



DEPARTMENT OF PUBLIC WORKS

Request for Bid:

Rip Rap Deliveries

BID NO. 750-0222-24A

City of Antioch
Operation & Maintenance Division
1201 W. Fourth St
Antioch CA, 94509

Release Date: January 18, 2024

Bids Due: February 22, 2024, by 2:00 P.M.

I. GENERAL CONDITIONS

- 1. General Information** - The Public Works Department of the City of Antioch, California, will receive bid responses located at the City Clerk's Office at City Hall, 200 H St, 3rd Floor, Antioch, CA 94509 on **February 22, 2024 until 2:00 P.M.** Questions relating to specifications or technical questions must be submitted via email to Bryan Pitts at bpitts@antiochca.gov. Contractors are **NOT** to pursue City staff by telephone or in person.
- 2. Form of Bid** - The Bid shall be made on the attached Bid forms. If the form is deemed inadequate, additional information may be submitted with the Bid, via an attachment of catalogs, drawings, photographs, or a letter. Letters repeating prices and details from the City's specifications must be omitted. Bids shall be made only on the designated form, properly executed, and enclosed in a sealed envelope bearing the name of the vendor, the Bid number, due date, and Bid title. Forms are available and may be secured by prospective vendors at the Department of Public Works at 1201 W. 4th Street, Antioch, CA 94509. Bids shall be written in ink, computer generated, or by typewriter. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by the person signing the Bid. Bids are to be verified before submission as they cannot be corrected or altered or signed after Bids are opened.
- 3. Interpretation of Bids** - Should a vendor find discrepancies in, or omissions from the specifications, or should vendor be in doubt as to their true meaning, vendor shall submit a formal request to the Public Works Department for an interpretation thereof prior to the Bid opening to the attention of Bryan Pitts at bpitts@antiochca.gov. The person submitting the request shall be responsible for its prompt delivery. Any interpretation of, or change in the bid documents will be made only by an addendum published on the City's website and shall become part of any contract awarded. The City will not be responsible for any other explanation or interpretations. **Technical questions or requests shall be submitted no later than 4 p.m. January 31, 2024, and will be answered by 4 p.m. February 7, 2024.**
- 4. Addenda** - Any addenda issued by the City during the time of request shall be covered in the Bid and shall be made a part of the contract.
- 5. Bid Opening** - Bids shall be delivered to the City Clerk's Office located at City Hall, 200 "H" St, 3rd Fl, Antioch, CA 94509 on or before the day and hour set for the opening of Bids. A contractor may withdraw their Bid, either personally or by written request, at any time prior to the scheduled time for opening of Bids.
- 6. Late Bids** - Any Bids received after the scheduled time of opening will be clocked in but will not be opened or considered.
- 7. No Bid** - If a bid is not made, the bid form must be returned and the reason for not bidding stated; otherwise, the vendor's name will be removed from the bidders list. If a bid is submitted without an amount, it will not be considered.
- 8. Award or Rejection** - The Bid will be awarded to the lowest responsive and responsible bidder offering the lowest price to the City and will be announced by way of publishing to the City's website ([Bid Documents](#)).

The City reserves the right to reject any or all bids, to accept or reject any one or more items of a bid, or to waive any minor irregularities or informalities in the bid. It is anticipated that all items will be purchased, however the City reserves the right to change quantities prior to the award.

If within the past two years, a contractor has had a contract terminated early by the City of Antioch then the contractor is disqualified from submitting Bids on any future projects for a two-year period from the date of termination.

- 9. Insurance Requirements** - Proposers acknowledge the City's insurance requirements as detailed in Attachment "B". Exceptions to City insurance requirements will not be made. Any Proposer unable to meet the insurance requirements at the time of the Bid Due date, as detailed, shall not be eligible for selection or award of contract.
- 10. Prevailing Wage** - Where labor is required for public work as part of this contract, pursuant to the provisions of the Labor Code of the State of California, contractors shall pay no less than the minimum wages established by the Director of the Department of Industrial Relations of the State of California. **It shall be required that the contractor's DIR# be written on the sealed bid package for verification purposes. If no DIR# is stated, the submitted Bid package will not be reviewed. (If applicable)**

To the extent applicable, Contractor shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation, and prevailing wages.

