



REQUEST FOR PROPOSAL

**OVERHEAD COST ALLOCATION PLAN AND
COMPREHENSIVE USER FEE STUDY**

PROPOSAL NO. 946-0710-17F

PROPOSAL DUE DATE: THURSDAY AUGUST 10, 2017 AT 2:00 PM

**CITY OF ANTIOCH
REQUEST FOR PROPOSAL
RFP No. 946-0710-17F**

**OVERHEAD COST ALLOCATION PLAN AND
COMPREHENSIVE USER FEE STUDY**

RELEASE DATE: July 10, 2017

CLOSING DATE: Proposals must be received by August 10, 2017
at 2:00 p.m. PST at the address listed below.

CONTACT PERSON: Dawn Merchant, Finance Director
925-779-6135
925-779-7054 (fax)
dmerchant@ci.antioch.ca.us

Mailing address:

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

Delivery Address:

City of Antioch/Finance 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 preparation of an Overhead Cost Allocation Plan and Comprehensive User Fee Study. Each proposal shall be in accordance with the conditions and specifications outlined in the Request for Proposal. 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 Finance Department at the above indicated address on or before 2:00 p.m., August 10, 2017. It is the bidder's responsibility to ensure that bids are received prior to the 2:00 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, www.ci.antioch.ca.us/CityGov/Finance/Purchasing/RFPs.htm, 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. Or you may contact the Finance Department at 925-779-7055.

I. BACKGROUND

The City of Antioch was incorporated in 1872 as a general law city operating under the City Council/City Manager form of government. Antioch is a suburban city providing quality police, water, streets, parks, engineering, planning, and administrative services. The City has approximately 275 employees and an annual operating budget in excess of \$135 million.

The City will endeavor to administer the proposal process in accordance with the terms and dates outlined in this RFP, however, the City reserves the right to modify the activities, time line, or any other aspect of the process at any time, as deemed necessary. By requesting proposals, the City is in no way obligated to award a contract or pay the expenses of proposing vendors in connection with the preparation or submission of a proposal. The award of any contract shall be contingent on the requisite staff and Council approvals if required. Determination of best value to the City shall be based upon, but not limited to, the following considerations: cost; the ability, capacity, and skill of the proposer to provide the services; the ability of the provider to deliver timely services; the character, integrity, reputation, judgment, experience, and efficiency of the provider. No single factor will determine the final award decision. Please describe all other services that may be used in the determination for award of bid.

II. PURPOSE & SCOPE OF WORK

The City of Antioch is requesting proposals from qualified firms for an Overhead Cost Allocation Plan and a Comprehensive User Fee Study. In addition, the vendor is to provide a mechanism to review and revise both the overhead cost allocation and user fees as necessary. The objective is to ensure that the City of Antioch is utilizing comprehensive overhead rates and accurately accounting for the true cost of providing various services with the City operations. The City last had a Cost Allocation Plan and Fee Study done in 2005.

There is a separate scope of work for each of the two projects and firms responding to this RFP shall be prepared to deliver products and perform the work necessary to provide an Overhead Cost Allocation Plan and a Comprehensive Fee Study within (6) months of issuance of a contract.

A. Required Services – Overhead Cost Allocation Plan

1. Work with selected City staff to define the purpose, uses, and goals for an overhead cost allocation plan, ensuring that the development of the plan will be both accurate and appropriate for the City's current needs.
2. Develop an Overhead Cost Allocation Plan Model for calculating the full costs of providing each City service and an OMB Circular A-87 applicable plan for use with Federal Grants and Programs. The requirements of the model shall allow for:
 - 2.1 The addition or removal of direct and overhead costs so that the overhead cost allocation plan can be developed from a simple plan to a progressively more inclusive plan.
 - 2.2 The ability to continuously update the model and overhead cost allocation plan from year-to-year as the organizational structure changes and the costs change.
 - 2.3 Justification to support internal and external rates and/or percentages charged by departments for cost recovery.

