Systems; Records Retention.

(a) The Recipient must maintain project accounts according to GAAP as issued by the Governmental Accounting Standards Board (GASB) or its successor. The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets.

(b) The Recipient must comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

(c) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:

- i. Establish an official file for the Project which adequately documents all significant actions relative to the Project;
- ii. Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
- iii. Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
- iv. Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
- v. Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
- vi. If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.

(d) The Recipient must maintain separate books, records and other material relative to the Project. The Recipient must also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Completion of Construction. The Recipient must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the California State Auditor, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Recipient must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.

C.3.3 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee.

Requests for amendments must be in writing and directed to the contact listed in Section 4 and to the Division's Chief of Loans and Grants Administration Section.

C.3.4 Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

C.3.5 Audit.

(a) The Division may call for an audit of financial information relative to the Project if the Division determines that an audit is desirable to assure program integrity or if an audit becomes necessary because of state or federal requirements. If an audit is called for, the audit must be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit must be in the form required by the Division.

(b) Audit disallowances must be returned to the State Water Board.

C.3.6 Bonding.

Where contractors are used, the Recipient must not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.

C.3.7 Competitive Bidding

Recipient must adhere to any applicable state law or local ordinance for competitive bidding and applicable labor laws.

C.3.8 Compliance with Applicable Laws, Rules, and Requirements.

The Recipient must, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, to the extent applicable, the Recipient must:

(a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;

(b) Comply with the Policy; and

(c) Comply with and require compliance with the state and federal requirements set forth elsewhere in this Agreement.

C.3.9 Computer Software.

The Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

C.3.10 Conflict of Interest.

The Recipient certifies that its owners, officers, directors, agents, representatives, and employees are in compliance with applicable state and federal conflict of interest laws.

C.3.11 Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project.

The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.

C.3.12 Data Management.

The Recipient will undertake appropriate data management activities so that Project data can be incorporated into statewide data systems.

C.3.13 Disputes.

(a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.

(b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.

(c) Recipient must continue with the responsibilities under this Agreement during any dispute.

(d) This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

C.3.14 Reserved.

C.3.15 Environmental Clearance.

(a) Notwithstanding any other provision, the State Water Board has no binding obligation to provide funding under this Agreement except for activities excluded from, not subject to, or exempt under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). No work that is subject to CEQA or NEPA may proceed under this Agreement until the State Water Board has provided approval to proceed. Upon receipt and review of the Recipient's environmental documents, the State Water Board shall make the appropriate environmental findings before determining whether to approve construction or implementation funding for the Project under this Agreement. Providing approval for such construction or implementation funding is fully discretionary. The State Water Board may require changes in the scope of work or additional mitigation as a condition to providing construction or implementation funding under this Agreement. Recipient shall not perform any work subject to CEQA and/or NEPA before the State Water Board completes its environmental review and specifies any changes in scope or additional mitigation that may be required. Proceeding with work subject to CEQA and/or NEPA without approval by the State Water Board shall constitute a breach of a material provision of this Agreement.

(b) If this Project includes modification of a river or stream channel, the Recipient must fully mitigate environmental impacts resulting from the modification. The Recipient must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.

C.3.16 Governing Law.

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

C.3.17 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement must be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.

C.3.18 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, the Bank, and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System or the Project; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient must also provide for the defense and indemnification of the Indemnified Persons in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and must cause the Indemnified Persons to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section survive the term of this Agreement.

C.3.19 Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.

C.3.20 Integration.

This Agreement constitutes the complete and final agreement between the parties. No oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.

C.3.21 Leveraging Covenants.

(a) Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Exhibit F of this Agreement.

(b) The Recipient covenants to furnish such financial, operating and other data pertaining to the Recipient as may be requested by the State Water Board to: (i) enable the State Water Board to cause the issuance of Bonds and provide for security therefor; or (ii) enable any underwriter of Bonds issued for the benefit of the State Water Board to comply with Rule 15c2-12(b)(5). The Recipient further covenants to provide the State Water Board with copies of all continuing disclosure documents or reports that are disclosed pursuant to (i) the Recipient's continuing disclosure undertaking or undertakings made in connection with any outstanding System Obligation, (ii) the terms of any outstanding System Obligation, or (iii) a voluntary disclosure of information related to an outstanding System Obligation. The Recipient must disclose such documents or reports to the State Water Board at the same time such documents or reports are submitted to any dissemination agent, trustee, nationally recognized municipal securities information repository, the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) website or other person or entity.

C.3.22 No Discrimination.

(a) The Recipient must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project or System on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project.

(b) If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property.

(c) The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).

(d) The Recipient's obligations under this section shall survive the term of this Agreement.

(e) During the performance of this Agreement, Recipient and its contractors and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.

(f) The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(g) The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(h) The Recipient, its contractors, and subcontractors must comply with all applicable federal civil rights regulations, including statutory and national policy requirements. (2 CFR § 200.300). This includes, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech. (Executive Order 13798).

(i) The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

(j) The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

C.3.23 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation, or undertaking established herein.

C.3.24 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement.

C.3.25 Notice.

Upon the occurrence of any of the following events, the Recipient must provide notice as set forth below.

- (a) Within 24 hours of the following, the Recipient must notify the Division by phone at (916) 327-9978 and by email to tatiana.guillen@waterboards.ca.gov, uyen.trinh-le@waterboards.ca.gov, and DrinkingWaterSRF@waterboards.ca.gov;
 - i. The seizure of, or levy on, any Revenues securing this Agreement;
 - ii. Any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division.
- (b) Within five (5) business days, the Recipient must notify the Division by phone at (916) 327-9978; by email to Lance.Reese@waterboards.ca.gov, tatiana.guillen@waterboards.ca.gov, uyen.trinh-le@waterboards.ca.gov, and DrinkingWaterSRF@waterboards.ca.gov; and by mail to the contact address set forth in Section 4 of this Agreement of the occurrence of any of the following events:

- i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - ii. Change of ownership of the Project or the System or change of management or service contracts, if any, for operation of the System;
 - iii. Loss, theft, damage, or impairment to Project, the Revenues or the System;
 - iv. Failure to meet any debt service coverage test in Exhibit B of this agreement;
 - v. Draws on the Reserve Fund;
 - vi. Listed Events and Events of Default, except as otherwise set forth in this section;
 - vii. Failure to observe or perform any covenant or comply with any condition in this Agreement;
 - viii. An offer from a public entity to purchase the Project or the System or any portion thereof, or any of the real or personal property related to or necessary for the Project;
 - ix. A proceeding or action by a public entity to acquire the Project or the System by power of eminent domain;
 - x. Incurrence of a System Obligation or other Material Obligation by the Recipient; or
 - xi. A default, event of acceleration, termination event, modification of terms, or other similar event under the terms of a System Obligation or other Material Obligation of the Recipient, any of which reflect financial difficulties.
- (c) Within ten (10) business days, the Recipient must notify the Division by phone at (916) 327-9978, by email to tatiana.guillen@waterboards.ca.gov, uyen.trinh-le@waterboards.ca.gov, and DrinkingWaterSRF@waterboards.ca.gov, and by mail to the contact address set forth in Section 4 of this Agreement of the following events:
- i. Material defaults on Material Obligations, other than this Obligation;
 - ii. Unscheduled draws on material debt service reserves or credit enhancements, reflecting financial difficulties;
 - iii. Substitution of credit or liquidity providers, if any or their failure to perform;
 - iv. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity to operate the System or the Recipient's continued existence;
 - v. Circulation of a petition to repeal, reduce, or otherwise challenge the Recipient's rates for services of the System;
 - vi. Consideration of dissolution, or disincorporation, or any other event that could materially impair the Revenues;
 - vii. Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
 - viii. Rating changes on outstanding System Obligations, if any;
 - ix. Issuance of additional Parity Obligations;
 - x. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board; or
 - xi. Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- (d) The Recipient must notify the Division promptly by phone at (916) 327-9978, by email to tatiana.guillen@waterboards.ca.gov, uyen.trinh-le@waterboards.ca.gov, and

DrinkingWaterSRF@waterboards.ca.gov, and by mail to the contact address set forth in Section 4 of this Agreement of any of the following events:

- i. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this financial assistance, or in any certification, report, or request for disbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
- ii. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
- iii. Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- iv. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more;
- v. Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- vi. Any Project monitoring, demonstration, or other implementation activities required in Exhibit A or Exhibit D of this Agreement, if any;
- vii. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
- viii. Any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, as required by Exhibit C.4.3(xxvii);
- ix. Any events requiring notice to the Division pursuant to the provisions of this Agreement;
- x. Completion of Construction of the Project, and actual Project Completion;
- xi. The award of the prime construction contract for the Project;
- xii. Initiation of construction of the Project.

C.3.26 Operation and Maintenance; Insurance.

The Recipient agrees to sufficiently and properly staff, operate and maintain all portions of the System during the Useful Life of the Project in accordance with all applicable state and federal laws, rules, and regulations.

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses

in connection with such reconstruction, repair or replacement so that the same must be completed and the System must be free and clear of all claims and liens. If such net proceeds are insufficient to reconstruct, repair, or restore the System to the extent necessary to enable the Recipient to pay all remaining unpaid principal portions of the Payments, if any, in accordance with the terms of this Agreement, the Recipient must provide additional funds to restore or replace the damaged portions of the System.

Recipient agrees that for any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

C.3.27 Permits, Subcontracting, and Remedies.

Recipient must procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses must be submitted to the Division before any construction begins.

The Recipient must not contract or allow subcontracting with excluded parties. The Recipient must not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient must not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at

http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml

C.3.28 Professionals.

The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

C.3.29 Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient must monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met.

In addition, the Recipient agrees to comply with the Davis-Bacon provisions incorporated by reference in Section 3 of this Agreement.

C.3.30 Public Funding.

This Project is publicly funded. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

C.3.31 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for responding to any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

C.3.32 Related Litigation.

Under no circumstances may the Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Quality Control Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to repay all of the disbursed funds plus interest in the event that Recipient does not complete the project.

C.3.33 Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request.

C.3.34 State Water Board Action; Costs and Attorney Fees.

Any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.

C.3.35 Timeliness.

Time is of the essence in this Agreement.

C.3.36 Unenforceable Provision.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

C.3.37 Venue.

Any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

C.3.38 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

C.4 MISCELLANEOUS STATE AND FEDERAL REQUIREMENTS

C.4.1 Reserved.

C.4.2 State Cross-Cutters.

Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following for the term of the Agreement:

- i. The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- ii. Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- iii. Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- iv. Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- v. Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- vi. Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- vii. Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- viii. Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- ix. Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- x. Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.

C.4.3 Federal Requirements and Cross-Cutters for SRF Funding.

The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions for the Useful Life of the Project:

- i. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- ii. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 3 of this Agreement in all construction contracts and subcontracts.
- iii. The Recipient must comply with the signage requirements set forth in Exhibit A.
- iv. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- v. The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>.
- vi. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
- vii. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- viii. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.

- ix. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- x. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
- xi. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
- xii. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- xiii. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.
- xiv. The Recipient certifies to the best of its knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.

The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.

- xv. The Recipient must comply with the following federal non-discrimination requirements:
 - a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.

- c. The Age Discrimination Act of 1975, which prohibits age discrimination.
 - d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
 - e. 40 CFR Part 7, as it relates to the foregoing.
- xvi. If the Project relates to construction of a publicly owned treatment works, where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
- xvii. If the Project relates to construction of a publicly owned treatment works, the Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the Recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.
- xviii. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

"During the performance of this contract, the contractor agrees as follows:"(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting

agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

- xix. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises.
- xx. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/> .
- xxi. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- xxii. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- xxiii. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.
- xxiv. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- xxv. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

xxvi. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.

xxvii. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, EPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the EPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

xxviii. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.

xxix. The Recipient certifies that no Project Funds will be used on:

- a. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- b. Telecommunications or video surveillance services produced by such entities;
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
- d. Other telecommunications or video surveillance services or equipment in violation of [2 CFR 200.216](#).

EXHIBIT D – SPECIAL CONDITIONS

Technical:

1. Recipient shall provide a complete set of as-built plans and specifications for the complete project to the San Francisco District Office within six (6) months of project completion.
2. Recipient shall notify the San Francisco District Office of any significant change orders during project construction and provide related revised plans and specifications relevant to drinking water safety for review and approval.

Environmental:

1. The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:
 - a. The letter from Cathy Marcinkevage of the National Marine Fisheries Service to Chandra Jenkins of the United States Army Corps of Engineers, "Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Antioch Desalination Facility Intake Replacement Project, July 8, 2020"
 - b. The letter from Kaylee Allen of the United States Fish and Wildlife Service to Peck Ha of the United States Army Corps of Engineers, "Formal Consultation on the Brackish Water Desalination Facility Project, Contra Costa County, California (U.S. Army Corps of Engineers File No.: SPK-2019-00499), Biological Opinion, July 2, 2020."
 - c. The Mitigation Monitoring and Reporting Program adopted by the Recipient on February 6, 2018 for the Project. The Recipient shall implement all mitigation measures therein.
 - d. The letter dated October 10, 2018, from Julianne Polanco of the Office of Historic Preservation (OHP), to Wendy Pierce of the State Water Board, including, but not limited to, the following:
 - i. The Recipient shall notify the San Manuel Band of Mission Indians in the event of any inadvertent discoveries.
2. In the Recipient's Progress Reports submitted pursuant to this Agreement, the Recipient shall include a discussion of the status of its compliance with environmental measures identified in this Exhibit D, with separate sections clearly labeled and titled, discussing the status of the Recipient's compliance.
3. In the Recipient's Project Completion Report submitted pursuant to this Agreement, the Recipient shall include a discussion of its compliance with environmental measures identified in this Exhibit D, with separate sections clearly labeled and titled, discussing the status of the Recipient's compliance.

EXHIBIT E – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule. The final Payment Schedule will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

EXHIBIT F – TAX CERTIFICATE

F.1 Purpose.

The purpose of this Exhibit F is to establish the reasonable expectations of the Recipient regarding the Project and the Project Funds, and is intended to be and may be relied upon for purposes of Sections 103, 141 and 148 of the Code and as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. This Exhibit F sets forth certain facts, estimates and circumstances which form the basis for the Recipient's expectation that neither the Project nor the Bond Funded Portion of the Project Funds is to be used in a manner that would cause the Obligation to be classified as "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

F.2 Tax Covenant.

The Recipient agrees that it will not take or authorize any action or permit any action within its reasonable control to be taken, or fail to take any action within its reasonable control, with respect to the Project which would result in the loss of the exclusion of interest on the Bonds from gross income for federal income tax purposes under Section 103 of the Code.

F.3 Governmental Unit.

The Recipient is a state or local governmental unit as defined in Section 1.103-1 of the Treasury Regulations or an instrumentality thereof (a "Governmental Unit") and is not the federal government or any agency or instrumentality thereof.

F.4 Financing of a Capital Project.

The Recipient will use the Project Funds to finance costs it has incurred or will incur for the construction, reconstruction, installation or acquisition of the Project. Such costs shall not have previously been financed with the proceeds of any other issue of tax-exempt obligations.

F.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section F.12 hereof, operates the Project.

F.6 Temporary Period.

The Recipient reasonably expects that at least eighty-five percent (85%) of the Bond Funded Portion of the Project Funds will be allocated to expenditures for the Project within three (3) years of the earlier of the effective date of this Agreement or the date the Bonds are issued ("Applicable Date"). The Recipient has incurred, or reasonably expects that it will incur within six (6) months of the Applicable Date, a substantial binding obligation (i.e., not subject to contingencies within the control of the Recipient or a related party) to a third party to expend at least five percent (5%) of the Bond Funded Portion of the Project Funds on Project Costs. The completion of acquisition, construction, improvement and equipping of the Project and the allocation of the Bond Funded Portion of the Project Funds to Project Costs will proceed with due diligence.

F.7 Working Capital.

No operational expenditures of the Recipient or any related entity are being, have been or will be financed or refinanced with Project Funds.

F.8 Expenditure of Proceeds.

The Bond Funded Portion of the Project Funds shall be used exclusively for the following purposes: (i) Reimbursement Expenditures (as defined in Section F.20 below), (ii) Preliminary Expenditures (as defined in

Section F.20 below) in an aggregate amount not exceeding twenty percent (20%) of the Bond Funded Portion of the Project Funds, (iii) capital expenditures relating to the Project originally paid by the Recipient on or after the date hereof, (iv) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (v) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Bond Funded Portion of the Project Funds.

F.9 Private Use and Private Payments.

No portion of the Project Funds or the Project is being, has been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). No portion of the principal of or interest with respect to the Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of the Project by a person or entity other than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local Governmental Unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

F.10 No Sale, Lease or Private Operation of the Project.

The Project (or any portion thereof) will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation. The Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation. Except as permitted under Section F.12 hereof, the Recipient will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons or entities any right to use the Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

F.11 No Disproportionate or Unrelated Use.

No portion of the Project Funds or the Project is being, has been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

F.12 Management and Service Contracts.

The Recipient represents that, as of the date hereof, it is not a party to any contract, agreement or other arrangement with any persons or entities engaged in a trade or business (other than Governmental Units) that involve the management or operation of property or the provision of services at or with respect to the Project that does not comply with the standards of the Treasury Regulations, Revenue Procedure 97-13, as modified by Revenue Procedure 2001-39 and IRS Notice 2014-67, or Revenue Procedure 2017-13, as applicable. The

Recipient represents that it will not be party to any such contract, agreement or arrangement with any person or entity that is not a Governmental Unit for the management of property or the provision of services at or with respect to the Project, while the Obligation (including any obligation or series thereof issued to refund the Obligation, as the case may be) is outstanding, except: (a) with respect to any contract, agreement or arrangement that does not constitute "private business use" of the Project under Code §141(b), or (b) with respect to any contract, agreement or arrangement that complies with (i) Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-2 C.B. 38, and as amplified by Notice 2014-67, with respect to contracts entered into before August 18, 2017 and not materially modified or extended after August 18, 2017, or (ii) Revenue Procedure 2017-13, with respect to contracts entered into or materially modified or extended on or after August 18, 2017, or (c) with respect to any contract, agreement or arrangement that does not give rise to use of the Bond Funded Portion of the Project Funds or the Project by a non-Governmental Unit of more than the amount of such non-qualified use permitted by the Code, or (d) in the event that the Recipient receives an opinion of counsel, satisfactory to the State Water Board and the Bank and expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel"), that such contract, agreement or arrangement will not adversely affect the exclusion of the interest on the Obligation from gross income for federal income taxation purposes.