No less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to all workers, laborers and mechanics employed in the execution of the work by the Contractor or any subcontractor doing or contracting to do any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be filed with, and available for inspection, at the City offices. Contractor shall post, at each job site, a copy of the prevailing rate of per diem wages. The Contractor shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor under Contractor.

The City reserves the right to request and review the contractor's payroll records in the form of certified payroll records. In the event certified payroll records are requested, they are to be submitted via email to sconnelly@antiochca.gov. Furthermore, Contractor is to submit two sets: one complete and one redacted of private information [On the second copy the name, address and social security number of the individual employees must be redacted (blacked out).]

- 11. Terms and Conditions** - The bidder shall not change the wording on the specifications or conditions. No words or comments shall be added to the general conditions or detailed specifications. Any explanation or alternative offered shall be set forth in a letter attached to the front cover of the specifications. Alternatives which do not substantially comply with the City's specifications cannot be considered. Conditional bids cannot be accepted.
- 12. Payment Terms** - Must be indicated by filling in the proper blanks on the bid form. Cash discounts of less than 20 days will be considered net. The standard terms at the City of Antioch are Net 30 days.
- 13. Brand Names** - The make or brand and grade of the article on which the bid is submitted should be stated on the bid form.

- 14. FOB Point** - It is understood that the bidder agrees to deliver FOB (Freight on Board) Destination, with no freight charges to the City. All costs for packing, delivery, drayage, postage, freight, express, or for any other purpose are to be borne by the bidder.
- 15. Approved Equal** – Brand names and numbers, when used, are for reference to indicate the character or quality desired. The use of the name of a manufacturer, or any special brand or make, in describing any item in the bid documents does not restrict bidders to that manufacturer or specific article. An equal of the named product will be given due consideration if literature is submitted with the bid showing that the product is of equal or better quality and utility to that specified by the City. Determination of acceptability of any product shall be solely at the City’s discretion.
- 16. Tax** - No bid shall include federal excise tax, in as much as the City is exempt per published IRS regulations concerning state/local governments. The City is obligated to pay applicable state sales or use taxes.
- 17. Appeals** - Any actual or prospective bidder, or contractor that has a grievance in connection with any City solicitation or award of contract may protest in writing pursuant to the provisions in Antioch Municipal Code section 3-4.03. Protestors are urged to seek resolution of their complaints initially with the using department.
- 18. Contract Documents** - The work embraced herein shall be performed at the locations covered in this bid and in accordance with the current Standard Specifications of the State of California, Business and Transportation Agency, Department of Transportation. In addition to the State Specifications, the following will also apply: these Specifications; the Bid; the Contract, required herein; any supplemental agreements amending or extending the work; working drawings or sketches clarifying or enlarging upon the work specified herein; and to pertinent portions of other documents included by reference thereto in these Specifications.
- The Successful bidder shall be expected to agree to and comply with all terms addressed in the attached Sample Maintenance Services Agreement. The bidder shall not change the wording in the attached specifications or conditions. No words or comments shall be added to the general conditions or detailed specifications. Conditional bids cannot be accepted.
- 19. Business License** – The City of Antioch requires that any contractor doing business within the city limits must hold a valid City of Antioch Business License prior to merchandise delivery (by vendor) or services provided.
- 20. Governing Law** - This contract shall be construed and interpreted according to the laws of the State of California with venue for any action under this Agreement in Contra Costa County, California.
- 21. Liabilities** - Contractor shall indemnify, save, and hold harmless from and defend the City, its officers, agents and employees, against any and all claims, costs, demands, causes of action, suits, losses, expense or liability arising from, or alleged to have arisen, from any acts or omissions of Contractor, its agents, sub-contractors, officials or employees, in connection with the execution of the work covered by this Agreement, as it may be amended, except for the sole negligence or willful misconduct of City. This indemnification includes any claim that the materials or equipment provided under this Agreement, or any tool, article or process used in manufacture of such tools or equipment, constitutes an infringement of any patent issued by the United States. This entire indemnification provision shall survive termination or cancellation of this Agreement.