- 2.4 For internal rates, a determination of the General Fund and Information Services Fund administrative support that is charged to other departments and funds such as Water, Sewer, Marina, Animal Control, etc.
3. Work with the City in developing service provisions, cost categories and allocation criteria for current and future programs.
4. Prepare Overhead Cost Allocation Plan and participate in the presentation to the City Manager, City Council and City staff. Collect and document comments and concerns.
5. Prepare final plans for both OMB Circular A-87 Cost and Total Full Cost Allocation Plan and provide 5 bound copies and one unbound copy (or file copy in Microsoft Word format) to the City, including an electronic model which can be easily updated.

B. Required Services – Comprehensive User Fee Study

The consultant shall conduct a comprehensive review of the City's user fee and rate structure with the goal of establishing a consistent and objectively based user fee and rate structure that meets the needs of the City and its citizens. Water and Sewer rate, and Impact fees are excluded from this study. Specific experience with municipal government is most desirable.

1. A review of the documentation supporting the current fee structure for all departments and services is necessary. Further, in utilizing the Overhead Cost Allocation Model developed as part of this project, calculation of the costs, including a billable rate structure, of providing current levels of City services is required as part of the project. A survey comparison of fees with similar and neighboring cities (i.e., Pittsburg, Concord, Brentwood, etc.) for information only, is also requested.
2. Prepare Comprehensive User Fee Study, which includes a billable rate schedule, indentifying the total cost for each service, the current fees, and makes fee recommendations for each service presented. Review draft report with departments and City Manager for final input on report before presenting a draft report for City Council review and discussion.
3. Provide 5 bound final copies and one unbound copy (or file copy in Microsoft Word format) to the City.

III. QUALIFICATIONS

- A. The qualified firms shall have extensive experience developing an overhead cost allocation plans for agencies of similar size and range of services as the City of Antioch.
- B. The qualified firms must be properly licensed, staffed, equipped, and financed to perform the work relevant to a project of this nature. The selected firm will be required to obtain a City of Antioch business license.
- C. The qualified firms shall have proven methodologies for the collection and analysis of cost data relevant to a project of this nature and for the conversion of the data to the studies specified in this RFP.

IV. PROPOSAL REQUIREMENTS

A. General Requirements

1. Inquiries concerning the RFP must be submitted via email to Dawn Merchant, Finance Director, at the following email address: dmerchant@ci.antioch.ca.us
2. Responses will not be made to telephone inquiries.
3. Proposal Submittal: An original and five copies of the complete request for proposal 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 form of the RFP may be found at www.ci.antioch.ca.us/CityGov/Finance/Purchasing/RFPs.htm. There, the document can be downloaded.

The proposal should be delivered as follows:

Mailing address:

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

Delivery Address:

City of Antioch
Finance Department
200 H St
Antioch, CA 94509

B. Format of Proposal

1. Transmittal Letter

- 1.1 Signed Transmittal Letter briefly stating the proposer's understanding of the services to be performed; the commitment to perform the services within the specified time period, a statement why the firm believes itself to be the best qualified to perform the engagement and the person authorized to represent the proposer.
- 1.2 Company information to include the name, address, phone number, fax number, and email of the firm's contact person for the RFP.
- 1.3 Description of your firm, including the size (number of employees), number of years in business and areas of specialization.

2. Scope of Services, Work Plan & Schedule

- 2.1 Provide a description of the work program including a description of deliverables and activities that will be undertaken. Consultants should describe their approach for managing the project, schedule and communicating with the City.

- 2.2 Consultants should describe their technical approach to the work, and should list specific tasks necessary to fulfill the project requirements. Proposers are encouraged to amplify the scope of services, and to identify any supplemental tasks necessary or recommend any alternatives that may enhance the project or reduce its costs.
- 2.3 Provide a schedule that includes resource (both City employees and consultant employees) requirements, a step-by-step work plan of all activities involved in the conduct of the work, and timelines for those steps, identifying major steps and milestones.