F.13 No Disposition of Financed Property.

As of the date hereof, the Recipient does not expect to sell or otherwise dispose of any portion of the Project, in whole or in part, prior to the final maturity date of the Obligation.

F.14 Useful Life of Project.

As of the date hereof, the Recipient reasonably expects that the economic useful life of the Project, commencing at Project Completion, will be at least equal to the term of this Agreement, as set forth in Exhibit A hereto.

F.15 Payments.

Payments generally are expected to be derived from assessments, taxes, fees, charges or other current Revenues of the Recipient in each year, and such current Revenues are expected to equal or exceed the Payments during each payment period. Any amounts accumulated in a sinking fund or bona fide debt service fund to pay Payments (whether or not deposited to a fund or account established by the Recipient) will be disbursed to pay Payments within thirteen months of the initial date of accumulation or deposit. Any such fund used for the payment of Payments will be depleted once a year except for a reasonable carryover amount not exceeding the greater of earnings on such fund or one-twelfth of the Payments in either case for the immediately preceding year.

F.16 No Other Replacement Proceeds.

The Recipient will not use any of the Bond Funded Portion of the Project Funds to replace or substitute other funds of the Recipient that were otherwise to be used to finance the Project or which are or will be used to acquire securities, obligations or other investment property reasonably expected to produce a yield that is materially higher than the yield on the Bonds.

F.17 No Sinking or Pledged Fund.

Except as set forth in Section F.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay Payments on the Obligation within the meaning of Section 1.148-1(c) of the Treasury Regulations. If any sinking fund or pledged fund comes into being with respect to the Obligation before the Obligation has been fully retired which may be used to pay the Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

F.18 Reserve Amount.

The State Water Board requires that the Recipient maintain and fund a separate account in an amount equal to one (1) year of debt service with respect to the Obligation (the "Reserve Amount") as set forth in Exhibit B. The Recipient represents that the Reserve Amount is and will be available to pay debt service with respect to the Obligation, if and when needed. The Reserve Amount consists solely of revenues of the Recipient and does not include any proceeds of any obligations the interest on which is excluded from gross income for federal income tax purposes or investment earnings thereon. The aggregate of the Reserve Amount, up to an amount not exceeding the lesser of (i) ten percent of the aggregate principal amount of the Obligation, (ii) the maximum annual debt service with respect to the Obligation, or (iii) 125 percent of the average annual debt service with respect to the Obligation, will be treated as a reasonably required reserve fund.

F.19 Reimbursement Resolution.

The "reimbursement resolution" adopted by the Recipient is incorporated herein by reference.

F.20 Reimbursement Expenditures.

Reimbursements are disallowed, except as specifically authorized in Exhibit B or Exhibit D of this Agreement. To the extent so authorized, a portion of the Bond Funded Portion of the Project Funds may be applied to reimburse the Recipient for Project Costs paid before the date hereof, so long as the Project Cost was (i) not paid prior to sixty (60) days before the Recipient's adoption of a declaration of official intent to finance the Project, (ii) not paid more than eighteen (18) months prior to the date hereof or the date the Project was placed-in-service, whichever is later, and (iii) not paid more than three (3) years prior to the date hereof (collectively, "Reimbursement Expenditures"), unless such cost is attributable to a "preliminary expenditure." Preliminary expenditure for this purpose means architectural, engineering, surveying, soil testing and similar costs incurred prior to the commencement of construction or rehabilitation of the Project, but does not include land acquisition, site preparation and similar costs incident to the commencement of acquisition, construction or rehabilitation of the Project. Preliminary expenditures may not exceed 20% of the Bond Funded Portion of the Project Funds.

F.21 Change in Use of the Project.

The Recipient reasonably expects to use all of the Bond Funded Portion of the Project Funds and the Project for the entire stated term to maturity of the Obligation. Absent an opinion of Nationally-Recognized Bond Counsel to the effect that such use of the Bond Funded Portion of the Project Funds will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code, the Recipient will use the Bond Funded Portion of the Project Funds and the Project solely as set forth in this Agreement.

F.22 Rebate Obligations.

If the Recipient satisfies the requirements of one of the spending exceptions to rebate specified in Section 1.148-7 of the Treasury Regulations, amounts earned from investments, if any, acquired with the Bond Funded Portion of the Project Funds will not be subject to the rebate requirements imposed under Section 148(f) of the Code. If the Recipient fails to satisfy such requirements for any period, it will notify the State Water Board and the Bank immediately and will comply with the provisions of the Code and the Treasury Regulations at such time, including the payment of any rebate amount calculated by the State Water Board or the Bank.

F.23 No Federal Guarantee.

The Recipient will not directly or indirectly use any of the Bond Funded Portion of the Project Funds in any manner that would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code, taking into account various exceptions including any guarantee related to investments during an initial temporary period until needed for the governmental purpose of the Bonds, investments as part of a bona fide debt service fund, investments of a reasonably required reserve or replacement fund, investments in bonds issued by the United States Treasury, investments in refunding escrow funds or certain other investments permitted under the Treasury Regulations.

F.24 No Notices or Inquiries from IRS.

Within the last 10 years, the Recipient has not received any notice of a final action of the Internal Revenue Service that determines that interest paid or payable on any debt obligation of the Recipient is or was includable in the gross income of an owner or beneficial owner thereof for federal income tax purposes under the Code.

F.25 Amendments.

The provisions in this Exhibit may be amended, modified or supplemented at any time to reflect changes in the Code upon obtaining written approval of the State Water Board and the Bank and an opinion of Nationally-Recognized Bond Counsel to the effect that such amendment, modification or supplement will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code.

F.26 Reasonable Expectations.

The Recipient warrants that, to the best of its knowledge, information and belief, and based on the facts and estimates as set forth in the tax covenants in this Exhibit, the expectations of the Recipient as set forth in this Exhibit are reasonable. The Recipient is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in the provisions in this Exhibit.

F.27 Assignment.

The Recipient consents to any pledge, sale, or assignment to the Bank or a trustee for the benefit of the owners of the Bonds, if any, at any time of any portion of the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement and the right to make all related waivers and agreements in the name and on behalf of the State Water Board, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Agreement, if any, and the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement to Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation).

ATTACHMENT "C"

March 9, 2021

State Water Resources Control Board
Division of Financial Assistance
Attn: David Bruglia
1001 I Street
Sacramento, CA 95814

Re: City of Antioch ("Recipient") – Brackish Water Desalination Project – Project No. 0710001-002C ("Project") – Agreement No. SWRCB0000000000D2002028 ("Agreement")

Ladies and Gentlemen:

I am the City Attorney of the City of Antioch (the "Recipient") in connection with the Brackish Water Desalination Project – Project No. 0710001-002C ("Project"). This opinion is delivered to the State Water Resources Control Board ("State Water Board") at the request of the Recipient. In connection therewith, I have examined the laws pertaining to the Recipient, originals of the Agreement between the Recipient and the State Water Board, the Recipient is authorized to enter into this Installment Sale Agreement (Agreement) pursuant to Authorized Resolution No. 2018/79. The Recipient's authorized representative resolution (Closing Resolution) 2021/___ adopted on March 9, 2021, the Recipient's rate-setting resolution 2019/190 adopted on December 10, 2019, (collectively, "the Resolutions"), and such other documents, legal opinions, instruments and records, and have made such investigation of law, as I have considered necessary or appropriate for the purpose of this opinion.

Based on the foregoing, it is my opinion that:

- a. The Recipient, a general law city of the State of California duly organized, validly existing under the laws of the State of California pursuant to Article XI, section 7 of the California Constitution has the requisite legal right, power, and authority to execute and deliver the Agreement and carry out and consummate all transactions contemplated therein.
- b. The Resolutions have been duly adopted at meetings of the Recipient which were called and held pursuant to law with all public notice required by law and at which a quorum was present and acting when the Resolutions were adopted. The Resolutions are in full force and effect and have not been amended, modified, supplemented, or

rescinded, nor has the rate-setting resolution been challenged or the rates become subject of a referendum or initiative or other similar process.

- c. To the best of my knowledge and based upon a reasonable investigation, all proceedings required by law or under the ordinances or bylaws of the Recipient to be taken by the Recipient in connection with the authorization of the Agreement and the transactions contemplated by and related thereto, and all such approvals, authorizations, consents or other orders of or filings or registrations with such public boards or bodies, if any, as may be legally required to be obtained by the Recipient prior to the date hereof with respect to all or any of such matters have been taken or obtained and are in full force and effect, except that no opinion is expressed as to any approvals, obligations or proceedings which may be required under any federal securities laws or state blue sky or securities laws.
- d. To the best of my knowledge and based upon a reasonable investigation, the execution and delivery of the Agreement and the consummation of the transactions therein will not conflict with or constitute a breach of or default (with due notice or the passage of time or both) under (i) the statutes creating the Recipient or any amendments thereto, (ii) the ordinances or by laws of the Recipient, (iii) any bond, debenture, note or other evidence of indebtedness, or any material contract, agreement or lease to which the Recipient is a party or by which it or its properties are otherwise subject or bound or (iv) any applicable law or administrative regulation or any applicable court or administrative decree or order. All material contracts, agreements, or leases are listed in Exhibit D of the Agreement.
- e. To the best of my knowledge and based upon a reasonable investigation, the Recipient has sufficient property rights in the Project property for the purposes contemplated in the Agreement and has complied with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) with respect to any property acquired for the purposes of the Project. These property rights extend in perpetuity.
- f. To the best of my knowledge and based upon a reasonable investigation, there is no action, suit, proceeding, inquiry or investigation before any court, or by any federal, state, municipal or other governmental authority pending for which the City has been served or threatened against or affecting the Project or the Recipient's water system (the "System"), or the assets, properties, or operations of the Recipient relating to the System, which, if determined adversely to the Recipient or its interests would result in any material change in the assets or financial condition of the Recipient, the Project, or the System; and the Recipient is not in default with respect to any order or decree of any court or any order, regulation, or demand of any federal, state, municipal, or other governmental agency which default might

- have consequences that would materially and adversely affect the financial condition of the Recipient, the Project, or the System.
- g. No facts have come to my attention which lead me to believe that the Recipient's authorized representative has made any untrue statement of a material fact or omitted or omits to state a material fact or has made misleading statements in the Agreement.
 - h. The Agreement has been duly authorized, executed, and delivered, and assuming due authorization, execution and delivery of the Agreement by the State Water Board, constitutes legal, valid, and binding obligation of the Recipient enforceable against the Recipient in accordance with its terms, subject to the laws relating to bankruptcy, insolvency, reorganization, or creditors' rights generally and to the application of equitable principles, if equitable remedies are sought.

Sincerely,

Thomas Lloyd Smith
City Attorney
City of Antioch

California DWSRF Payment Schedule

ATTACHMENT "D"

Principal is paid over: 30 Years
Interest rate: 1.40000%

Project No. 0710001-002C - Antioch, City of
Agreement: SWRCB0000000000D2002028 - based on Actual +
Projected Disbursements

Antioch Brackish Water Desalination Project


Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	7/31/2021		0.00	1.400	113,091.35	113,091.35	113,091.35	27,629,413.00	0.00
2	7/31/2022		0.00	1.400	538,012.21	538,012.21	538,012.21	45,294,115.00	0.00
3	7/31/2023		0.00	1.400	676,277.12	676,277.12	676,277.12	51,894,115.00	0.00
4	7/31/2024		1,493,499.60	1.400	764,083.63	2,257,583.23	2,257,583.23	53,506,500.40	0.00
5	7/31/2025		1,508,492.22	1.400	749,091.01	2,257,583.23	2,257,583.23	51,998,008.18	0.00
6	7/31/2026		1,529,611.12	1.400	727,972.11	2,257,583.23	2,257,583.23	50,468,397.06	0.00
7	7/31/2027		1,551,025.67	1.400	706,557.56	2,257,583.23	2,257,583.23	48,917,371.39	0.00
8	7/31/2028		1,572,740.03	1.400	684,843.20	2,257,583.23	2,257,583.23	47,344,631.36	0.00
9	7/31/2029		1,594,758.39	1.400	662,824.84	2,257,583.23	2,257,583.23	45,749,872.97	0.00
10	7/31/2030		1,617,085.01	1.400	640,498.22	2,257,583.23	2,257,583.23	44,132,787.96	0.00
11	7/31/2031		1,639,724.20	1.400	617,859.03	2,257,583.23	2,257,583.23	42,493,063.76	0.00
12	7/31/2032		1,662,680.34	1.400	594,902.89	2,257,583.23	2,257,583.23	40,830,383.42	0.00
13	7/31/2033		1,685,957.86	1.400	571,625.37	2,257,583.23	2,257,583.23	39,144,425.56	0.00
14	7/31/2034		1,709,561.27	1.400	548,021.96	2,257,583.23	2,257,583.23	37,434,864.29	0.00
15	7/31/2035		1,733,495.13	1.400	524,088.10	2,257,583.23	2,257,583.23	35,701,369.16	0.00
16	7/31/2036		1,757,764.06	1.400	499,819.17	2,257,583.23	2,257,583.23	33,943,605.10	0.00
17	7/31/2037		1,782,372.76	1.400	475,210.47	2,257,583.23	2,257,583.23	32,161,232.34	0.00
18	7/31/2038		1,807,325.98	1.400	450,257.25	2,257,583.23	2,257,583.23	30,353,906.36	0.00
19	7/31/2039		1,832,628.54	1.400	424,954.69	2,257,583.23	2,257,583.23	28,521,277.82	0.00
20	7/31/2040		1,858,285.34	1.400	399,297.89	2,257,583.23	2,257,583.23	26,662,992.48	0.00
21	7/31/2041		1,884,301.34	1.400	373,281.89	2,257,583.23	2,257,583.23	24,778,691.14	0.00
22	7/31/2042		1,910,681.55	1.400	346,901.68	2,257,583.23	2,257,583.23	22,868,009.59	0.00
23	7/31/2043		1,937,431.10	1.400	320,152.13	2,257,583.23	2,257,583.23	20,930,578.49	0.00
24	7/31/2044		1,964,555.13	1.400	293,028.10	2,257,583.23	2,257,583.23	18,966,023.36	0.00
25	7/31/2045		1,992,058.90	1.400	265,524.33	2,257,583.23	2,257,583.23	16,973,964.46	0.00
26	7/31/2046		2,019,947.73	1.400	237,635.50	2,257,583.23	2,257,583.23	14,954,016.73	0.00
27	7/31/2047		2,048,227.00	1.400	209,356.23	2,257,583.23	2,257,583.23	12,905,789.73	0.00
28	7/31/2048		2,076,902.17	1.400	180,681.06	2,257,583.23	2,257,583.23	10,828,887.56	0.00
29	7/31/2049		2,105,978.80	1.400	151,604.43	2,257,583.23	2,257,583.23	8,722,908.76	0.00
30	7/31/2050		2,135,462.51	1.400	122,120.72	2,257,583.23	2,257,583.23	6,587,446.25	0.00
31	7/31/2051		2,165,358.98	1.400	92,224.25	2,257,583.23	2,257,583.23	4,422,087.27	0.00
32	7/31/2052		2,195,674.01	1.400	61,909.22	2,257,583.23	2,257,583.23	2,226,413.26	0.00
33	7/31/2053		2,226,413.26	1.400	31,169.79	2,257,583.05	2,257,583.05	0.00	0.00
			55,000,000.00		14,054,877.40	69,054,877.40	69,054,877.40		0.00

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Dawn Merchant, Finance Director 

SUBJECT: Sales Tax Citizens' Oversight Committee Appointments

RECOMMENDED ACTION

It is recommended that the Mayor nominate, and Council appoint by resolution:

- 1) One Member to the Sales Tax Citizens' Oversight Committee for the vacancy expiring March 2022; and
- 2) One Member to the Sales Tax Citizens' Oversight Committee for the vacancy expiring March 2024

FISCAL IMPACT

There is no fiscal impact to the City as all positions are voluntary.

DISCUSSION

The Sales Tax Citizens' Oversight Committee (Committee) is responsible for reviewing the receipt and expenditure of funds under Measure W as they relate to the Council's stated priorities outlined in the adopted FY2019-21 budget. The Committee is responsible for reporting out the result of their review by April 1st of each year at a public meeting. The Committee consists of seven members who are Antioch residents. The terms of the Committee members are staggered with four members serving a 4-year term and 3 members serving a 2-year term. At least one member of the Committee shall have a financial, accounting or auditing background. The Committee is appointed by the Mayor and approved by the City Council.