22. Right to Audit - The City of Antioch reserves the right to verify, by examination of vendors' records, all invoiced amounts when firm prices are not set forth in the purchase agreement.

23. Liquidated Damages - If delivery does not occur on schedule, it is understood that the City will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that the contractor shall pay to the City the sum of two hundred (\$200.00) dollars per day for each and every calendar days delay in finishing the contract.

24. Warranty - Terms of any warranty offered by the manufacturer or the bidder shall be included with the bid. Contractor warrants all work done and goods provided under this Agreement shall at the minimum: a) meet all conditions of the Agreement; b) shall be free from all defects in design, material, and workmanship; and 3) shall be fit for the purposes intended. If any defects occur within said **warranty period**, Contractor shall be solely responsible for the correction of those defects.

25. Key Dates and Information –

RFP Release Date:	January 18, 2024
Title:	Rip Rap Deliveries
Deadline for written questions/clarifications:	January 31, 2024, 4:00 p.m.
Response to Written Questions:	February 7, 2024, at 4:00 p.m.
<i>Bid Due Date and Time:</i>	<i>February 22, 2024, by 2:00 p.m.</i>
Submittal:	One original, with ink signatures, and one copy of the response to this Request for Proposal (RFP) must be sealed and must clearly display the Bidder's business name, Bid No. and DIR Number .
Contract Manager:	Bryan Pitts Operations Supervisor Streets and Landscape
Email Address:	bpitts@antiochca.gov
Address for Bid Submittals and Opening:	City of Antioch – City Hall City Clerk's Office 200 H St, 3rd Floor Antioch, CA 94509

II. SPECIFICATIONS

It is the intent of these specifications, terms, and conditions of this RFB to describe the requirements to supply and deliver F.O.B. rip rap material to 425 Fulton Shipyard, Antioch, CA 94509 or within a twelve (12) mile radius of this address as needed and requested. The scope of this project is to supply rip rap on an as needed basis for a period of three (3) years, beginning approximately February 27, 2024 and ending June 30, 2026, with the option of two (2), one (1) year extensions, to be exercised at the sole discretion of the City of Antioch, from July 1, 2026 to June 30, 2028.

The City of Antioch is soliciting bids from qualified vendors who can furnish and deliver Rip Rap material on an as needed basis. **Any award, which may be made pursuant to this RFB, will be made based on the lowest grand total price for all five (5) years.**

i. SPECIFIC REQUIREMENTS

All Rip Rap products shall be in new and unused condition and shall be of the most current and up to date model.

1. Measurement – Contractor shall furnish certified weight slips. Imported quarry rock shall be measured for payment by the ton in accordance with the provisions of CA Department of Transportation Standard Specifications (CSS) Section 9-1.02, Measurement of Quantities. The operator of each vehicle weighed shall obtain a weight or load slip from the weigher and deliver said slip to the City’s representative or designee at the point of delivery of the material.

2. Quality - Rock shall be durable and of suitable quality to ensure its permanence. It shall be free from cracks, seams, and other defects that would tend to unduly increase its deterioration from handling or natural causes. The inclusion of objectionable quantities of dirt, sand, clay, and rock fines will not be permitted. The rock material shall conform to the quality requirements of CSS Section 72-2.02, Materials.

3. Class of rock – Rock rip rap shall be #2 backing, #1 backing or facing, light class, 1/4T (1/4-Ton), and 1/2T (1/2-Ton) class of rock conforming to CSS Section 72.

ii. INSPECTION

The City will inspect the material after its arrival at the delivery point. If the rejection rate of a sample of components is 10% or higher, all components will be rejected. Contractor is solely responsible for ensuring the material arrives at the City’s ship-to location free of defects and manufactured in strict conformance with the specifications.

In the case that an item or lot is rejected, City Inspectors will provide Contractor and the City’s Finance Department with a written notice which will itemize the product deficiencies and required corrective action.