3. Description of Project Team Experience and Qualifications

- 3.1 Describe your firm's qualifications to provide the scope of work as outlined in Section II. Include recent projects of a similar nature.
- 3.2 Provide the background, qualifications and experience of professional staff to be assigned to this engagement. Specify who the Project Manager (lead person) will be for the project. Describe projects of a similar nature in which they had "hands on" responsibility.
- 3.3 The qualifications of each of the Principal and senior consultants should be spelled out in this section (resumes' for those people included). Those who are named must continue to have a direct, hands-on role in the project. The City may insist on Principal-level participation at every stage of the project. Any substitutions will require prior City approval.
- 3.4 Identify sub-consultants if any, and the role of each, spelled out by task.

4. Client References

- 4.1 Provide the names, titles, addresses, and telephone numbers of a contact person for at least three references. It is preferred that this list includes organizations for which your firm has performed similar services as outlined in this RFP. It is preferred that this list include municipalities of the approximate size of the City of Antioch.
- 4.2 Provide a complete listing of all California Municipal agency clients.

5. City's Consulting Services Agreement

The successful proposer shall be required to execute a Consulting Services Agreement, a template of which is attached as Exhibit A. If proposer has any questions or proposed deviations to the provisions in this Agreement, those must be set forth in writing in the proposal. Otherwise, the proposer shall be deemed to have accepted all provisions of the Agreement.

6. Cost Proposal

The consultant shall present a specific "not to exceed" fixed fee including associated fees (i.e. printing costs, etc.) with separate fee proposals for the full cost allocation plan (outlining any

additional fees for OMB Circular compliant plan), and user fee study. The fee estimate shall include:

1. A listing of tasks required to accomplish the scope of services
2. An estimate of the labor hours for each task, by position classification
3. The proposed hourly fee schedule
4. All reimbursable fees and expenses, noting that the City will not pay for lodging, vehicles or travel time

V. SUBMITTAL REQUIREMENTS

- A. Each firm shall submit a written proposal package, which shall include the items listed below. Failure to include any of the required information listed below may disqualify your RFP. Proposals should include, in this order:
 1. Transmittal Letter
 2. Scope
 3. Project Team
 4. References
 5. City's Consultant Services Agreement
 6. Cost Proposal
- B. Each section of your response should be clearly defined and separated from the others. Each section of your response should clearly match the number schema of this RFP.
- C. All proposal packages must be in hard copy. Someone authorized to execute legal documents on behalf of your firm must sign the original transmittal document. Please submit six (6) bound copies of the completed proposal.
- D. It is preferred that the basic proposal be submitted in standard 8 ½ by 11-inch page format. Attachments or enclosures may vary in size as necessary.

VI. EVALUATION OF PROPOSALS

- A. All proposals submitted will be reviewed by a City of Antioch evaluation panel. At the completion of the proposal review, finalists may be asked to provide an in-depth presentation. The panel will select the proposal which best fulfills the City's requirements and represents the best value to the City of Antioch. No single factor will determine the final award decision. The final approval of any contract will be made by the City Council based on staff recommendation.

Overall responsiveness to the Request for Proposal is an important factor in the evaluation process. Proposals will be evaluated on the basis of:

- Proposer's professional qualifications for performing scope of work
- The proposer's past experience and performance in similar engagements

- Project methodology and work plan
 - Client references
 - Cost proposal (this will not be the sole factor for this award)
- B. The City reserves the right to proceed with any subsequent procurement contract award to any firm base upon responses to this Request for Proposal and exclude those firms that are deemed not qualified.
- C. The City may award a contract on the basis of proposals submitted, without discussions, or may negotiate further with those firms within a competitive range. Proposals should be submitted on the most favorable terms the firm can provide.
- D. The City reserves the right to reject any and all proposals.
- E. The City is not liable for any costs incurred by firms in responding to this RFP.
- F. The selected consultant will be required to obtain a City of Antioch business license.

VII. DISPOSITION OF PROPOSALS AND OWNERSHIP OF DATA

- A. Proposals submitted in response to this RFP shall become the property of the City and a matter of public record. The firm must identify all copyrighted material, trade secrets or other proprietary information that they claim are exempt from disclosure under the Public Records Act (California Code Sections 6250 et seq.). In the event such an exemption is claimed, the firm shall state in the proposal that they will defend any action taken against the City to release such exempt material.
- B. Upon completion of all work under this contract, ownership and title of all plans, reports and documents produced as part of this contract will automatically be vested in the City of Antioch.