One (1) full-term position expiring March 2024 and one (1) partial-term expiring March 2022 are currently vacant. The City of Antioch advertised to fill the vacancies in the usual manner with an application deadline of January 29, 2021 at 5:00 p.m. The applicants were interviewed by Mayor Lamar Thorpe, Finance Director Dawn Merchant and City Treasurer Lauren Posada. Mayor Thorpe is nominating the following two applicants:

- Matthew Lemming
- Destiny Iwuoma

ATTACHMENTS

- A. Resolution**
- B. Applications**

ATTACHMENT A

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPOINTING [TO BE FILLED IN AFTER APPOINTMENT] TO THE SALES TAX
CITIZENS' OVERSIGHT COMMITTEE FOR THE PARTIAL-TERM VACANCY
ENDING IN MARCH 2022 AND [TO BE FILLED IN AFTER APPOINTMENT] TO THE
FULL-TERM VACANCY ENDING IN MARCH 2024**

WHEREAS, one (1) full-term committee member vacancy on the Sales Tax Citizens' Oversight Committee ends in March 2024 and one (1) partial-term committee member vacancy ends March 2022;

WHEREAS, the City Clerk's Office announced the vacancies on January 11, 2021 and accepted applications for the vacancies;

WHEREAS, Mayor Lamar Thorpe considered applications received and interviewed the interested applicants;

WHEREAS, Antioch Municipal Code Section 2-5.201 requires that the Mayor nominate candidates for membership on all boards and commissions and requires that the City Council approve, by a majority vote, the appointment of said nominee; and

WHEREAS, Mayor Lamar Thorpe has nominated [to be filled in] to the Sales Tax Citizens' Oversight Committee member partial-term vacancy ending in March 2022 and [to be filled in] to the full-term vacancy ending in March 2024.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby approves Mayor Thorpe's nominations of [to be filled in] to the Sales Tax Citizens' Oversight Committee member partial-term vacancy ending in March 2022 and [to be filled in] to the full-term vacancy ending in March 2024 appointing *him/her/them* to serve on the Sales Tax Citizens' Oversight Committee.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

ATTACHMENT B



RECEIVED

JAN 30 2021

CITY OF ANTIOCH
CITY CLERK

APPLICATION EXTENDED DEADLINE DATE: 5:00 p.m., January 29, 2021

APPLICATION FOR COMMUNITY SERVICE

SALES TAX CITIZENS' OVERSIGHT COMMITTEE

One (1) full-term vacancy expiring March 2024
One (1) partial-term vacancy expiring March 2022

Print Your Name Destiny Iwuoma

Address _____ City Antioch

ZIP Code 94531 Phone (H) _____ (W) _____ (C) _____

E-mail address destiny@even.com

Employer Even Responsible Finance

Address 1440 Broadway Floor 5 City Oakland

Occupation Member Operations Specialist

Years lived in the City of Antioch 1

List the three (3) main reasons for your interest in this appointment:

I served on the Finance Committee for the Associated Students of the University of California and have experience
reviewing expenditure reports. Furthermore, I believe in the power of the people and I believe this committee
plays a powerful role in ensuring the peoples funds are being allocated responsibly. I worked at the RYSE
Youth Center and witnessed the beauty of city dollars being used to positively impact young people in the city.

Have you had any previous appointments to other city commissions or boards? (If yes, please explain) No

What skills/knowledge do you have that would be helpful in serving on the Sales Tax Citizens' Oversight Committee? Public Speaking, note taking, facilitating, community outreach,
experience dealing with non profits, teaching public relations, Event planning

ATTACHMENT B



BOARDS/ COMMISSION/ COMMITTEE VACANCY ANNOUNCEMENT

SALES TAX CITIZENS' OVERSIGHT COMMITTEE

One (1) Full-term vacancy expiring March 2024
One (1) Partial-term vacancy expiring March 2022

A Sales Tax Citizens' Oversight Committee has been established following the voters passing Ballot Measure C – Transaction and Use (Sales) Tax. This passed at the November 5, 2013 Consolidated Election. At the November 6, 2018 Consolidated Election, the voters passed Ballot Measure W – Transaction and Use (Sales) Tax.

Each year, an independent auditor shall complete a public audit report of the revenue raised and its expenditure. The Sales Tax Citizens' Oversight Committee shall review the expenditures and report publicly how the funds are being used to address the City Council's stated priorities of maintaining Antioch's fiscal stability, police patrols, 911 emergency response, youth violence prevention programs; ensuring water quality/safety; repairing streets; cleaning up parks/illegal dumping; restoring youth afterschool/summer programs; and other essential services. The Committee's review shall be completed in conjunction with the City's budget process. The Committee's report on its review, whether oral or written, shall be considered by the City Council at a public meeting before April 1 of each year. Any written report shall be a matter of public record.

The Committee shall meet at least twice a year. The meetings will be public.

The Sales Tax Citizens' Oversight Committee consists of seven members who are Antioch residents. At least one member of the Committee shall have a financial, accounting or auditing background. The Committee will be nominated by the Mayor and approved by the City Council.

Members of the Sales Tax Citizens' Oversight Committee will be required to file an annual "Statement of Economic Interest".

To be considered for these volunteer positions, a completed application must be received by e-mail at: cityclerk@ci.antioch.ca.us, or mailed to the Office of the City Clerk, 200 H Street/P.O. Box 5007, Antioch, CA 94531-5007, no later than

5:00 p.m., Friday, January 29, 2021.

An application is available on the City's Website at: <https://www.antiochca.gov/#>.

ATTACHMENT B

Please indicate any further information or comments you wish to make that would be helpful in reviewing your application.

See Resume Attached for relevant Community Service and Professional Experience.

Can you attend meetings at the designated days and time? Yes

PLEASE ATTACH YOUR RESUME (*Recommended to enhance your application*).

PLEASE NOTE THIS COMPLETED APPLICATION IS AVAILABLE FOR PUBLIC REVIEW.

Committee Members are required to file a FPPC Form 700 (Statement of Economic Interests) disclosing their property, business and investment interests, with the City Clerk.

Email completed application with resume to: cityclerk@ci.antioch.ca.us. You can also mail/deliver to:

Office of the City Clerk
City of Antioch
200 "H" Street
P.O. Box 5007
Antioch, CA 94531-5007



Signature

1/29/2021

Date

ATTACHMENT B

DESTINY CHISOM IWUOMA

EDUCATION

University of California at Berkeley, Berkeley, CA

05/2015

Bachelor of Arts, American Studies: Race, Education & Public Policy

RELEVANT EXPERIENCE

Even Responsible Finance, Oakland, CA

06/18-Present

Member Operations Specialist

- Developed recruitment strategy for launching North Carolina office. Reached 2, 250 students via expos, info sessions, and conferences at Duke, NC State and UNC Charlotte
- Project manager for 20 All Hands meetings. Worked with all levels of the company to prep speakers for presentations; Trusted by senior leadership to execute autonomously
- Provides world class customer support to 2 million users, where I supported 10, 412 individual users with troubleshooting the Even application in order to access their wages

Teach for America (TFA), Berkeley, CA

08/13-06/14

Campus Campaign Coordinator

- Led outreach initiatives to disseminate TFAs mission to 5,000 college students. 500 of the students filled out interest cards signifying interest in the program, consolidated data using Salesforce to capture new leads
- Secured 36 speaking engagements before UC Berkeley faculty, campus clubs, ASUC Student Government, campus administrators, and the community at large
- Designed and implemented a campus-wide strategic operation, leveraging my network and the press to coordinate recruiting efforts

PROFESSIONAL EXPERIENCE

RYSE Youth Center, Richmond, CA

06/16-06/18

College Access Coordinator

- Reviewed and simplified college admission process to support 25 students with planning and submitting college applications; program participation increased by 68% compared to prior year
- Met with 25 students individually and as groups to assist with issues impacting academics such as A-G Course alignment, study skills, and behavioral issues; 90% of students successfully completed college applications
- Designed and developed a 300 mile College Tour, successfully collaborated with staff at six universities to create an experience for 9 students to increase their understanding of financial aid and eligibility criteria at four-year Universities

Teach for America (TFA), Richmond, CA

08/15-06/16

Third Grade Teacher

- Developed and executed cross-curricular lesson plans for reading, writing and math via Common Core curriculum; 35% of students moved from non-proficient to proficient in reading
- Assisted the Principal with implementing computer based reading & math exams for 59 third graders. 15% of third graders exceeded Level 3 Standard in reading on CAASP Exam
- Collaborated with fellow third grade teachers to create lesson plans for student instruction; Held one-on-one conferences with each student bi-weekly to discuss writing goals. Class Average for Writing increased by 9%

LEADERSHIP & COMMUNITY INVOLVEMENT

UC Berkeley, Residential and Student Services Program, Berkeley, CA

05/13-08/13

Summer Bridge Outreach Assistant

- Equipped 350+ incoming college students, via a 6-week course, with effective social and emotional skills to both enable a smooth transition and ensure a higher probability of initial success at the University

Iota Phi Theta Fraternity, Inc. Xi Omega, San Francisco Bay Area

05/17-02/18

Chapter President

- Created a strategic communications plan to increase Chapter membership by 67%
-

ATTACHMENT B



RECEIVED

JAN 29 2021

CITY OF ANTIOCH
CITY CLERK

APPLICATION EXTENDED DEADLINE DATE: 5:00 p.m., January 29, 2021

APPLICATION FOR COMMUNITY SERVICE

SALES TAX CITIZENS' OVERSIGHT COMMITTEE

One (1) full-term vacancy expiring March 2024

One (1) partial-term vacancy expiring March 2022

Print Your Name Matthew (Matt) Leming
Address _____ City Antioch
ZIP Code 94509 Phone (H) Cell (W) Cell (C) _____
E-mail address MLEMING.HR@GMAIL.COM
Employer TRADESHIFT
Address 221 MAIN STREET #250 City SAN FRANCISCO
Occupation People & Culture Professional
Years lived in the City of Antioch 30

List the three (3) main reasons for your interest in this appointment:

1. Service: a way to One back to my community
2. Skills: I see this as a great opportunity to
Learn new Skills and Share ideas
3. Experience/Participate in "Democracy in Action"

Have you had any previous appointments to other city commissions or boards? (If yes, please explain) No, not previously

What skills/knowledge do you have that would be helpful in serving on the Sales Tax Citizens' Oversight Committee? I am a Curious and Diplomatic
person. My professional background is in
People/Finance. I enjoy Challenging
work that involves problem Solving and
Learning new things.

ATTACHMENT B



BOARDS/ COMMISSION/ COMMITTEE VACANCY ANNOUNCEMENT

SALES TAX CITIZENS' OVERSIGHT COMMITTEE

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One (1) Partial-term vacancy expiring March 2022

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Each year, an independent auditor shall complete a public audit report of the revenue raised and its expenditure. The Sales Tax Citizens' Oversight Committee shall review the expenditures and report publicly how the funds are being used to address the City Council's stated priorities of maintaining Antioch's fiscal stability, police patrols, 911 emergency response, youth violence prevention programs; ensuring water quality/safety; repairing streets; cleaning up parks/illegal dumping; restoring youth afterschool/summer programs; and other essential services. The Committee's review shall be completed in conjunction with the City's budget process. The Committee's report on its review, whether oral or written, shall be considered by the City Council at a public meeting before April 1 of each year. Any written report shall be a matter of public record.

The Committee shall meet at least twice a year. The meetings will be public.

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To be considered for these volunteer positions, a completed application must be received by e-mail at: cityclerk@ci.antioch.ca.us, or mailed to the Office of the City Clerk, 200 H Street/P.O. Box 5007, Antioch, CA 94531-5007, no later than

5:00 p.m., Friday, January 29, 2021.

An application is available on the City's Website at: <https://www.antiochca.gov/#>.

ATTACHMENT B

Please indicate any further information or comments you wish to make that would be helpful in reviewing your application.

it is my personal philosophy & Mantva
to be part of the solution, rather
than part of the problem. Easy is
not fun, it's boring.

I'm an avid Reader & Love Learning.

Can you attend meetings at the designated days and time? Yes

PLEASE ATTACH YOUR RESUME (Recommended to enhance your application).

PLEASE NOTE THIS COMPLETED APPLICATION IS AVAILABLE FOR PUBLIC REVIEW.

Committee Members are required to file a FPPC Form 700 (Statement of Economic Interests) disclosing their property, business and investment interests, with the City Clerk.

Email completed application with resume to: cityclerk@ci.antioch.ca.us. You can also mail/deliver to:

Office of the City Clerk
City of Antioch
200 "H" Street
P.O. Box 5007
Antioch, CA 94531-5007



Signature

29 Jan 2021

Date

ATTACHMENT B

Matthew Leming |

Building Corporate Infrastructure, Employee Organization, Relationship Building

Senior People & Culture leader with progressive experience developing and implementing corporate strategy and policy for a 1,000+ employee organization. Dependable and disciplined professional who takes a proactive approach to corporate development, with key focus on inclusion, operational fitness, and shareholder profitability. Experienced in product development and the development of new revenue streams. Knowledgeable in corporate infrastructure implementation and system administration. Skilled at relationship-building across all levels of an organization, vendors, and communities served. Proficient with HRIS, recruitment, union negotiations, and benefits management.

- Proactive Human Resources Planning
- Corporate Infrastructure
- Strategic Implementation and Restructuring
- Field & Corporate Office Collaboration
- Employee Relations, Diversity & Inclusion
- Successful Project Development
- US Payroll
- Talent Acquisition & Training Development
- Workday HCM

Professional Achievements

Tradeshift | San Francisco, CA

2018-Present

Tradeshift is a cloud based business network and platform for supply chain payments, marketplaces, and apps. Its 2018 round of funding, led by Goldman Sachs, raised \$250 million at a valuation of \$1.1 billion, giving the company unicorn status.

Human Resources Business Operations Analyst, Nov 2018 - Present

- Global system administrator for Workday, an enterprise Human Capital Management (HCM) system.
- Led internal design and implementation of Workday HCM and Workday Payroll (US).
- HR Partner for all US Immigration cases.
- HR Partner for Global Compliance.

ACT Healthcare | Antioch, CA

2013-2019

Administrative Healthcare Organization with annual revenues in excess of +\$100 million, and 500 regional employees.

ACT Healthcare Business Solutions, Inc.

Lone Tree Post Acute
Delta View Post Acute
Alhambra Convalescent Hospital
San Miguel Villa

Consultant, Business Operations, November 2018 - March 2019

Director of People Operations, November 2014 - November 2018

- Served as key corporate leadership and Human Resource leader with dual reporting to the Chief Operating Officer and Chief Executive Officer.
- Devise staffing and human resource practices in compliance with State, Federal, and Collectively Bargaining.
- Developed and oversaw a \$25 million-dollar annual payroll.
- Supervised 20 licensed direct reports.
- Implement corporate values as directed by executive leadership.

ATTACHMENT B

Director of Information Technology, November 2014 - 2018

- Serve as key organization leader of Information Technology reporting to the Chief Executive Officer.
- Implemented data infrastructure across multiple locations for seamless IT functions.
- Reduced corporate IT expenditures by 50%.
- Led a team of multidisciplinary consultants and subject matter experts.
- Inventory administration and optimization

Business Office Manager, November 2013 - November 2014

- Served as key administrative staff reporting directly to the Administrator.
- Complied with the Department of Public Health policies and procedures and Title 22 regulations.
- Developed and performed administrative functions for a team of 120 medical professionals.
- Supported employer/union relations with a large union workforce.
- Managed scheduling for the entire facility, in compliance with corporate, State and Federal guidelines.
- Processed all incoming accounts receivable, accounts payable, and payroll functions.

Education


Contra Costa College District
Economics

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Powell Meads, Police Lieutenant

APPROVED BY: Tammany Brooks, Chief of Police 

SUBJECT: Police Crime Prevention Commission Appointment for One
Vacancy Expiring October 2021

RECOMMENDED ACTION

It is recommended that the Mayor nominate, and the Council appoint by resolution:

- 1) One member to the Police Crime Prevention Commission for a vacancy expiring October 2021.

FISCAL IMPACT

There is no fiscal impact as all positions are voluntary.

DISCUSSION

The Antioch Police Crime Prevention Commission makes recommendations to the City Council relative to crime prevention and reports on programs. Commissioners are involved in public presentations, coordination of various Neighborhood Watch groups, and special community events such as National Night Out. The Commission consists of 7 members, who each serve a 4-year term. **Applicants must not be a full-time police officer.** The Commission meets on the third Monday evening of the month barring holidays at which time the meeting will be held the following Wednesday.

Currently there are (2) vacancies on the Antioch Police Crime Prevention Commission. Two commissioners resigned from their positions, with terms ending in October 2021 and June 2023.

As a result of advertising, three applicants were interviewed by Mayor Lamar Thorpe and Police Chief Tammany Brooks to fill two previously vacant positions with terms ending in June and October of 2024. Two of those applicants were appointed to fill the vacancies during the February 23, 2021 City Council Meeting. The third applicant is being considered for appointment to a current vacancy:

Nichole Randolph

The appointment will be seated at the regularly scheduled Antioch Police Crime Prevention Commission meeting on March 15, 2021.

ALTERNATIVE

The Council could keep the positions vacant and continue the recruitment for additional applications. This alternative is not recommended.

ATTACHMENTS

- A. Resolution
- B. Application of the listed applicant

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPOINTING [INSERT NAME OF APPOINTEE AFTER APPOINTMENT] TO THE
POLICE CRIME PREVENTION COMMISSION FOR (1) ONE PARTIAL-TERM
VACANCY, ENDING IN OCTOBER 2021**

WHEREAS, there is currently (1) one vacancy on the Police Crime Prevention Commission ending in October 2021 and (1) one vacancy on the Police Crime Prevention Commission ending in June 2023;

WHEREAS, the City Clerk's Office made announcement of the vacancies and solicited applications for both vacancies;

WHEREAS, Mayor Lamar Thorpe considered one application received during the previous recruitment to fill the vacancy ending in October 2021. The second vacancy will remain unfilled pending applicant interviews;

WHEREAS, Antioch Municipal Code Section 2-5.201 requires that the Mayor nominate candidates for membership on all boards and commissions and requires that the City Council approve, by a majority vote, the appointment of said nominee; and

WHEREAS, Mayor Lamar Thorpe has nominated [insert name of appointee(s) after appointment] to the Police Crime Prevention Commission.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Antioch hereby approve the Mayor's nomination of [insert name of appointee(s) after appointment] and appoint him/her to serve on the Police Crime Prevention Commission, as a Commissioner, with a term ending in October 2021.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

RECEIVED

NOV 03 2020

CITY OF ANTIOCH
CITY CLERK**APPLICATION DEADLINE: 5:00 p.m. Friday, November 13, 2020**APPLICATION FOR COMMUNITY SERVICE**POLICE CRIME PREVENTION COMMISSION - One (1) Full-term vacancy**Print your name: Nichole RandolphAddress: Periwinkle Way City: AntiochZIP Code 94531 Phone (H) _____

E-mail address: _____

Employer: WCIRB of CAAddress: 1221 Broadway, Suite 900 City: OaklandOccupation: Senior Data Quality AnalystYears lived in the City of Antioch: Nine years, 10 months

List the three (3) main reasons for your interest on this appointment:

As a city resident, I wish to become more involved in the activities & decisions that impact me and my neighbors.The PCPC appears to provide a good introduction to how I may exercise my civic duty.Offering suggestions for combating crime and fostering more positive interactionswith police force are elements that I am passionate about.Have you attended any meetings of this commission? Not yetHave you had any previous city community service on this commission? (If yes, please explain) No

What skills/Knowledge do you have that would be beneficial in serving on the Police Crime Prevention Commission? I am committed, attentive, knowledgeable,
open minded and work well with people of diverse backgrounds and philosophies.