The City reserves the right-of-access to the Contractor’s facility to verify conformance to this specification at the City’s expense.

iii. FAILURE TO MEET SPECIFICATIONS

In the event any shipment or shipments of a contractor’s product do not meet the specification or delivery requirements, the City may reject the shipment or shipments and, at its option, may purchase this material from any supplier on the open market who can meet the City’s specification requirements, or the City may demand immediate replacement by Contractor of the non-conforming product.

Any costs over and above the original contract price will be charged back to the Contractor. In addition, Contractor shall bear the costs of removal and disposition for any delivery which fails to conform to the specifications.

iv. PRICING:

1. All prices are to be F.O.B. destination. Any freight/delivery charges are to be included.
2. All prices quoted shall be in United States dollars.
3. Price quotes shall include any and all payment incentives available to the City.
4. Bidders are advised that in the evaluation of cost, if applicable, it will be assumed that the unit price quoted is correct in the case of a discrepancy between the unit price and extended price.

- v. PRICE ADJUSTMENTS:** Prices shall be firm for the initial one-year term of the contract. The City may consider price increases submitted by Contractor 60 days prior to the end of the first year of the contract (June 30, 2024) and 60 days prior to the end of each subsequent year of the contract or each subsequent option year granted.

If granted, price adjustments will be implemented effective on the date of the subsequent year of the contract, e.g., July 1, 2024. The contractor bears the responsibility of providing conclusive proof that such changes in cost have taken place, and no such change shall take effect without prior written approval from the City.

- vi. DEFECTS, WORKMANSHIP, WARRANTY:** All material furnished shall be fully guaranteed against any defective material and workmanship. Proposed Rip Rap rock must meet or exceed Cal Trans Specifications. Bidder expressly warrants that all goods and services to be furnished pursuant to any contract awarded it arising from the Bid will conform to the descriptions and specifications contained herein and in supplier catalogs, product brochures and other representations, depictions, or models, and will be free from defects, of merchantable quality, good material, and workmanship. Bidder expressly warrants that all goods and services to be furnished pursuant to such award will be fit and sufficient for the purpose(s) intended. This warranty shall survive any inspections, delivery, acceptance, payment, or contract termination for any reason, by the City.
- vi. DELIVERIES:** All deliveries shall be made between the hours of 7:00 a.m. and 3:00 p.m., Monday through Friday. No deliveries before or after the hours specified. Deliveries are to be made 24 to 48 hours after the supplier has received the order. All deliveries will be made to 425 Fulton Shipyard, Antioch, CA 94509 or within a twelve (12) mile radius of this address. Telephone confirmation of delivery from the supplier on the day of delivery shall be required.
- vii. EMERGENCY ORDERS:** The City of Antioch may request an emergency order. Please specify your requirements and procedures for ordering emergency Rip Rap, charges for opening after hours, weekends and holidays. Please list these requirements on a separate sheet. Upon award the successful bidder will be asked to provide an after-hours phone number and contact information.
- viii. REGULAR ORDERS:** All orders will be placed by telephone or email by City of Antioch Staff.
- ix. PRODUCT INFORMATION:** Bidder must attach to this RFB product information/specifications and quarry/s from which Rip Rap is to be procured for this contract.

- x. **PAYMENTS AND INVOICING:** Will be net 30, or within 15 days if terms include discount. With each request for payment, invoices must reference purchase order number, date of order and delivery and description of materials and services including weight. Invoices are to be sent via email to rharris@antiochca.gov and bpitts@antiochca.gov
- xi. **TERM / TERMINATION / RENEWAL:**
1. The term of the contract, which may be awarded pursuant to this RFB, will be three (3) years, beginning approximately February 27, 2024, and ending June 30, 2026, with two (2), one (1) year extension options to be exercised at the sole discretion of the City of Antioch, to extend the contract for additional one (1)-year periods.
 2. This Agreement may be terminated as outlined in the Maintenance Services Agreement (MSA) attached to this RFB.