VIII. TENTATIVE RFP SCHEDULE (Subject to Change)

| | |
|---|---------------------|
| Mail/publish RFP..... | 7/10/17 |
| Proposal Deadline..... | 8/10/17 @ 2:00 p.m. |
| Evaluation of Proposals..... | 8/11/17-8/25/17 |
| Interviews with Finalists..... | 8/28/17-9/1/17 |
| Notification of Award..... | 9/6/17 |
| Council Meeting / Approval (if required)..... | 9/26/17 |
| Implementation Kick-off Date..... | 10/9/17 |

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 _____, 201_.

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

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on _____, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City' right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant represents that it is experienced in providing these services to public clients and is familiar with the plans and needs of City. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

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

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is

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

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

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

2.2 **Payment Schedule.**

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

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

2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement.

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

2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule: _____

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

Reimbursable Expenses are:

- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

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

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

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

4.1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Consultant's services include work within 50 feet of a railroad right of way, the Contractor shall have removed any exclusion on their liability policy limiting coverage for work near a railroad, or shall provide a Railroad Protective Liability policy in favor of the City. Limits for such coverage shall be no less than \$5,000,000.

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

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

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

4.5. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

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

4.5.2 *Primary Coverage.* For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

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

4.5.4 *Waiver of Subrogation.* Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

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

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

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

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

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

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

4.7. **Subcontractors.** Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject

to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.

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

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

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

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

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES

5.1. CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend (with counsel acceptable to the CITY) and hold harmless CITY, and its employees, officials, volunteers and agents ("Indemnified Parties") from and against any and all losses, claims, damages, costs and liability arising out of any personal injury, loss of life, damage to property, or any violation of any federal, state, or municipal law or ordinance, arising out of or resulting from the performance of this Agreement by CONSULTANT, its officers, employees, agents, volunteers, subcontractors or sub-consultants, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of CITY.

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

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

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

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, sexual orientation or any other legally protected status, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

- 7.6 **Prevailing Wages.** Should the scope of work fall under the requirements of the California Labor Code and implementing regulations for the payment of prevailing wages, then Consultant shall comply and pay prevailing wages.

Section 8. TERMINATION AND MODIFICATION.

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

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

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

- 8.2 **Extension.** City may, in their sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City' remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work

product prepared by Consultant pursuant to this Agreement; and/or

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

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.
- 9.2 **Confidentiality.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be kept confidential by Consultant. Such materials shall not, without the prior written permission of City, be used by Consultant for any purpose other than the performance of this Agreement nor shall such materials be disclosed publicly. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, shall be deemed confidential. Consultant shall not use the City's name or logo or photographs pertaining to the services under this Agreement in any publication without the prior written consent of the City.
- 9.3 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.4 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.
- 9.5 **Intellectual Property.** The City shall have and retain all right, title and interest, including copyright, patent, trade secret or other proprietary rights in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents and any other works of authorship fixed in any tangible medium or expression, including but not limited to physical drawings or other data magnetically or otherwise recorded on computer media ("Intellectual Property") prepared or developed by or on behalf of Consultant under this Agreement. Consultant further grants to City a non-exclusive and perpetual license to copy, use, modify or sub-license any and

all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional or supplemental work created under this Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.2 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.3 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.4 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.5 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.6 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

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

- 10.7 **Inconsistent Terms.** If the terms or provisions of this Agreement conflict with or are inconsistent with any term or provision of any attachment or Exhibit attached hereto, then the terms and provisions of this Agreement shall prevail.
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

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

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

Any written notice to City shall be sent to:

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

10.11 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and all other attachments, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

CITY:

CITY OF ANTIOCH

Ron Bernal, City Manager

Attest:

Arne Simonsen, City Clerk of City of Antioch

Approved as to Form:

Derek Cole, City Attorney

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

CONSULTANT:

[NAME OF CONSULTANT]

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____