Please indicate any addition information or comments you wish to make that would be helpful in reviewing your applications:

I have always prided myself on keeping abreast of global current events and elements that impact me locally where I live. More and more I realize that I need to be the change that I want to see in the world.

I can't speak negatively about the crime in Antioch without offering workable solutions or being involved with those who can develop and promote change. If appointed to this commission, I commit to be an active participant who will work with fellow citizens, businesses and the police department to develop/promote plans to reducing crime in our city.

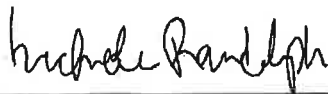
The Commission meets on the third Monday of the month in the Antioch Police Department's Community Room (300 "L" Street) at 7:00 p.m., barring holidays in which case meetings will be held the following Wednesday. Can you attend the meetings at the designated time? Yes

PLEASE ATTACH YOUR RESUME (*Recommended to enhance your application*).

PLEASE NOTE THIS COMPLETED APPLICATION IS AVAILABLE FOR PUBLIC REVIEW.

Email completed application with resume to: cityclerk@ci.antioch.ca.us. You can also mail/deliver to:

Office of the City Clerk
200 "H" Street
P.O. Box 5007
Antioch, CA 94531-5007



Signature

11/3/2020

Date

Nichole Randolph

Antioch, CA 94531 • Cell:

Education

Master of Science, Psychology
University of Phoenix, 2010

Bachelor of Arts, Psychology
San Francisco State University, 1998

Skills

- Strong customer service skills
- Clear, articulate speech
- Excellent communication skills
- Attention to details
- Strong problem solving ability
- Adaptable and function well in a team environment

Experience

WCIRB of California

Senior Data Reporting Analyst, 2/2012 to present

- Responsible for training Member Service Analysts and Examiners in process and procedures for data submission processing, exception handling and sequencing review of flat files.
- Function as the primary liaison for workers' compensation insurers and TPEs with respect to policy data reporting under STAR, which includes interpreting the WCPOLS Specs and requirements within the USRP.
- Assist data submitters with obtaining and retaining company approval to submit policy data via electronic media including reviewing WCPOLS test submissions and providing results/feedback.
- Troubleshoot systemic data submission deficiencies and work with data submitters and internal IT staff to facilitate solutions.
- Provide support and guidance to internal customers regarding WCPOLS reporting requirements.
- Core member of the PDQP team responsible for hard copy policy transaction review, drafting results correspondence to the insurer groups and leading teleconferences to discuss details of the PDQP review.
- Cross trained for a period as an Associate Account Specialist, which included creating the insurer dashboard, evaluating areas for improvement and leading teleconferences to discuss details of the previous quarter.

WCIRB of California

Senior Customer Service Analyst, 4/2003 to 2/2012

- Responsible for handling complex written and telephone inquiries regarding the Standard Classification System, Experience Rating, Policy Examination concerns, and a variety of other

questions, which involves analysis of customer concerns and explanation of relevant rules contained in the Regulatory manuals and plans.

- Assisted with the reworking of the Custom Data Product procedures and provided a tutorial to the Customer Service Department. Currently, responsible for processing all such orders submitted to Customer Service.
- Serve as Acting Team Leader when required. On occasion, provide telephone voicemail coverage for the Policyholder Ombudsman when he is out of the office for an extended period.

WCIRB of California

Customer Service Acting Team Leader, 1/2004 (approx. seven weeks)

- Responsible for tracking, evaluating, and distributing all written correspondence to department team members.
- Responsible for compiling data and publishing a weekly Escalation Report for review by the Customer Service Department Manager and management of fellow departments, which includes evaluating all calls within the department open for 30 days or more.

WCIRB of California

Customer Service Analyst, 10/2001 to 4/2003


- Prepared a review of the WCIRB's Data and Document Transfer System for the Customer Service Department.
- Responsible for tracking daily ticket totals and publishing a daily ACD report for the previous business day regarding telephone call statistics.
- Completed a Managing Multiple Tasks seminar.

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Rosanna Bayon Moore, Assistant City Manager 

APPROVED BY: Ron Bernal, City Manager

SUBJECT: Police Reform – Mental Health Crisis Response

RECOMMENDED ACTION

It is recommended that the City Council receive a presentation from Contra Costa Health Services and provide staff with direction.

FISCAL IMPACT

None at this time.

DISCUSSION

The Antioch City Council held a special meeting on February 26, 2021 to consider several dimensions of Police Reform. At that time, the City Council directed staff to proceed with arranging a presentation regarding planned improvements and implementation timetables associated with Contra Costa County's Mental Health Crisis Response efforts.

ATTACHMENTS

- A. Presentation to Mayor's Conference on February 4, 2021 re: Behavioral Health Community Crisis Response

Mayor's Conference
February 4, 2021



Behavioral Health Community Crisis Response

Dan Buckshi, Walnut Creek City Manager

Anna M. Roth, Director, Contra Costa Health Services



Behavioral Health Community Crisis Response Moving Forward

JULY 2020

Mayors' Conference
PMA Subcommittee
Formed



SEPTEMBER 2020

CCHS/PMA Outlines
Situation/Challenges



FEBRUARY 2021

PMA/CCHS Findings and
Recommendations

Collaborative Partners

- PMA Sub-Committee
- Contra Costa Health Services
- City and County Organizations
- Community Advocates
- Lived Experience Participants
- Multi-Agency, Multi-Sector Improvement Teams

Understanding the Context

- Resources and Programs
- County Crisis Teams
- Other Models
- National Guidelines and Best Practices

The Big Picture

Behavioral health issues are prevalent & increasingly recognized as a major area of need



**1 in 5 adults
experiencing behavioral
health issues**



**Third most
common EMS call**



**10,000+ involuntary
psychiatric holds**

Community Crisis Response Actions



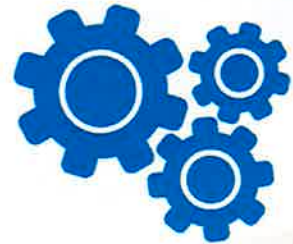
**Regional
Collaboration**



**PMA
Sub-Committee**



**Best
Practices**



**Value
Stream Map**

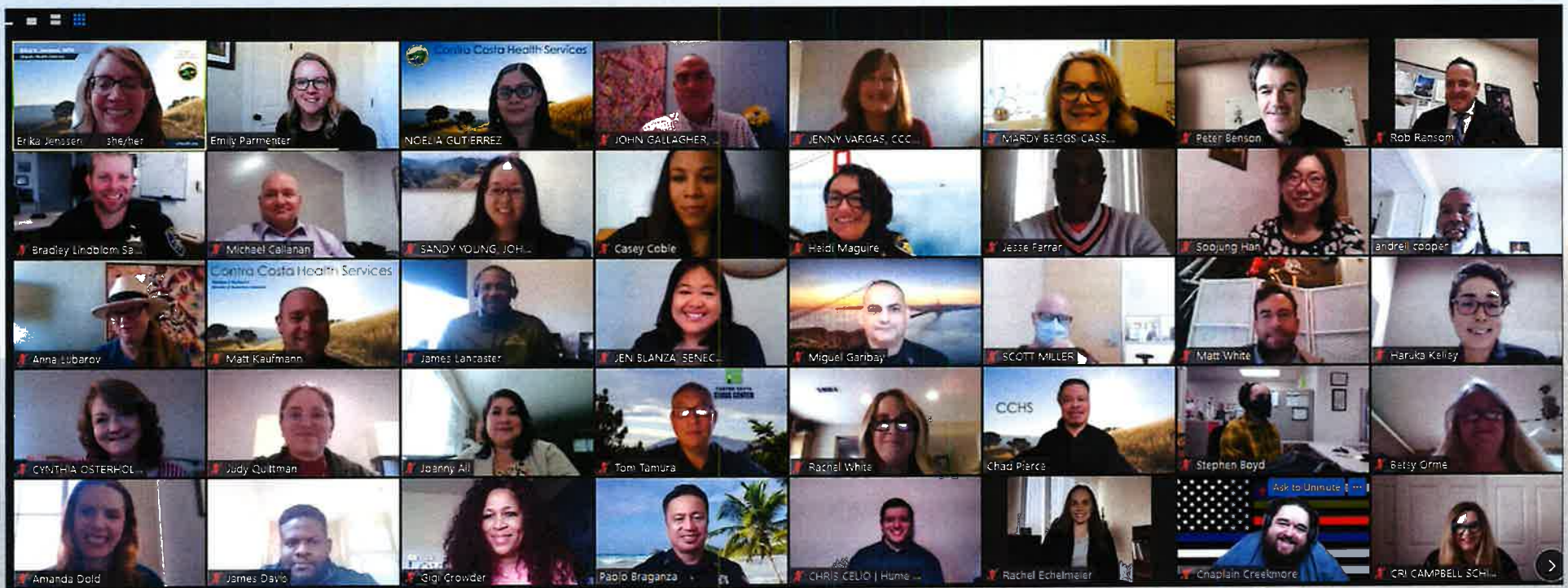


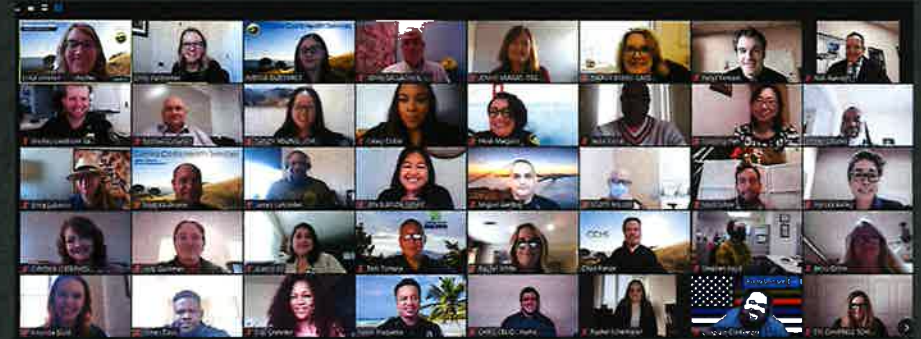
November 20, 2020

Community Crisis Response Value Stream Mapping

WEBSITE: [CCHEALTH.ORG/bhs/crisis-response](https://cchealth.org/bhs/crisis-response)

Multi-disciplinary County-wide Team





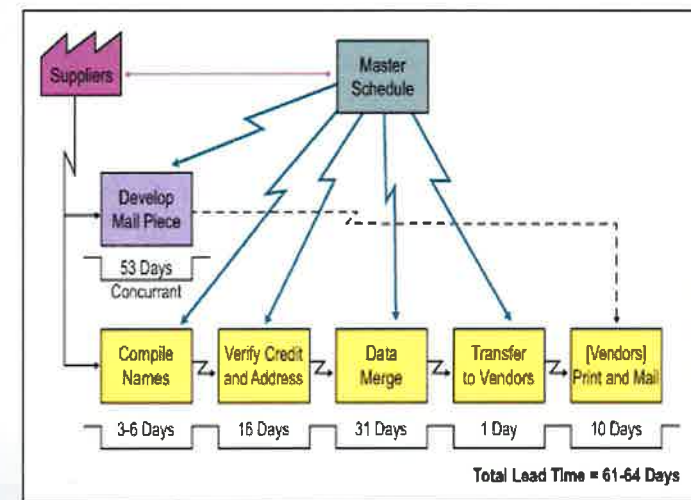


Anyone
...Anywhere
...Anytime!

<https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-services-executive-summary-02242020.pdf>

Value Stream Map

- Visual representation of process from beginning to end
- Value from the person's perspective



Observations & Interviews

Team

PRE-CRISIS /
BEFORE THE
CRISIS

DURING THE
CRISIS / CALL
FOR HELP

CRISIS
RESPONSE/
POST CRISIS

Observation / Interview Locations

PROVIDER CLINICS - KAISER, SUTTER, JOHN MUIR	ACCESS LINE	CCHP ADVICE RN, OTHER ADVICE RN LINES
MILLER WELLNESS	HEALTHCARE FOR THE HOMELESS	CORE HOMELESS OUTREACH TEAM
HUMES, NAMI, COMMUNITY-BASED ORGS	211	COUNTY CLINICS
FAMILY MEMBERS / LIVED EXPERIENCE	DISCOVERY CENTER	DISCOVERY HOUSE

911 - MEDICAL & LAW DISPATCH	EMERGENCY DEPARTMENT
PSYCHIATRIC EMERGENCY DEPARTMENT	LAW ENFORCEMENT
FAMILY MEMBERS / LIVED EXPERIENCE	

MENTAL HEALTH EVALUATION TEAM	TRANSITION TEAM
FAMILY MEMBERS / LIVED EXPERIENCE	JUVENILE HALL
MOBILE RESPONSE TEAM (YOUTH)	MOBILE CRISIS RESPONSE TEAM
ALCOHOL AND OTHER DRUGS PROGRAMS	

Lived Experience Themes



**Cultural
responsiveness
training**



**Teams that reflect
culturally diverse
communities served**

**Peer and Family
support at every
level of service**



**Service with
kindness, respect
& dignity**



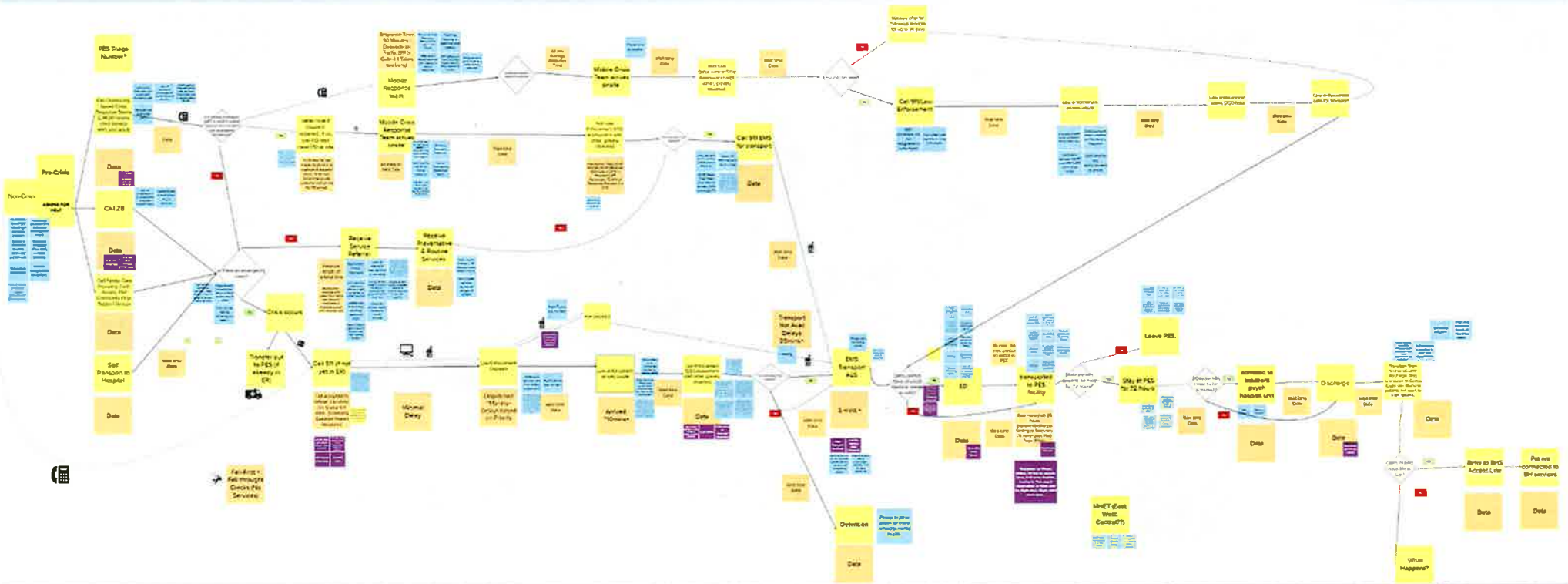
Current State Map

Blue = Waste

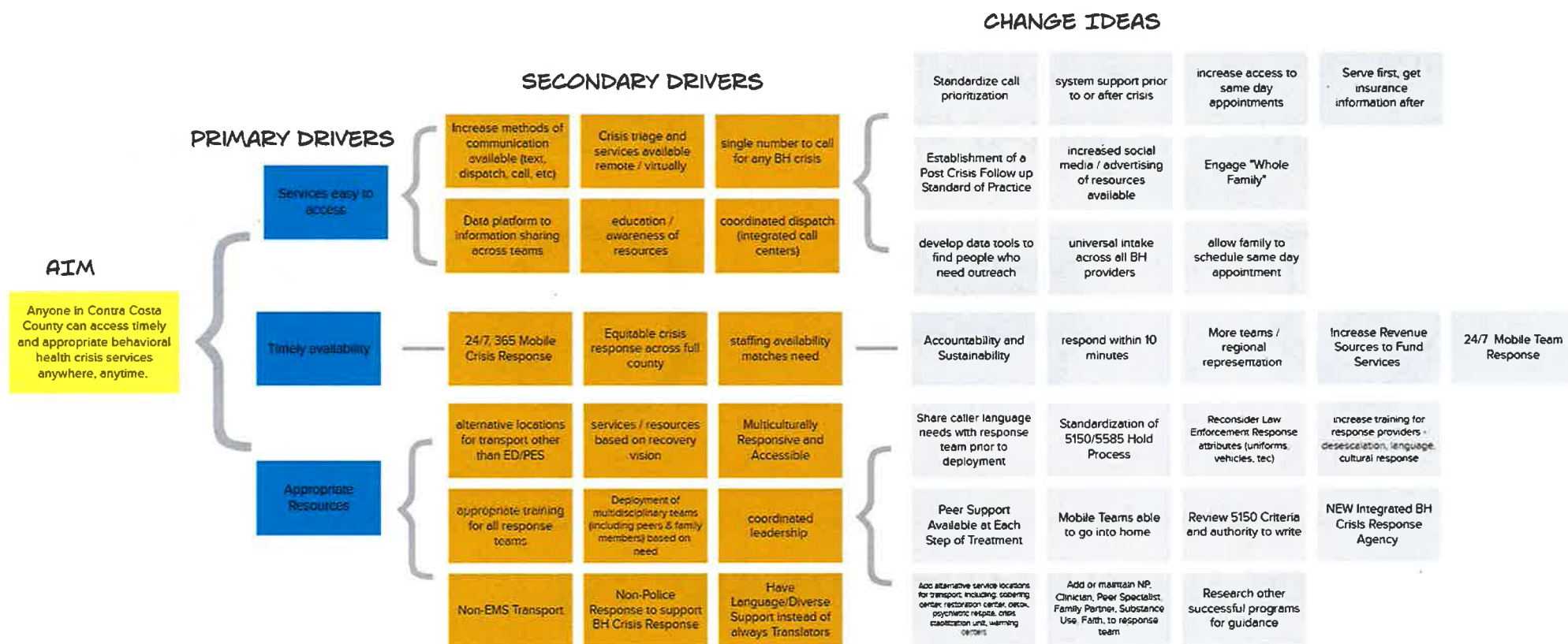
Yellow =
Process
Step

Orange =
Data Cycle
and wait
times

Purple =
Specific
Data
Points



AIM: Anyone in Contra Costa County can access timely and appropriate behavioral health crisis services anywhere, anytime.