BID SUBMITTAL WORK SHEET – RIP RAP DELIVERIES BID NO. 750-0222-24A

There shall be no guarantee as to actual quantities purchased during the contract period stated. Purchases shall be strictly on an as needed basis. Quantities listed below are estimates for bidding purposes only. No minimum or maximum is guaranteed.

Rip Rap

(Unit Ton Price to include cost of Rip Rap and Trucking F.O.B. Destination)

THREE YEAR PRICING (FEB 2024-JUNE 2026):

<u>Item No.</u>	<u>Quantity</u>	<u>Unit</u>	<u>Description</u>	<u>Unit Cost</u>	<u>Extension</u>	<u>Unit Cost</u>	<u>Extension</u>	<u>Unit Cost</u>	<u>Extension</u>
				FY24		FY25		FY26	
1	250	Ton	#2 Backing – Avg. Size 6" x 12"	\$	\$	\$	\$	\$	\$
2	500	Ton	#1 Backing or Facing Rock – Avg. Size 10" x 18"	\$	\$	\$	\$	\$	\$
3	2000	Ton	Light Class Rip Rap – Avg. Size 12" x 24"	\$	\$	\$	\$	\$	\$
4	1800	Ton	¼ Ton Rip Rap – Avg. Size 18" x 36"	\$	\$	\$	\$	\$	\$
5	500	Ton	½ Ton Rip Rap	\$	\$	\$	\$	\$	\$
TOTAL \$						TOTAL \$		TOTAL \$	

TOTAL THREE (3) YEAR COST \$ _____

OPTIONAL: TWO YEAR EXTENTION PRICING (JULY 2026-JUNE 2028):

<u>Item No.</u>	<u>Quantity</u>	<u>Unit</u>	<u>Description</u>	<u>Unit Cost</u>	<u>Extension</u>	<u>Unit Cost</u>	<u>Extension</u>
				FY27		FY28	
1	250	Ton	#2 Backing – Avg. Size 6" x 12"	\$	\$	\$	\$
2	500	Ton	#1 Backing or Facing Rock – Avg. Size 10" x 18"	\$	\$	\$	\$
3	2000	Ton	Light Class Rip Rap – Avg. Size 12" x 24"	\$	\$	\$	\$
4	1800	Ton	¼ Ton Rip Rap – Avg. Size 18" x 36"	\$	\$	\$	\$
5	500	Ton	½ Ton Rip Rap	\$	\$	\$	\$
				TOTAL \$		TOTAL \$	

TOTAL OPTIONAL TWO (2) YEAR COST _____ \$

FIVE YEAR BID GRAND TOTAL \$ _____

Written Five Year Bid Grand Total Amount: _____

CITY OF ANTIOCH**Rip Rap Deliveries****Bid No. 750-0222-24A**

The undersigned contractor declares that it has carefully examined the locations of the proposed work, plans and specifications, special provisions and read the accompanying instructions to contractors. The undersigned submitter certifies that he/she is, at the time of presenting this Bid, and shall be, throughout the length of the contract, licensed by the state of California to do the type of work required under the terms of the contract documents. Submitter further certifies that he/she is skilled and regularly engaged in the general class of work called for in the contract documents.

In accordance with the requirements, the submitter represents that he/she is competent, knowledgeable and has special skills on the nature, extent, and inherent conditions of the work to be performed. Submitter further acknowledges that there are certain peculiar and inherent conditions which may create, during maintenance operations, unusual or peculiar unsafe conditions hazardous to persons and property. Submitter acknowledges that he/she is aware of such risks and that he/she has the skill and experience to foresee and to adopt protective measures to perform the maintenance services adequately and safely with respect to such hazards.

Does proposed Bid conform to all requirements listed in this document and drawings? ____
If NO, explain non-conforming specifications in detail on separate sheet.

Terms or Cash Discount (if other than net 30 days) _____

Company Name _____

Contact Name _____

Title _____

Address _____

City/State/Zip _____

Telephone _____ FAX _____

Email Address _____

Contractor's License No. _____ Exp. Date _____

City of Antioch Business License No. _____ Exp. Date _____

Signature _____ Date _____

Bid must be in a sealed envelope with the Bid number, closing date, DIR number, and time on the outside envelope.