Priority Improvement Areas



**Single Phone
Number**



**Mobile 24/7
Response**



**Non-Police
Mobile Crisis
Team**



**Alternate
Destinations**

Design Team Members

- Police Services Manager, Walnut Creek
- CCHS Behavioral Health, Office for Consumer Empowerment (OCE)
- Executive Director, NAMI Contra Costa
- Contra Costa County Mental Health Commission
- Lived Experience
- City of Concord Police Department
- Sr. Administrative Analyst, City Manager's Office, Pittsburg
- San Ramon Police Department
- San Pablo Police Department
- CCRMC, Health Centers & Detention Health, Performance Improvement
- CCHS Behavioral Health Integration Services Manager
- CCHS Mental Health
- CCHS Central County Adult Behavioral Health
- CCHS IT and Innovation
- Medical Director, Contra Costa County Fire Protection District
- Fire EMS Chief, Contra Costa County Fire Protection District
- CCHS Health Housing & Homeless
- Program Director, Seneca Family of Agencies
- CCHS Mental Health Services

Next Steps



THANK YOU




CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Joe Vigil, Police Lieutenant

APPROVED BY: Tammany Brooks, Chief of Police 

SUBJECT: Police Reform - Body Worn and In-Car Cameras

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution:

1. Approving a five-year contract with Axon Enterprises Inc. to purchase body worn / in car camera hardware and operating system software from April 1, 2021 to March 31, 2026 and authorizing the City Manager to execute a purchasing agreement with Axon Enterprises not to exceed \$1,422,108.88 over a five-year period;
2. Authorizing the purchase of the Evidence.com/CAD/RMS interface computer software and authorizing the City Manager to execute a purchasing agreement with Mark 43 not to exceed \$15,000.00; and
3. Authorizing the City Manager to make the necessary FY2020/21 budget amendments.

FISCAL IMPACT

There will be an initial implementation expenditure with Axon Enterprises Inc. of \$420,538.12 and an annual expenditure of \$250,392.69 for the following four years. The total expenditure over the five-year contract period will be \$1,422,108.88 for the Axon camera hardware and software.

1. Year one cost - \$420,538.12 (includes car camera startup costs)
2. Year two cost - \$250,392.69
3. Year three cost - \$250,392.69
4. Year four cost - \$250,392.69
5. Year five cost - \$250,392.69

There will be a one-time cost for the purchase of the Evidence.com/CAD/RMS interface software. The total purchase price will be approx. \$15,000.

DISCUSSION

The City of Antioch Police Department currently does not utilize body worn cameras or a vehicle mounted camera system. The body worn camera system (\$1,007,767.33) is a singular unit that an officer will wear while on-duty. The camera is worn on the uniform and is forward facing. The camera can record video and audio, as well as capture still photographs. These cameras will upload content from the camera to Axon's secure cloud-based storage system when they are docked for charging. The cameras will also include mounting hardware. With Axon's current distribution and equipment access, they can have the Police Department trained and using body worn cameras in as little as 60 days from the execution of the contract. This will also depend on the existing infrastructure and availability of their technicians.

The car camera system is composed of two cameras (\$414,341.55). The front is mounted on the inside of the car and faces forward, capturing video. The second is mounted in the backseat area and records the backseat area of the car. Both cameras can record video and audio from inside the car. Both cameras upload content to Axon's secure cloud-based storage through the car's mobile data computer hotspot. Police vehicles will also be outfitted with an interior and exterior antenna, modem, and hub for data. With Axon's current distribution and equipment access, they can have the Police Department trained and using vehicle cameras in 6-8 months from the execution of the contract. This too will also depend on the existing infrastructure and availability of their technicians.

By entering into an agreement to purchase and utilize cameras, the City adds an additional layer of accountability and transparency to the community. The cameras can increase officer and public safety, improve officer training, and improve officer response.

The benefits of the Axon camera systems are video recording and playback of incidents, multiple microphone audio recordings, real time alerts and activations of camera systems, cloud storage which is easily accessible to review for cases and court summons, and a system the District Attorney's Office is already trained on and using for court trials and testimony.

The Axon camera platform allows officers to capture photographs, videos, and audio evidence in the field and directly upload it to an investigation or incident. Additionally, there is a mechanism in place to allow for crime victims to upload their personal photos/videos into the cloud and attach it to their working cases, allowing for increased police/community interaction and streamlined customer service.

The five-year contract with Axon Industries covers all hardware and software updates, as well as all camera equipment and replacement parts for the duration of the contract. At month 30 of the contract, all cameras will be upgraded (at no cost) to the most current platform. This will also happen again at month 60 (at no cost).

Currently, the Police Department is in the process of upgrading the CAD system to Mark 43. A feature of the Axon software is it allows the cameras to communicate with the CAD system. This will allow the cameras to gather information related to calls for service and attach them to videos. This feature allows the camera to grab the Officer's identification from the call, the time Officers arrived at the scene, as well as when they cleared the

scene, and categorize the call. The purchase of the interface software from Mark 43 would allow the cameras to interface with the existing CAD/RMS systems and share information and data with each other. This would be a one-time purchase.

Sole source justification for the Axon Enterprises Inc. is requested and based on the following facts and circumstances:

Axon Industries is the only company that offers this equipment with these capabilities and is currently the industry standard. The District Attorney's office is already trained on this platform and is currently using it for the prosecution of cases. Axon cameras are one-of-a-kind and not sold through distributors, the manufacturer is the exclusive distributor.

ATTACHMENTS

A. Resolution

Exhibit 1: Axon Enterprise Inc. Quote

Exhibit 2: Axon Master Services and Purchasing Agreement - Draft

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING A SOLE SOURCE REQUEST, AUTHORIZING THE CITY MANAGER TO
EXECUTE AN AGREEMENT WITH AXON ENTERPRISES INC. TO PURCHASE
CAMERA HARDWARE AND SOFTWARE AND MARK 43 TO PURCHASE RELATED
INTERFACE SOFTWARE RELATED TO THE CAMERA SYSTEMS, AND
AUTHORIZING THE CITY MANAGER TO AMEND THE FY2020/21 BUDGET AS
NECESSARY**

WHEREAS, the City of Antioch Police Department currently has no contract with Axon Enterprises Inc.;

WHEREAS, the City of Antioch Police Department desires to purchase and issue body worn / in car camera hardware and software;

WHEREAS, additional accountability and transparency for the community are achieved by more fully integrating camera technology into City operations;

WHEREAS, body worn and in car cameras can increase Officer and public safety, improve Officer training, and improve Officer response.

WHEREAS, the issuance of Axon equipment will assist in improving officer and public safety through the use of technology, training, and equipment;

WHEREAS, Axon camera systems and its software are unique to Axon Enterprises Inc. and can only be provided by Axon Enterprises Inc.;

WHEREAS, the cost to purchase the Axon system is anticipated not to exceed \$1,422,108.00;

WHEREAS, Mark 43 interface software will allow the cameras to communicate and share information with the Records Management and Computer Aided Dispatch systems;

WHEREAS, the cost to purchase interface software from Mark 43 is anticipated not to exceed \$15,000; and

WHEREAS, funding for the purchase has not been approved in the General Fund FY2020/21 budget and would require a budget amendment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby:

1. Authorizes and directs the City Manager or designee to complete a sole source request for the Axon system and Mark 43 interface software for the camera systems;

RESOLUTION NO. 2021/**

March 9, 2021

Page 2

2. Authorizes and directs the City Manager or designee to execute a purchasing agreement with Axon Industries Inc. to provide Body Worn/In Car camera hardware and software not to exceed \$1,422,108.88 over a five-year period from April 1, 2021 to March 31, 2026;
3. Authorizes the one-time purchase from Mark 43 of the interface software for the camera systems, for an amount not to exceed \$15,000; and
4. Authorizes the City Manager to make the necessary FY2020/21 budget amendments.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch, at a regular meeting thereof, held on the 9th day of March, 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**



AXON

Antioch Police Dept. - CA

AXON SALES REPRESENTATIVE

Kevin Watson

480-463-2203

kwatson@axon.com

ISSUED

3/2/2021



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

Q-289602-44257.568KW

Issued: 03/02/2021

Quote Expiration: 03/31/2021

Account Number: 147404

Payment Terms: Net 30
Delivery Method: Fedex - Ground

SHIP TO

Joseph Vigil
Antioch Police Dept. - CA
300 L Street
Antioch, CA 94531
US

BILL TO

Antioch Police Dept. - CA
300 L Street
Antioch, CA 94531
US

SALES REPRESENTATIVE

Kevin Watson
Phone: 480-463-2203
Email: kwatson@axon.com
Fax: 4804632203

PRIMARY CONTACT

Joseph Vigil
Phone: (925) 779-6993
Email: jvigil@antiochca.gov

Year 1

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
73449	RESPOND DEVICE LICENSE	60	122	0.00	0.00	0.00
73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	60	30	0.00	0.00	0.00
73746	PROFESSIONAL EVIDENCE.COM LICENSE	60	10	0.00	0.00	0.00
73682	AUTO TAGGING LICENSE	60	122	0.00	0.00	0.00
73746	PROFESSIONAL EVIDENCE.COM LICENSE	60	122	0.00	0.00	0.00
73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE	60	122	0.00	0.00	0.00
73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	60	488	0.00	0.00	0.00
Hardware						
75015	SIGNAL SIDEARM KIT		122	249.00	249.00	30,378.00
71044	BATTERY, SIGNAL SIDEARM, CR2430 SINGLE PACK		244	0.00	0.00	0.00
73202	AXON BODY 3 - NA10		122	699.00	699.00	85,278.00
74210	AXON BODY 3 - 8 BAY DOCK		15	1,495.00	1,495.00	22,425.00
70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK		15	43.90	43.90	658.50
11508	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK		122	0.00	0.00	0.00
11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2		122	0.00	0.00	0.00

Year 1 (Continued)

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other						
73665	RESPOND DEVICE PAYMENT	12	122	60.00	60.00	7,320.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	10	468.00	468.00	4,680.00
73835	AUTO TAGGING LICENSE PAYMENT	12	122	108.00	108.00	13,176.00
73842	UNLIMITED EVIDENCE.COM TAP BUNDLE PAYMENT	12	122	1,068.00	1,068.00	130,296.00
73827	AB3 CAMERA TAP WARRANTY	60	122	0.00	0.00	0.00
73828	AB3 8 BAY DOCK TAP WARRANTY	60	15	0.00	0.00	0.00
71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK		15	0.00	0.00	0.00
Services						
85055	AXON FULL SERVICE		1	17,000.00	17,000.00	17,000.00
79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE		1	0.00	0.00	0.00
Subtotal						311,211.50
Estimated Shipping						0.00
Estimated Tax						26,458.31
Total						337,669.81

Year 1- Fleet 3

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
80410	FLEET, EVIDENCE LICENSE, 1 CAMERA STORAGE, ACCESS	60	98	0.00	0.00	0.00
80400	FLEET, VEHICLE LICENSE, ACCESS	60	49	0.00	0.00	0.00
Hardware						
72036	FLEET 3 STANDARD 2 CAMERA KIT		49	0.00	0.00	0.00
80486	EXT WARRANTY, FLEET 3, 2 CAMERA KIT, 4 YEARS		49	0.00	0.00	0.00
11634	CRADLEPOINT IBR900-1200M-B-NPS+5YR NETCLOUD		49	0.00	0.00	0.00
71200	FLEET ANT, AIRGAIN, 5-IN-1, 2LTE, 2WIFI, 1GNSS, BL		49	0.00	0.00	0.00
74110	FLEET ETHERNET CABLE, CAT6, 25 FT		49	0.00	0.00	0.00
Other						
80457	FLEET 3 BASIC PAYMENT	12	49	1,548.00	1,548.00	75,852.00

Year 1- Fleet 3 (Continued)

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other (Continued)						
No Custom Triggers	No Custom Triggers (Declined)		49	0.00	0.00	0.00
Services						
74063	FLEET 2 NEW INSTALLATION (PER VEHICLE)		49	0.00	0.00	0.00
					Subtotal	75,852.00
					Estimated Tax	7,016.31
					Total	82,868.31

Spares

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware						
73202	AXON BODY 3 - NA10		3	0.00	0.00	0.00
11508	MOLLE MOUNT, DOUBLE, AXON RAPIDLOCK		3	0.00	0.00	0.00
11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2		3	0.00	0.00	0.00
Other						
73827	AB3 CAMERA TAP WARRANTY	60	3	0.00	0.00	0.00
					Subtotal	0.00
					Estimated Tax	0.00
					Total	0.00

Year 2

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other						
73835	AUTO TAGGING LICENSE PAYMENT	12	122	108.00	108.00	13,176.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	10	468.00	468.00	4,680.00
73665	RESPOND DEVICE PAYMENT	12	122	60.00	60.00	7,320.00
73842	UNLIMITED EVIDENCE.COM TAP BUNDLE PAYMENT	12	122	1,068.00	1,068.00	130,296.00
80457	FLEET 3 BASIC PAYMENT	12	49	1,548.00	1,548.00	75,852.00
					Subtotal	231,324.00
					Estimated Tax	19,068.69
					Total	250,392.69

Year 3

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other						
73835	AUTO TAGGING LICENSE PAYMENT	12	122	108.00	108.00	13,176.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	10	468.00	468.00	4,680.00
73665	RESPOND DEVICE PAYMENT	12	122	60.00	60.00	7,320.00
73309	AXON CAMERA REFRESH ONE		3	0.00	0.00	0.00
73842	UNLIMITED EVIDENCE.COM TAP BUNDLE PAYMENT	12	122	1,068.00	1,068.00	130,296.00
73309	AXON CAMERA REFRESH ONE		122	0.00	0.00	0.00
73689	MULTI-BAY BWC DOCK 1ST REFRESH		15	0.00	0.00	0.00
80457	FLEET 3 BASIC PAYMENT	12	49	1,548.00	1,548.00	75,852.00
Subtotal						231,324.00
Estimated Tax						19,068.69
Total						250,392.69

Year 4

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other						
73835	AUTO TAGGING LICENSE PAYMENT	12	122	108.00	108.00	13,176.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	10	468.00	468.00	4,680.00
73665	RESPOND DEVICE PAYMENT	12	122	60.00	60.00	7,320.00
73842	UNLIMITED EVIDENCE.COM TAP BUNDLE PAYMENT	12	122	1,068.00	1,068.00	130,296.00
80457	FLEET 3 BASIC PAYMENT	12	49	1,548.00	1,548.00	75,852.00
Subtotal						231,324.00
Estimated Tax						19,068.69
Total						250,392.69

Year 5

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other						
73835	AUTO TAGGING LICENSE PAYMENT	12	122	108.00	108.00	13,176.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	10	468.00	468.00	4,680.00

Year 5 (Continued)

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other (Continued)						
73665	RESPOND DEVICE PAYMENT	12	122	60.00	60.00	7,320.00
73310	AXON CAMERA REFRESH TWO		3	0.00	0.00	0.00
73842	UNLIMITED EVIDENCE.COM TAP BUNDLE PAYMENT	12	122	1,068.00	1,068.00	130,296.00
73310	AXON CAMERA REFRESH TWO		122	0.00	0.00	0.00
73688	MULTI-BAY BWC DOCK 2ND REFRESH		15	0.00	0.00	0.00
80457	FLEET 3 BASIC PAYMENT	12	49	1,548.00	1,548.00	75,852.00
Subtotal						231,324.00
Estimated Tax						19,068.69
Total						250,392.69

Grand Total	1,422,108.88
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Summary of Payments

Payment	Amount (USD)
Year 1	337,669.81
Year 1- Fleet 3	82,868.31
Spares	0.00
Year 2	250,392.69
Year 3	250,392.69
Year 4	250,392.69
Year 5	250,392.69
Grand Total	1,422,108.88

Tax is subject to change at order processing with valid exemption.

Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature: _____ **Date:** _____

Name (Print): _____ **Title:** _____

PO# (Or write N/A): _____

Please sign and email to Kevin Watson at kwatson@axon.com or fax to 4804632203

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

The trademarks referenced above are the property of their respective owners.

Axon Internal Use Only		
		SFDC Contract #:
		Order Type:
		RMA #:
		Address Used:
		SO #:
Review 1	Review 2	
Comments:		

ATTENTION

This order may qualify for freight shipping, please fill out the following information.

What is the contact name and phone number for this shipment?	
What are your receiving hours? (Monday-Friday)	
Is a dock available for this incoming shipment?	
Are there any delivery restrictions? (no box trucks, etc.)	

**Master Services and Purchasing Agreement**

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc., a Delaware corporation ("**Axon**"), and the agency on the Quote ("**Agency**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions.**

"**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

"**Axon Device**" means all hardware provided by Axon under this Agreement.

"**Quote**" means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

"**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").

Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3 **Payment.** Axon invoices upon shipment. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys' fees.

4 **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB shipping point via common carrier. Title and risk of loss pass to Agency upon Axon's delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

6 **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7 Warranty.

7.1 Hardware Limited Warranty. Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("CEW") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

7.2 Claims. If Axon receives a valid warranty claim for an Axon manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Device with the same or like Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering a Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

7.3 Spare Axon Devices. For qualified purchases, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose. .

7.4 Limitations. Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.

7.4.2 Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the 12 months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.

8 Statement of Work. Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

9 Axon Device Warnings. See www.axon.com/legal for the most current Axon Device warnings.

- 10 **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.
- 11 **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
- 12 **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
- 13 **Indemnification.** Axon will indemnify Agency's officers, directors, and employees ("Agency Indemnitees") against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's negligence or willful misconduct, or claims under workers compensation.
- 14 **IP Rights.** Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
- 15 **IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
- 16 **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.
- 17 **Termination.**
- 17.1 **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
- 17.2 **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
- 17.3 **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
- 18 **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be

understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for 5-years thereafter. Axon pricing is Confidential Information and competition sensitive. If Agency is required by law to disclose Axon pricing, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

19 General.

19.1 Force Majeure. Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.

19.2 Independent Contractors. The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

19.3 Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

19.4 Non-Discrimination. Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.

19.5 Export Compliance. Each Party will comply with all import and export control laws and regulations.

19.6 Assignment. Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.

19.7 Waiver. No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.

19.8 Severability. If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.

19.9 Survival. The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.

19.10 Governing Law. The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

19.11 Notices. All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc.
Attn: Legal
17800 N. 85th Street
Scottsdale, Arizona 85255
legal@axon.com

Agency:
Attn:
Street Address
City, State, Zip
Email

19.12 Entire Agreement. This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or

understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each representative identified below declares they have been expressly authorized to execute this Agreement as of the date of signature.

Axon Enterprise, Inc.

Agency

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Axon Cloud Services Terms of Use Appendix

1 **Definitions.**

“Agency Content” is data uploaded into, ingested by, or created in Axon Cloud Services within Agency’s tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

“Evidence” is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

“Non-Content Data” is data, configuration, and usage information about Agency’s Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

“Personal Data” means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

- 2** **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data (**“TASER Data”**). Agency may not upload non-TASER Data to Axon Evidence Lite.

- 3** **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content are not business records of Axon. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will have limited access to Agency Content solely for providing and supporting Axon Cloud Services to Agency and Agency end users.

- 4** **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

- 5** **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user’s use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user’s access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency’s account or Agency Content, or if account information is lost or stolen.

To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.

- 6 **Privacy**. Axon will not disclose Agency Content or information about Agency except as compelled by a court or administrative body or required by law or regulation. If Axon receives a disclosure request for Agency Content, Axon will give Agency notice, unless legally prohibited from doing so, to allow Agency to file an objection with the court or administrative body. Agency agrees to allow Axon access to certain information from Agency to (a) perform troubleshooting services upon request or as part of regular diagnostic screening; (b) enforce this Agreement or policies governing the use of Axon Evidence; or (c) perform analytic and diagnostic evaluations of the systems.
- 7 **Axon Body 3 Wi-Fi Positioning**. Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
- 8 **Storage**. For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.
- 9 **Location of Storage**. Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
- 10 **Suspension**. Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.
- Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
- 11 **Axon Cloud Services Warranty**. Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
- 12 **Axon Records**. Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and

functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

- 13** **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 13.1** copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - 13.2** reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
 - 13.3** access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 13.4** use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
 - 13.5** access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
 - 13.6** remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
 - 13.7** use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.
- 14** **After Termination.** Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
- 15** **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
- 16** **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.
- 17** **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.

Professional Services Appendix

- 1 **Utilization of Services.** Agency must use professional services as outlined in the Quote and this Appendix within 6 months of the Effective Date.

- 2 **Body-Worn Camera Full Service (BWC Full Service).** BWC Full Service includes advance remote project planning and configuration support and up to 4 consecutive days of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which on-site services are appropriate. If Agency requires more than 4 consecutive on-site days, Agency must purchase additional days. BWC Full Service options include:

System set up and configuration <ul style="list-style-type: none"> Instructor-led setup of Axon View on smartphones (if applicable) Configure categories and custom roles based on Agency need Register cameras to Agency domain Troubleshoot IT issues with Axon Evidence and Axon Dock ("Dock") access One on-site session included
Dock configuration <ul style="list-style-type: none"> Work with Agency to decide the ideal location of Docks and set configurations on Dock Authenticate Dock with Axon Evidence using admin credentials from Agency On-site assistance, not to include physical mounting of docks
Best practice implementation planning session <ul style="list-style-type: none"> Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies Discuss the importance of entering metadata in the field for organization purposes and other best practice for digital data management Provide referrals of other agencies using the Axon camera devices and Axon Evidence Recommend rollout plan based on review of shift schedules
System Admin and troubleshooting training sessions Step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence
Axon instructor training (Train the Trainer) Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations
Evidence sharing training Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies
End user go-live training and support sessions <ul style="list-style-type: none"> Assistance with device set up and configuration Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide
Post go-live review

- 3 **Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

- 4 **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.

- 5 **Access Computer Systems to Perform Services.** Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.
- 6 **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional Services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it.
- 7 **Acceptance.** When Axon completes professional Services, Axon will present an acceptance form ("**Acceptance Form**") to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional Services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within 7 calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within 7 calendar days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional Services.
- 8 **Agency Network.** For work performed by Axon transiting or making use of Agency's network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency's network from any cause.



Master Services and Purchasing Agreement

Technology Assurance Plan Appendix

If Technology Assurance Plan (“TAP”) or a bundle including TAP is on the Quote, this appendix applies.

- 1 **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.
- 2 **Officer Safety Plan.** If Agency purchases an Officer Safety Plan (“OSP”), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
- 3 **OSP 7 Term.** OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month (“OSP 7 Term”).
- 4 **TAP BWC Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera (“BWC Upgrade”) as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon’s option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
- 5 **TAP Dock Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote (“Dock Upgrade”). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon’s option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon’s option.
- 6 **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.
- 7 **Upgrade Change.** If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
- 8 **Return of Original Axon Device.** Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
- 9 **Termination.** If Agency’s payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
 - 9.1 TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
 - 9.2 Axon will not and has no obligation to provide the Upgrade Models.
 - 9.3 Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.

Axon Auto-Tagging Appendix

- 1 **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Agency's Computer-Aided Dispatch ("CAD") or Records Management Systems ("RMS"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Agency's CAD or RMS.
- 2 **Support.** For thirty days after completing Auto-Tagging Services, Axon will provide up to 5 hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, so long as long as Agency maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Agency changes its CAD or RMS.
- 3 **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
- 4 **Agency Responsibilities.** Axon's performance of Auto-Tagging Services requires Agency to:
 - 4.1 Make available relevant systems, including Agency's current CAD or RMS, for assessment by Axon (including remote access if possible);
 - 4.2 Make required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
 - 4.3 Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Agency safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
 - 4.4 Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
 - 4.5 Promptly install and implement any software updates provided by Axon;
 - 4.6 Ensure that all appropriate data backups are performed;
 - 4.7 Provide assistance, participation, and approvals in testing Auto-Tagging Services;
 - 4.8 Provide Axon with remote access to Agency's Axon Evidence account when required;
 - 4.9 Notify Axon of any network or machine maintenance that may impact the performance of the module at Agency; and
 - 4.10 Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
- 5 **Access to Systems.** Agency authorizes Axon to access Agency's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.

Axon Fleet Appendix

- 1 **Agency Responsibilities.** Agency must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 or Axon Fleet 3 (collectively, "Axon Fleet") as established by Axon during the qualifier call and on-site assessment at Agency and in any technical qualifying questions. If Agency's representations are inaccurate, the Quote is subject to change.
- 2 **Cradlepoint.** If Agency purchases Cradlepoint Enterprise Cloud Manager, Agency will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Agency requires Cradlepoint support, Agency will contact Cradlepoint directly.
- 3 **Third-party Installer.** Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.
- 4 **Wireless Offload Server.**
 - 4.1 **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("WOS"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.
 - 4.2 **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.
 - 4.3 **Updates.** If Agency purchases WOS maintenance, Axon will make updates and error corrections to WOS ("WOS Updates") available electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.
 - 4.4 **WOS Support.** Upon request by Axon, Agency will provide Axon with access to Agency's store and forward servers solely for troubleshooting and maintenance.
- 5 **Axon Vehicle Software.**
 - 5.1 **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "Axon Vehicle Software".) "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.
 - 5.2 **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.



Master Services and Purchasing Agreement

- 6 **Axon Fleet Upgrade.** If Agency has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Agency with the same or like model of Fleet hardware ("Fleet Upgrade") as schedule on the Quote.

If Agency would like to change models for the Axon Fleet Upgrade, Agency must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Agency is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.

Within 30 days of receiving the Axon Fleet Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Agency does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Agency.

- 7 **Privacy.** Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body. Agency acknowledges and agrees that Axon may access Agency Content to: (a) perform troubleshooting services upon request or as part of Axon's maintenance or diagnostic screenings; (b) enforce this Agreement or policies governing use of Axon Evidence; (c) generate aggregated data, excluding information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual (collectively, "PII"), to improve, analyze, support, and operate Axon's current and future devices and services.

- 8 **Axon Fleet Termination.** Axon may terminate Agency's Fleet subscription for non-payment. Upon any termination:

- 8.1 Axon Fleet subscription coverage terminates, and no refunds will be given.
- 8.2 Axon will not and has no obligation to provide the Axon Fleet Upgrade.
- 8.3 Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.



Master Services and Purchasing Agreement

Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus.

- 1 **Axon Respond Subscription Term.** If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency.

If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date.

The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.

- 2 **Scope of Axon Respond.** The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.

- 3 **Axon Body 3 LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.

- 4 **Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.

- 5 **Axon Respond Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.

With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.

- 6 **Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Aware services, including any Axon-provided LTE service.


CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Joe Vigil, Police Lieutenant

APPROVED BY: Tammany Brooks, Chief of Police 

SUBJECT: Police Reform - Staffing for Body Worn and In Car Cameras

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution:

1. Authorizing the hiring of one Lead Police Records Technician and one Police Records Technician at a total initial annual cost of \$263,819.00; and
2. Authorizing the City Manager to make the necessary FY2020/21 budget amendments

FISCAL IMPACT

There will be an initial annual cost of \$253,819.00 for the two identified positions. The fiscal impact in subsequent years will increase due to bargaining unit provisions in the respective MOU. This staffing expense is in addition to the annual Axon contract costs. Also, there is an approximately \$10,000 expense associated with computer / workstation equipment for the positions.

Therefore, total costs for each year are as follows:

Year 1	Staffing + Equipment	\$263,819
Year 2	Staffing	\$258,895*
Year 3	Staffing	\$264,073*
Year 4	Staffing	\$269,355*
Year 5	Staffing	\$274,742*

*Assumes 2% salary increase

The total estimated fiscal impact over the first 5 years is \$1,330,884.

DISCUSSION

The City of Antioch Police Department does not currently utilize body worn cameras or a vehicle mounted camera system. Currently, the Records Bureau handles the control of data in the Records Management System and assists with packaging cases for the District Attorney's Office. Records personnel are also tasked with maintaining these records and assisting in the redaction of information and monitoring and preparing Public Records Act requests.

With the implementation of the body worn and in car cameras, the Records Bureau will be directly impacted with a significant increase of content received on a daily basis. Dedicated staffing is needed to meet the increased demand and management of these requests.

Based on the volume of content that will be generated by both body worn and in car cameras, it is anticipated a minimum of two additional full-time staffing positions are required to ensure all legally mandated redaction, production, and release requirements are met.

It will take several months to advertise, test, and hire additional staff for the Records Bureau. The Police Department aims to implement body cameras before the hiring of this additional staff, but is not able to properly or adequately administer the volume of additional responsibilities on an ongoing basis without impacting patrol operations. To temporarily meet these needs, two Community Service Officers who are currently assigned to the jail will be temporarily re-assigned to the Records Bureau to assist in managing these records. This, in turn, will temporarily place prisoner booking and transportation duties on Patrol Officers. Temporary assignment of these specific duties will impact staffing of patrol operations on a short term basis.

ATTACHMENTS

A. Resolution

ATTACHMENT "A"

RESOLUTION NO. 2021/**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH APPROVING THE HIRE OF ONE LEAD POLICE RECORDS TECHNICIAN AND ONE POLICE RECORDS TECHNICIAN TO SUPPORT THE IMPLEMENTATION OF BODY WORN / IN CAR CAMERAS IN THE CITY OF ANTIOCH, AND AUTHORIZING THE CITY MANAGER TO AMEND THE FY2020/21 BUDGET AS NECESSARY

WHEREAS, the City of Antioch Police Department is integrating body worn / in car camera hardware and software into City operations;

WHEREAS, the City of Antioch Police Department does not currently utilize body worn cameras or a vehicle mounted camera system;

WHEREAS, the implementation of said effort is anticipated to produce an increase in audio, video and still photographs that are part of the public record for the City of Antioch Police Department with certain defined responsibilities for records maintenance;

WHEREAS, the City of Antioch recognizes that the expanded public record will produce an associated increase in Public Records Act requests for which the Antioch Police Department is responsible for providing timely responses consistent with the California Government Code;

WHEREAS, the increased volume of data and impacts to the Police Department's Records Management System require dedicated personnel; and

WHEREAS, funding for the dedicated personnel has not been approved in the General Fund FY2020/21 budget and requires a budget amendment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Antioch hereby:

1. Approves hiring of one Lead Police Records Technician and one Police Records Technician at a first 12 months estimated cost of \$263,819
2. Authorizes the City Manager or designee to make the necessary FY2020/21 budget amendments.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch, at a regular meeting thereof, held on the 9th day of March, 2021 by the following vote:

ATTACHMENT "A"

AYES:

NOES:

ABSTAIN:

ABSENT:


**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 9, 2021

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: John Fortner, Police Lieutenant

APPROVED BY: Tammany Brooks, Chief of Police 

SUBJECT: Purchase of Peregrine Technologies Software with Sole Source Justification Request

RECOMMENDED ACTION

It is recommended that the City Council adopt a resolution approving the following actions:

1. Approve the sole source request for the purchase and deployment of a software platform from Peregrine Technologies;
2. Authorize and direct the City Manager to negotiate and execute a three-year purchase agreement, with Peregrine Technologies, for a software license in an amount of \$127,000 annually, not to exceed \$381,000; and
3. Authorize and direct the City Manager to amend the fiscal year 2020/21 General Fund budget in the amount of \$87,000.

FISCAL IMPACT

The project expenditure is not included in the approved fiscal year 2020/21 General Fund Police Department Budget.

The implementation expenditure, for a three-year subscription, will be \$127,000 annually. A portion of the initial expenditure can be re-allocated from existing budgeted funds in the fiscal year 2020/21 budget. Staff proposes to re-allocate \$40,000 from the Community Based Prosecution Program budget, which was discontinued for FY21. Staff also requests a budget amendment for the remaining difference of \$87,000. The remaining cost of the agreement for the next two years will be included in the upcoming fiscal year 2021-23 budget.

The attached resolution includes actions to approve the sole source request for Peregrine Technologies, to amend the current budget to include the remaining first year cost of \$87,000, and to authorize the City Manager or his designee to negotiate and execute a purchase agreement with Peregrine Technologies in an amount not to exceed \$381,000 over a three-year agreement.

DISCUSSION

- Background

Law enforcement today faces a rapidly shifting landscape, with challenges on every front. Success in meeting the challenges of the future include policing strategies that leverage advanced technologies. The City of Antioch has been committed to enhancing technology within the police department that enables staff to provide a higher quality level of service and increased public safety.

Peregrine Technologies is a software engineering company dedicated to supporting law enforcement agencies with their most complex and critical challenges. Peregrine is an advanced analytic platform that provides a single point of access to view and analyze large-scale real-time data from various data sources. The software performs several critical functionalities including data integration, search and information retrieval, advanced analytics, data management, collaboration, access control, and security. The software was developed to facilitate real-time fact-based decision-making, enhance investigatory capabilities, streamline criminal analysis, and generate intelligence driven products for law enforcement professionals. Peregrine creates a unique and extremely efficient method for taking large amounts of raw data, from diverse sources, and turning it into useful information quickly, significantly optimizing an end user's time.

Peregrine engineers design their software to work with many different platforms to provide complete system interoperability. Peregrine will support Antioch Police Department's existing records management systems (RMS), computer aided dispatch systems (CAD), video management systems (VMS), license plate recognition data (LPR), real-time sensor data, case management systems, evidence management systems, arrest records, and unstructured data such as document, imagery and video repositories.