DELIVER BID SUBMITTAL TO:

CITY OF ANTIOCH
Bid NO. 750-0222-24A
200 H St, 1st Floor
Antioch, CA 94509

NON-COLLUSION AFFIDAVIT

THIS PAGE MUST BE NOTARIZED

CITY OF ANTIOCH

Rip Rap Deliveries

Bid No. 750-0222-24A

The contractor, by its officers and agents or representatives present at the time of filing this Bid, being duly sworn on their oaths say, that neither they nor any of them have in any way directly or indirectly entered into any arrangement or agreement with any other proposer, or with any public officer of the CITY OF ANTIOCH whereby such affiant or affiants or either of them has paid or is to pay to such proposer or public officer any sum of money, or has given or is to give to such other proposer or public officer anything of value whatever, or such affiant or affiants or either of them has not directly or indirectly entered into any arrangement or agreement with any other proposer or proposers, which tends to or does lessen or destroy free competition in the letting of the contract sought for on the attached Bids; that no Bid has been accepted from any subcontractor or supplier through any Bid depository, the By-Laws, Rules or Regulations of which prohibit or prevent the Contractor from considering any Bid from any subcontractor or supplier which is not processed through said Bid depository, or which prevent any subcontractor or supplier from Bids to any Contractor who does not use the facilities or accept Bids from or through such Bid depository; that no inducement of any form or character other than that which appears upon the face of the Bid will be suggested, offered, paid or delivered to any person of the contract, nor has this proposer any agreement or understanding of any kind whatsoever, with any person whomsoever to pay, deliver to, or share with any other person in any way or manner, any of the proceeds of the contracts sought by this Bid

NAME _____

SIGNATURE _____

TITLE _____

Subscribed and sworn to before me by:

This _____ day of _____, 20_____

Notary Public

Attachment "A"

SAMPLE

CITY OF ANTIOCH MAINTENANCE SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement ("**Agreement**") is made and entered into this *****INSERT DAY***** day of *****INSERT MONTH*****, *****INSERT YEAR***** ("**Effective Date**") by and between the City of Antioch, a municipal corporation organized under the laws of the State of California with its principal place of business at 200 H Street, Antioch California 94509 ("**City**") and *****INSERT NAME*****, a *****[INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY]***** with its principal place of business at *****INSERT ADDRESS***** ("**Contractor**"). City and Contractor are sometimes individually referred to as "**Party**" and collectively as "**Parties**" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing *****INSERT TYPE OF SERVICES***** services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

2.2 Project.

City desires to engage Contractor to render such services for the *****INSERT NAME OF PROJECT***** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional *****INSERT TYPE OF SERVICES***** maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 [Insert Term or Time of Performance].

The term of this Agreement shall be from **[Insert start date]** to **[Insert end date]**, unless earlier terminated as provided herein. The City reserves the right to review the Contractor's performance at the end of each year and cancel all or part of the Agreement.

*****CONTRACT NAME*****

3.2 Responsibilities of Contractor.

- 3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.
- 3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.
- 3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.
- 3.2.4 City's Representative. The City hereby designates *****INSERT NAME OR TITLE*****, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.
- 3.2.5 Contractor's Representative. Contractor hereby designates *****INSERT NAME OR TITLE*****, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.
- 3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants, and other staff at all reasonable times.
- 3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the

professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees, and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged, and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of [***INSERT WRITTEN DOLLAR AMOUNT***] Dollars (\$[***INSERT NUMERICAL DOLLAR AMOUNT***) per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to perform the Work while said dispute is decided by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's

work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify, and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors, and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal

opportunity employer and it shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees, and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the

Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

3.2.11 Insurance. Contractor shall not commence work for the City until it has provided evidence satisfactory to the City that it has secured all insurance required under Exhibit "D" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state, and federal laws, rules, and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 Bonds.