Peregrine technology integrates and secures data of any type or scale; provides intuitive methods for users to search and access all data from one place; empowers entire agencies to answer complex questions; controls and shares information securely; and allows teams to securely collaborate on operations, investigations, and projects.

- Analysis

The police department uses many complex hardware- and software-based technologies to conduct its day-to-day field and support services operations. Data from these systems are collected and stored electronically, most often in different places. Currently, staff does not have an efficient or user-friendly solution for conducting advanced searches across all these databases. Furthermore, staff

does not have the capability to securely share information electronically or work collaboratively on projects with internal or external partners. To a large degree, producing records and reports are still done manually, which is inefficient and time consuming.

To provide an example, there are over one million records of data residing in the police department's current records management system. The specific data sources RMS does not integrate include: Vigilant/LEARN databases (ALPR data), IA Pro and BlueTeam, ShotSpotter, Laserfiche, Milestone and EagleEye VMS (community cameras), and other useful technology like body worn cameras. To accomplish these tasks staff must search numerous fields in multiple data bases. Additionally, there is no geographical information system (GIS) for staff to utilize that integrates into these other data sources which makes research, investigating, and reporting exhaustive and time consuming.

A significant consequence of leveraging the advantages of these different technologies is the demand for increased transparency by responding to Public Records Act requests, subpoenas, and the public demand for meaningful fact-based information related to policing (i.e. personnel records, informal and formal public contacts, community engagement, deployment of resources, crime trends, policies and procedures, use of force, etc.) Peregrine Technologies provides a powerful solution for each of these issues.

Peregrine Technologies software has been deployed in Contra Costa County since 2018. Currently, the cities of San Pablo, Pittsburg, Pinole, and Hercules are using Peregrine's solution for data integration, advanced search functions, powerful analytics, secure information sharing and collaboration, and the electronic filing (*eFiling*) of criminal cases (CCC DA is currently using Peregrine for electronic filing of in-custody felony cases with San Pablo and roll-out is starting with Pittsburg).

Currently, Records and Investigations staff must manually package (3-copies) of criminal cases (to include digital evidence) to deliver to the District Attorney's Office in-person. This is due to mandated Department of Justice (DOJ) and Criminal Justice Information System (CJIS) security compliance standards. On average, the Investigations Bureau will prepare and package approximately twenty-five (25) cases a week for the DA's office at forty-five (45) minutes per case. Digital evidence for each case is saved to DVD-R or USB flash drives (due to the data volume of audio, pictures, and video), and compiled by detectives, evidence technicians, or dispatchers, which can additionally take about fifteen (15) minutes per case. Afterwards, and often daily, a detective must commute about thirty (30) minutes to the DA's office in Martinez to file critical cases while dropping off or checking in others. This equates to 18.75 hours a week for Records Technicians (@ \$57.53 hr = \$1,079), and 10.25 hours a week for Detectives (@\$98.85 hr = \$1,013). The potential savings (not counting other factors like gas, office materials, miscellaneous deliveries to Martinez, time processing/signing warrants, etc.) equates to \$108,784 annually.

Using Peregrine Technologies, it takes about fifteen (15) minutes for a Records Technician to build an electronic case (i.e. create a digital folder and drag and drop components) and share a secure link to the folder that is DOJ/CJIS compliant. At

about \$14.00 a case and twenty-five cases a week, that equates to about \$18,200 annually. A potential net savings of \$90,584 in staff efficiency annually.

Secure links are used to share information and reports with other law enforcement agencies and affiliates. Peregrine uniquely allows network-wide collaboration that is supported by Peregrine's security model, which allows analysts, records technicians, investigators, and command staff to share data and analyze products and briefs that are finished or in progress. Because of this security model, agencies that use Peregrine can seamlessly and securely share/exchange information.

Preparing for the future, Peregrine Technologies has developed a mobile field investigation application (Mobile FI) that will assist officers in gathering information, and records technicians with mandated reporting. Beginning in 2022, the Antioch Police Department will be mandated to collect sixteen (16) points of data for every police stop, pursuant to the Racial and Identity Profiling Act ("RIPA," AB 953). The first mandated report will be due April 1, 2023. The Peregrine Mobile FI application will allow the Antioch Police Department to be fully integrated, trained, and prepared to meet RIPA requirements quickly. This application will replace the antiquated requirement of manually handwriting information, submitting it for review and approval, and having records staff enter each data point for every contact.

Peregrine's innovative platform enables growth through connection, and in addition to the department's surrounding ecosystem of resources, Peregrine will add value into the future with an ability to connect to external tools, teams, data, and processes.

- Conclusion

The Antioch Police Department recommends the procurement of a three-year subscription of Peregrine Technologies software to further increase the effectiveness and efficiency of department staff; enabling the department to direct resources where they are needed most, into the community.

Peregrine Technologies software will give the Antioch Police Department a great tool and resource to help solve and decrease crime in the city.

ATTACHMENTS

A. Resolution

Exhibit #1 – Peregrine Technologies Sole Source Form

Exhibit #2 – Peregrine Technologies Quotation Packet

RESOLUTION NO. 2021/**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING THE SOLE SOURCE REQUEST FOR THE PURCHASE OF A
SOFTWARE LICENSE FROM PEREGRINE TECHNOLOGIES, RE-ALLOCATING
FISCAL YEAR 2020/21 BUDGETED FUNDS, AND AUTHORIZING THE CITY
MANAGER TO EXECUTE A PURCHASING AGREEMENT.**

WHEREAS, the City of Antioch has been committed to enhancing technology within the police department that enables staff to provide a higher quality level of service and increased public safety;

WHEREAS, the Police Department is seeking City Council authorization for the City Manager to negotiate and execute an Agreement between the City of Antioch and Peregrine Technologies for the purchase of a three-year subscription software license which includes software service, warranty, maintenance support, and training programs;

WHEREAS, Peregrine Technologies is the sole developer and manufacturer of the Peregrine advanced analytic platform for law enforcement and is therefore considered a sole source provider.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Antioch as follows:

1. The City Council hereby approves the sole source request for the purchase of a software license from Peregrine Technologies for the Antioch Police Department.
2. The City Council hereby authorizes and directs the City Manager or his designee to negotiate and execute a three-year purchase agreement, with Peregrine Technologies, for a software license in an amount of \$127,000 annually, not to exceed \$381,000 with Peregrine Technologies in a form approved by the City Attorney.
3. The City Council hereby authorizes and directs the City Manager or his designee to amend the fiscal year 2021/22 General Fund budget in the amount of \$87,000 to assist in funding the purchase of a software license from Peregrine Technologies for the Antioch Police Department.

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RESOLUTION NO. 2021/**

March 9, 2021

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I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 9th day of March, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH**

To Whom It May Concern:

This letter identifies Peregrine Technologies, Inc., a Delaware Corporation ("Peregrine Technologies" or "Peregrine") as the sole developer and manufacturer of the Peregrine advanced analytic platform. Peregrine is also the sole provider of software service, warranty, maintenance, and training programs associated with the Peregrine platform.

Background

Peregrine's software system was deployed after 18 months of research and development beginning in 2017 in partnership with Law Enforcement personnel in Contra Costa County, CA in order to produce an advanced analytic platform that integrates and analyzes several key data sources used by Law Enforcement agencies in Contra Costa County, including but not limited to CAD/RMS data, gunshot detection data, Automated License Plate Reader (ALPR) data, body camera video, interview room video, police reports, search warrant data, and various unstructured media data sources, as well as 15 custom applications built by Peregrine using such platform including scripts, queries, and user interfaces to integrate and analyze Law Enforcement data.

The existing Peregrine infrastructure was configured with direct input from Law Enforcement personnel in Contra Costa County and has been thoroughly vetted through usage by Law Enforcement personnel since September 2018. The system supports specific data sources present at Antioch Police Department (APD) and is configured to accelerate workflows prioritized by APD personnel.

About Peregrine

Peregrine is an advanced analytic platform that provides a single point of access to view and analyze large-scale data from various data sources. The software performs several critical functionalities, including: data integration, search and information retrieval, advanced analytics, data management, collaboration, access control, and security. The software was developed to enhance investigatory capabilities, streamline criminal analysis, and generate intelligence products for Law Enforcement. Peregrine creates a unique and extremely efficient method for turning large amounts of raw data into useful analysis products, quickly and with significant reduction in Criminal Analyst and IT Engineer manpower needs.

Peregrine was designed for complete system interoperability and supports existing record management systems, case management systems, evidence management systems, arrest records, warrant data, subpoenaed data, Computer Aided Dispatch (CAD) data, gang intelligence data, suspicious activity reports, ALPR data, and unstructured data such as document repositories, imagery, and video.

Peregrine uniquely allows networkwide collaboration that is supported by Peregrine's security model; which allows analysts, investigators, and command staff to share data and analyze products and briefs that are finished or in progress including the underlying data. Because of this security model, agencies that use Peregrine can seamlessly and securely share/exchange information.

The Peregrine advanced analytic platform is proprietary to Peregrine Technologies. The platform is used to develop highly-specialized software, including scripts, interfaces, queries, and algorithms, among other things, intended for public safety applications.

Contract Implementation

The proposed Peregrine contract will leverage the significant engineering efforts to deploy the existing Peregrine infrastructure. The system is unmatched in access speed, data visualization, and substantial analytic tools that are not available in any other software toolset.

Kind Regards,

Nick Noone | President & CEO | Peregrine Technologies

nick@peregrine.io



Public Safety Data Integration Peregrine Technologies

**City of Antioch Police Department
Dated: October 01, 2020**

Prepared for:

Antioch Police Department
ATTN: Chief Tammany Brooks,
Lieutenant John Fortner
300 L Street
Antioch, CA 94509
(925) 779-6942

Prepared by:

Peregrine Technologies, Inc.
Nick Noone, Co-founder & CEO
130 Bush St.
San Francisco, CA 94104
(650) 619-0046
nick@peregrine.io



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8. Pricing



Dear Chief Brooks,

We are pleased to present Peregrine for your review and consideration.

I would like to thank you for taking the time to meet with Peregrine. We appreciate the opportunity to learn about your operations and discuss your needs. Please find enclosed our Proposal for the Peregrine Platform including software, data integration, and professional services for implementation.

Please feel free to contact me with any questions at (650) 619-0046 or nick@peregrine.io.

Once again, I would like to thank you and the Antioch Police Department for your time and consideration.

Respectfully,
Nick Noone
CEO



Proposal Overview

The following document details the proposed software agreement between Peregrine Technologies, Inc. ("Peregrine") and Antioch Police Department ("APD").

Peregrine will provide its platform to APD to access, integrate, and analyze information across the department. This proposal includes an annual software license to operate Peregrine which includes data integration, project support, user onboarding & training, ongoing support, and data storage. Under this proposal, Peregrine will provide:

- **Annual License to Peregrine Platform**
 - Use cases & capabilities as detailed on pages 8 – 10
 - Includes: Unlimited users, unlimited search, unlimited sharing within and outside APD, unlimited data imports, unlimited investigations, and unlimited storage of media
- **Data Integration**
 - Data integrations as detailed on page 11
- **Project Support**
 - User group onboarding and training with a focus on use cases enumerated on pages 8 - 10
 - Electronic filing workflow development and support
 - Interagency sharing workflow development and support
 - Other workflow development as agreed on with project team
- **User Onboarding & Training**
 - Peregrine will provide secure login credentials & onboarding to all new users of the Peregrine Platform
 - Training: Peregrine will provide training on-site at APD as well as refresher sessions and desk sides
- **Ongoing Support**
 - Peregrine will provide on-site support as needed and mutually agreed by the Project Sponsors as detailed on page 14
 - Peregrine will provide remote technical & analytic support with service levels as detailed on page 15
- **Data Storage & Retention**
 - Peregrine has designed all data handling, storage, & retention policies in full compliance with California DOJ CJIS requirements.



About Peregrine Technologies

Peregrine is a web based CJIS compliant Platform-as-a-Service (PaaS) that provides a single point of access to view and analyze large-scale real-time data from various data sources. The software performs several critical functionalities, including data integration, search and information retrieval, advanced analytics, data management, reporting, collaboration, access control, and security.

Peregrine was developed to provide a common operations and intelligence picture to facilitate real-time operational decision-making, enhance investigatory capabilities, streamline criminal analysis, and generate intelligence products for Law Enforcement. The software creates an extremely efficient method for turning large amounts of raw data into useful decision-support and analysis products, quickly and with significant reduction in manual manpower processing needs. Peregrine will be made available to any and all law enforcement personnel within Antioch, through the Antioch Police Department.

Peregrine was designed for complete system interoperability and supports existing record management systems (RMS), computer aided dispatch systems (CAD), video management systems (VMS), body worn camera (BWC) systems, automated license plate reader (ALPR) data, real-time sensor data, case management systems, evidence management systems, arrest records, subpoenaed data, gang intelligence data, suspicious activity reports, cell and social media data from Search Warrants, and unstructured data such as document, imagery, and video repositories. Peregrine delivers:

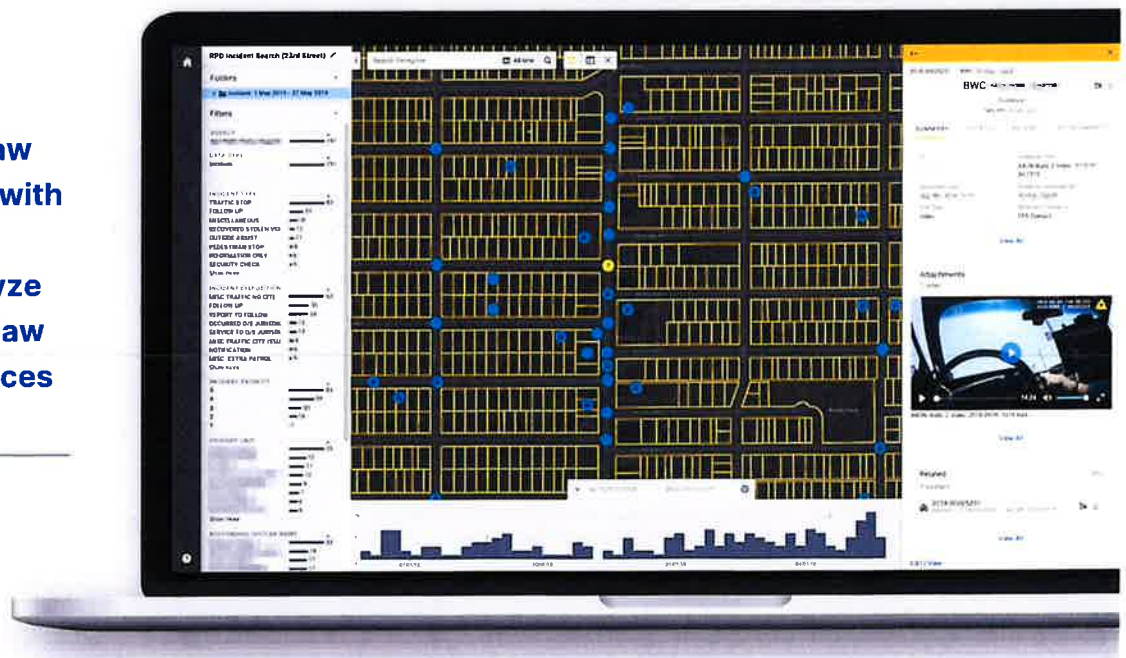
- Technology to integrate and secure data of any type or scale
- Intuitive methods for people to search and access all data from one place
- Applications that empower entire agencies to answer complex questions
- A platform for teams to securely collaborate on operations, investigations, and projects



Company Background

Peregrine Technologies, Inc. is a California-based software engineering company founded in 2017, financed by leading Silicon Valley investors, and dedicated to supporting Law Enforcement agencies on their most complex and critical challenges. Our organization is led by Stanford-educated computer scientists who have created and deployed software for some of the most important and security-conscious government and commercial institutions. We are passionate about partnering directly with our customers to solve problems together and strive to provide the greatest level of service. All current employees of Peregrine have successfully passed Department of Justice and Criminal History background checks to support the Law Enforcement mission.

Peregrine provides Law Enforcement Agencies with a platform to search, manage, analyze and collaborate on all law enforcement data sources in one place





Experience in Contra Costa County & New Mexico

Peregrine's software platform was developed and deployed after 18 months of research and development in partnership with law enforcement personnel in Contra Costa County, CA.

During this research and development period, Peregrine founders were embedded in a full-time capacity studying and integrating key data sources used by law enforcement agencies in and around Contra Costa County, including but not limited to CAD/RMS data, gunshot detection data, body camera video, interview room video, police reports, search warrant data, video data, various sensors, and other unstructured data sources. Peregrine has active engineering projects with the city of San Pablo, CA and Pittsburg, CA, that involve the integration of several law enforcement data sources into a single web-based Software as a Service (SaaS) analytics and reporting platform in full compliance with California DOJ CJIS requirements.

In addition, Peregrine's software platform is deployed at the Crime Analysis Unit of the Real Time Crime Center for the Albuquerque Police Department in New Mexico.

A Peregrine deployment team integrated key data sources used by Albuquerque PD, including but not limited to CAD/RMS data, gunshot detection data, body camera video, interview room video, police reports, search warrant data, traffic citations, crash reports, arrest warrant data, GIS map layers, booking photos, and various unstructured media data sources. Peregrine has active engineering projects with the City of Albuquerque, NM that involve the integration of several law enforcement data sources into a single web-based Software as a Service (SaaS) analytics and reporting platform in full compliance with California DOJ CJIS requirements.

Please direct initial reference checks to:

Captain Brian Bubar
San Pablo Police
Department
brianb@sanpabloc.a.gov
(707) 301-6032

Lieutenant Brian Mathews
Pittsburg Police
Department
bmathews@ci.pittsburg.ca.us
(925) 786-3762

Commander Leonard
Nerbetski
Albuquerque Police
Department
lnerbetski@cabq.gov
(505) 235-9068



Peregrine Use Cases

Peregrine empowers law enforcement officers and personnel across the entire agency. Use cases include:

- **Global Search & Discovery**
 - Law enforcement officers and personnel across every team leverage Peregrine to access and review all available information from one secure location, saving hours of time otherwise spent logging into and navigating through multiple disconnected systems.
- **Secure Collaboration Across Teams & Partner Agencies; Electronic Filing**
 - Granular security and access controls allow teams and agencies to securely collaborate, with peace of mind knowing that security requirements are reinforced and adhered to. Rather than physically transport sensitive data, rely on phone calls, fax, or miss a piece of critical information, personnel seamlessly share information via CJIS and FIPS 140-2 compliant cloud infrastructure, with controls that ensure each person sees only what they are authorized to see.
- **Investigations**
 - Detectives use Peregrine to find leads that were previously undiscoverable, manage cases, synthesize results, and securely collaborate with internal and external teams. All available law enforcement data sources are available to investigators in one location, empowering detectives to ask questions, find answers, and make faster, more accurate decisions.
 - Investigative staff can overlay and correlate multiple information sources simultaneously to find connections. Raw data is cleaned and enriched automatically so that investigators spend more time on analysis and decision-making, and significantly less time on manual data processing.



- **Decision Support for Executive Leadership**

- Peregrine empowers executive leaders with tools to ask questions, review critical information, and make decisions based upon reliable data that previously took their staff days or weeks to create. Reports, dashboards, intelligence briefings, critical media and documents are accessible through intuitive interfaces that otherwise require significant manual labor to retrieve and synthesize.
- With investigators, analysts, and operations staff utilizing the same interoperable platform, executive leaders can maintain full situational awareness of their organization's activity and utilization of resources to the necessary levels of granularity.

- **Real-Time Operations**

- Operational staff maximize real-time situational awareness with all available information accessible in a single view. Operators react to sensor activations, alerts, events, and patterns by immediately reviewing myriad data feeds in a single system including live video, CAD incidents, arrests, cases, individuals, and various real-time and historical sensor feeds.
- Multiple internal and external collaborators can access and monitor information feeds in real-time, with security controls to ensure each participant can access only what they are permitted to view.
- Actionable intelligence can be transferred to command staff and field operations for real-time review, and after-action-reviews can be conducted to review steps that were taken by staff in response to critical events.



- **Report Automation**

- Analysts leverage Peregrine to automate reporting that would otherwise be created manually over the course of multiple hours or days and re-created manually any time new questions are asked or changes are required.
- Peregrine removes the need for importing, exporting, cleaning, and merging of raw data across multiple systems. All available data is integrated, enriched, and accessible in one powerful report building interface, empowering analysts to spend more time answering questions and less time on manual work.
- Peregrine also provides significantly improved methods to audit information, which means analysts and those reviewing critical data can trust and verify their results. Leaders can review reports, ask new questions on-the-fly, and get answers in real-time rather than waiting days or weeks for information.



Peregrine Capabilities Summary

Data Integration

- Flexible integrations accommodate data of any type or scale
- Automated tagging of unstructured data
- Link detection across disparate data sources
- Duplicate detection and record resolution/merge suggestions
- Automated data transformations, including time-zone conversion
- Automated linking of imported data from search warrants (such as mobile

Search

- One place to perform global search across all data sources
- Full-text querying across all data in the system, both structured and unstructured
- Advanced geospatial search filtering within specific addresses, areas, and transportation routes
- Store search results and save complex queries for repeat search
- Configurable monitors & alerts

Advanced Analytics

- Geospatial, temporal, and network analysis across multiple data sources
- Drill-down analysis on specific activities, persons, or events
- Link-exploration across data that was previously locked in siloed databases
- Advanced filtering of any data type or data value
- Live dashboards connected to analytics platform for exploration of underlying data

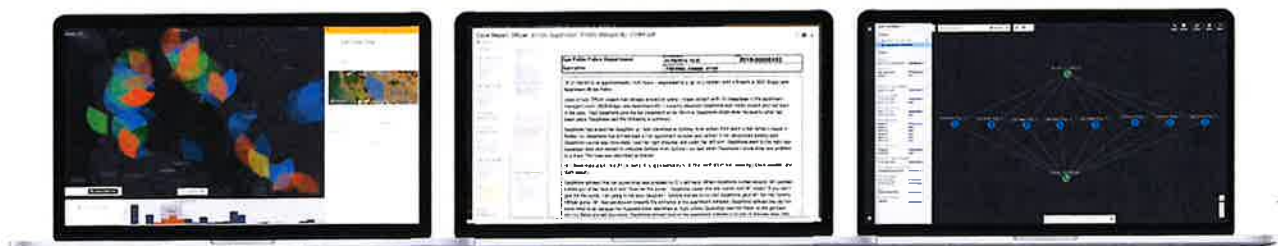
Secure Collaboration

- Rich presentation tools to share analyses or narrate a criminal story
- Real-time collaboration between officers and investigators inside a shared web application
- Automated & saved reporting
- Granular data security and permission model to configure access controls according to regulatory and agency needs
- Secure data export with audit logging

Access Control & Security

- Full data lineage including when it was created or modified and the data source from which it was derived
- Granular security and access restrictions associated with specific data types and data sources

Enable law enforcement to seamlessly access, investigate, and collaborate on data across the organization.





APD Data Sources

Agency Wide Data Integration

Peregrine proposes to integrate APD's key data sources, including:

APD Data Sources

- Records Management Systems (Data 911, Mark43)
 - All records including incidents, arrests, citations, cases, subjects, vehicles, property, & personnel
 - All associated media and case reports
 - Links between systems and records
- Computer Aided Dispatch Systems (Data 911, Mark 43)
- Automated Vehicle Location (AVL)
- Milestone VMS
- Shotspotter via Freeway Security Network (contingent on third party API fee)
- Vigilant commercial, fixed camera, mobile patrol car data (contingent on third party API fee)
- Body-worn camera & video database
- Eagle Eye Contract Vault
- BlueTeam (IAPRO)
- Booking photographs when available
- ESRI

Cell and Social Media data from Search Warrants

In addition, Peregrine has created and continually expands a suite of integrations for automatic import and analysis of search warrant returns. Detectives and administrators can drag & drop data into Peregrine, which immediately detects the type of search warrant return, extracts data for analysis, and links search warrant data with other APD data sources.

Search warrant data integrations include:

- Historical call data records for 4 major wireless communications service providers
- Mobile phone historical and live GPS ping data
- Physical phone extraction data



Proposal Logistics & Implementation

Initial Milestones & Project Deliverables

Peregrine intends to complete the integration of APD's proposed data sources no later than 12 weeks following initial data access. Timeline initiates upon access to all proposed data sources.





Key Team Members

- **Antioch Police Department**
 - **Project Sponsor Description of Role:**
 - Responsible for strategic vision, day to day logistics & interactions, and user access
 - **Technical Sponsor Description of Role:**
 - Responsible for IT management and day to day technical / data source access requirements
- **Peregrine Technologies**
 - **Executive Sponsor:** Nick Noone, CEO
 - **Project Lead:** Toki Sherbakov, Deployment Strategist
 - **Implementation Team:** Dana Ford, Forward Deployed Engineer; Sarah Hollingsworth, Deployment Strategist
 - **Central Infrastructure Team:** Ben Rudolph, CTO

Data Sources & Access Controls

- **Data Sources:** Peregrine proposes to integrate Data911 CAD/RMS, Mark43 CAD/RMS; Milestone VMS; Search warrant data sources; Automated Vehicle Location (AVL); Shotspotter through Freeway Security Network [excluding API fees] ; Vigilant commercial data, Vigilant fixed cameras, Vigilant mobile patrol car camera [excluding API fees]; Eagle Eye Contract Vault, BlueTeam (IAPRO), Booking photographs when available, ESRI, and other identified internal data sources
- **Additional Integrations:** All additional data integrations shall be at the mutual agreement between the Project Sponsor & Project Lead
 - After Project Sponsor & Project Lead agree on additional data integrations, Project Lead & Technical Lead will coordinate the data modeling & technical requirements, respectively, with APD's Technical Sponsor
 - Peregrine will model, ingest, and make available new data sources to users in real-time and shall work out data inconsistency & proper representation case by case



User Access, Onboarding & Training

- **Current User Access**

- Peregrine Platform access can be configured for on-premise as well as off-premise access via APD desktop and mobile machines
- All users are assigned individual, two-factor authentication credentials
- Mobile device management to be determined with Technical Sponsor as-needed

- **Adding & Removing Users:** APD may add an unlimited number of additional APD users to Peregrine Platform & Peregrine Mobile

- APD's Project or Technical Sponsor retain specific approval rights to new users
- Once a written request for a new Peregrine user is submitted, Peregrine shall then supply the new user with secure, two-factor authentication credentials and schedule an introductory training session
- In the event of the need to remove users from Peregrine, within 24 hours of a request to remove user by APD's Project or Technical Sponsor, Peregrine shall revoke all access rights
- Peregrine can support an Active Directory integration to enable automatic user addition & removal

- **Onboarding & Training:** Each new user shall have Basics and Intermediate training sessions to provide 1) Overview of the Peregrine application(s), 2) Background on currently accessible data sources, and 3) Introduction to analytic capabilities. Additional training will be carried out based on need

Support

- **On-site Support:** Peregrine shall support APD users on-site with in-person trainings, analytical support, user feedback, modeling/understanding of additional data sources or automated data imports, and new product features
 - Peregrine employees performing on-site support shall receive prior approval by Project Sponsor in order to access APD premises & interact with users





- **Offsite Support:** Peregrine provides 24/7 critical tech support via support@peregrine.io and support line (630) 946-4273. Peregrine's Project Lead and Technical Lead are also available and make best efforts to address user or administrative concerns.

Service Levels & Issue Resolution

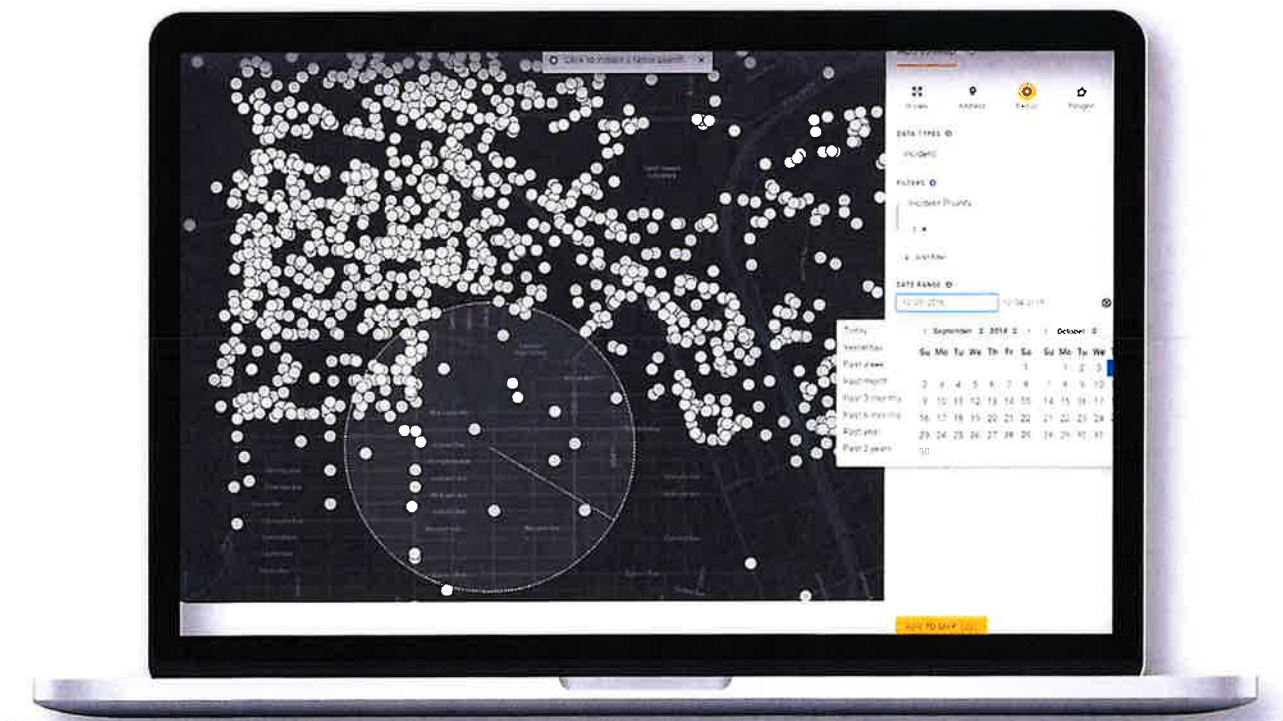
- **System Availability:** During any calendar month, the Peregrine system shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the system, provided that Peregrine is not responsible for any downtime of the applications or software caused by third party data services (e.g. Evidence.com or Mark43 database). Peregrine shall provide APD with prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime of the system, as well as periodic updates during the unscheduled downtime regarding Peregrine's progress in remedying the unavailability and the estimated time at which the system shall be available.
- **Issue Response and Resolution:**
 - "Severity level 1 error" means any system error that renders the system or any material portion of the system inoperative, or materially impairs use of the system in a production environment.
 - "Severity level 2 error" means any system error that substantially impairs use of one or more features or functions of the system.
 - "Severity level 3 error" means any system error that has a minimal impact on the performance or operation of the system.

Severity Level	Level of Effort	Initial Response	Work Around	Permanent Fix	Status Updates
1	Continuous best efforts, 24/7	Immediate, but in no event to exceed 30 minutes	8 hours	3 calendar days	Every 2 hours prior to work around and every calendar day until permanent correction
2	Commercially reasonable efforts, 24/7	1 hour	24 hours	5 calendar days	Every 6 hours prior to work around and every calendar day until permanent correction
3	Commercially reasonable efforts, during normal business hours	1 business day	10 business days	20 business days	Every 2 business days prior to work around and every calendar day until permanent correction



APD Technical Details

- **Software Architecture, Hosting, & Security:** Peregrine has implemented procedures to adhere to the FBI CJIS Security Policy. In addition, the hosting facility for Peregrine software utilizes state-of-the-art access control technologies that meet or exceed CJIS requirements
- **Application Requirements:** The Peregrine Platform runs on the following applications:
 - Browser requirements for Peregrine Platform – Google Chrome Version 69 and above, Mozilla Firefox Version 62 and above, or Microsoft Edge Version 17 and above
 - Mobile device requirements for Peregrine Mobile – iPhone OS version 12.0 and above
- **3rd Party Data Access:** In order to model & ingest 3rd party data sources, Peregrine requires explicit Project Sponsor approval & grant of access rights
- **Upgrades:** Peregrine continuously invests and upgrades the current software platform on a daily to weekly basis. All upgrades are included in the APD annual license and as the platform evolves, Peregrine shall give 48 hour advance notice of any “major upgrades” (i.e., affect application availability for more than 60 minutes)





Pricing

The below contemplates a package price and includes an unlimited, site wide, subscription license package. Peregrine looks forward to partnering with APD to ensure the user experience & platform achieves APD's objectives.

The license includes the Peregrine platform as it stands today, including use cases & capabilities as detailed on pages 8–10, professional services, training, and all future software improvements. Peregrine will honor the proposed annual subscription price for years 1-3 of the subscription agreement.

City of Antioch Peregrine Platform Pricing Estimates	
Pricing Estimates, Hosted / Software-as-a- Service	
1. Software Licensing – Other than or in addition to annual subscription.	Not applicable
2. Third-Party Licensing (if applicable) – Discuss pricing for any recommended third-party solutions.	Third Party API or data fees may apply*
3. Vigilant API	\$5,000 <i>waived**</i>
3.Implementation – Training, user adoption, travel expenses, initial installation, scoped data conversion, scoped integration, etc.	\$60,000 <i>waived**</i>
4. Annual Subscription, 3 Years – Includes operating and maintenance, support, data conversion, data integrations to meet project objectives	
Year One	\$127,000
Year Two	\$127,000
Year Three	\$127,000
5. Total Year One	\$192,000 ** \$127,000
6. Total Three Years	\$381,000

**Third Party API or data fees may include: Vigilant partner agency and/or commercial Data, Clear, TLO, etc.*

***Waived with multi-year agreement*



Package Details (1/2)

Peregrine Technologies Annual License – 1 Year Term	\$127,000.00
Enterprise Data Integrations	Included
Data911 records management system database	Included
Data911 computer aided dispatch system database	Included
Mark43 records management system database	Included
Mark43 computer aided dispatch system database	Included
Automated Vehicle Location (AVL)	Included
Milestone VMS	Included
Vigilant commercial, fixed camera, mobile patrol car	Included
Eagle Eye Contract Vault	Included
BlueTeam (IAPRO)	Included
Booking photographs when available	Included
Shotspotter via Freeway Security Network [excluding third-party API fee]	Included
Body-worn camera data source if/when applicable	Included
National Integrated Ballistic Information Network (NIBIN) database	Included
ESRI	Included
External API	Included



Package Details (2/2)

User Training & Support	Included
Peregrine platform introductory user training	Included
Peregrine platform advanced user training	Included
User-specific workflow development and support	Included
24-hour troubleshooting	Included
Software deployment, upgrades, and feature enhancements	Included
Peregrine Platform Tools	Included
Unlimited users	Included
Unlimited search queries	Included
Unlimited saved search queries	Included
Unlimited investigations	Included
Unlimited alert configurations	Included
Unlimited exports and downloads of data	Included
Unlimited report templates	Included
Unlimited dashboard configurations	Included
Unlimited sharing between internal users	Included
Unlimited sharing with external organizations	Included
Unlimited interagency searches	Included
Generic file storage	Included
Search warrant data import & processing	Included
Generic tabular data import & processing	Included
Entity resolution capability	Included
Permission controls, including location-based, user groups, and cell-level ACLs	Included
Within-agency permission controls	Included
External organization permission controls	Included
Full audit capability	Included
Automatic record deletion detection & expungement	Included