3.2.13.1 Performance Bond. If required by law or otherwise specifically requested by City in Exhibit "D" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "D" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of

such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

~~3.2.13.4~~ Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.2.14 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed *****INSERT WRITTEN DOLLAR AMOUNT***** (\$*****INSERT NUMERICAL DOLLAR AMOUNT*****) without written approval of City's *****INSERT TITLE*****. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 California Labor Code Requirements

a. Contractor 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, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor 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 Contractor and all subcontractors 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.

b. 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 Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, 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.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor 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 Contractor or any subcontractor.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

- 3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished documents and data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.
- 3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.
- 3.4.4 Agreement Subject to Appropriation of Funds. The Contractor understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Antioch City Council. The Agreement may terminate without penalty, liability, or expense of any kind to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, the Agreement will terminate, without penalty, liability, or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and City Council. Contractor's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

3.5 General Provisions.

- 3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

INSERT NAME, ADDRESS & CONTACT PERSON

City:

INSERT DEPARTMENT NAME / CONTACT PERSON

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

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

- 3.5.2 Indemnification.

- 3.5.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold the City, its officials, officers, employees, volunteers

CONTRACT NAME

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 alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense, and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.2.1 that may be brought or instituted against City or its officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents, or volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Contra Costa County, California. In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

3.5.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

- 3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer.
- 3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.
- 3.5.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.5.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.
- 3.5.11 No Third-Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.
- 3.5.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 3.5.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.
- 3.5.15 Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement,

the prevailing Party shall be entitled to recover from the losing party attorney's fees and costs in an amount determined to be reasonable by a court of competent jurisdiction.

3.5.16 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.19 Wage Theft Prevention.

3.5.19.1 Contractor, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

3.5.19.2 BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

3.5.19.3 If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Contractor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment

or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

3.5.19.4 For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

3.5.19.5 Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

3.5.19.6 Notice provided to the City shall be addressed to: Attention: City Manager, P. O. Box 5007, Antioch, CA 94531-5007. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the *****INSERT DAY***** day of *****INSERT MONTH*****, *****INSERT YEAR*****.

CITY OF ANTIOCH

Approved By:

*****INSERT CONTRACTOR NAME*****

Kwame Reed
Acting City Manager

Signature

ATTEST:

Name

Elizabeth Householder
City Clerk

Title

Approved As To Form:

Thomas Lloyd Smith
City Attorney

****CONTRACT NAME****

EXHIBIT "A"
SCOPE OF SERVICES

*****INSERT SCOPE*****

EXHIBIT "B"
SCHEDULE OF SERVICES

*****INSERT SCHEDULE*****

**EXHIBIT "C"
COMPENSATION**

[INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES**]**

ATTACHMENT "B"

EXHIBIT "D" INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an "X" indicated in the space before the requirement apply to Contractor's Agreement.**

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees, or subcontractors.

Contractor shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

Coverage at least as broad as Insurance Services Office ("ISO") 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 **\$2,000,000.00** 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.

Coverage at least as broad as ISO 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 **\$1,000,000.00** 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.

Coverage at least as broad as ISO 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 **\$5,000,000.00** 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.

Automobile Liability:

Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000.00** combined single limit for bodily injury and property damage.

Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody, and control of the Contractor, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

___ Insurance appropriate to the Contractor’s profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

___ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

___ Insurance appropriate to the Contractor’s profession, with limit no less than _____per occurrence or claim, _____aggregate

Workers’ Compensation Insurance:

X Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000.00** per accident for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees. Waiver needed.)*

The Employer’s Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Builder’s Risk (Course of Construction):

___ Insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery, and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery, or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City’s site.

Contractor’s Pollution Legal Liability:

___ Contractor’s pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

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 City.

Cyber Liability Insurance

___ Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

- Bid Bond
- Performance Bond
- Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

X Additional Insured Status and Primary/Non-Contributory Language:

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the City's coverage and be endorsed to add the City and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Loss Payee Status – Builder's Risk/Course of Construction Insurance (applicable to Construction Contracts only)

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

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. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor, its employees, agents, and subcontractors.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions (“SIR”):

Any deductibles or self-insured retentions must be declared to and approved by 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. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A-:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
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 work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor’s Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further

agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request

Verification of Coverage:

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.

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.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.