



Request for Proposals for:
Economic Development Baseline and Strategic Plan(s)



RFP Release August 14, 2019

RFP response due by September 19, 2019 no later than 3:00 PM

City of Antioch

Request for Proposal

Economic Development Base Line & Strategic Plan(s)

Purpose

The City of Antioch is seeking proposals from qualified professionals that are knowledgeable in research and development, data analysis and economic sectors to assist the City with creating an economic Base Line of data, employment centers, identify economic and business sectors/industries which will be used by staff to strategically implement actions that improve employment centers and assist economic sectors expand and locate in Antioch.

Background

The city of Antioch, California has a history that starts before California became a state. The first settlers landed on the shores of what's now the Historic Downtown District from the San Joaquin River in 1850 and in 1872, Antioch was incorporated. Since that time, Antioch has been the home of Opportunity and economic growth. Early settlers were the area's first entrepreneurs that started things like a distillery, a soda water plant, a brick kiln, and eventually papermills and lumber yards. Antioch has a long silent history of being an employment and manufacturing leader in Contra Costa County and the Bay Area. Coal was discovered in the hills and created an economic boom for the area. The sandy soil in the east Antioch area is home to some of the oldest grape vines in the state. Many of the vines were planted in the mid-1890's and are still producing top-rated grapes.

The city of Antioch has now grown to a population of 114,000 and covers approximately 30 square miles. Antioch is the second largest city in Contra Costa County. Antioch has a very robust and diverse retail sector that includes Best Buy, Costco, Lowe's (two locations), Macy's, Target, and five major automotive brands at three dealerships. Antioch is also home of two Kaiser Permanente facilities and Sutter Delta Medical Center.

Over the years as the population increased, the balance of creating jobs did not keep with the same pace as residential growth. Many individuals and families sought out Antioch as an opportunity to own a home that was suited to their income despite having to commute out of the area. There are approximately 56,000 Antioch residents that make up its workforce. Approximately 32% of the residents have a college degree. Based on the most recent commute pattern data, up to 90% of the workforce commutes out of the area daily. In 2018, BART (Bay Area Rapid Transit) extended their passenger rail service into Antioch, thus providing an additional means of transit to the region.



The City of Antioch's Economic Development Department will work with the consultant team to ensure the economic development Base Line meets the needs of this new department charged with economic development.

Objective

It is expected the Base Line will provide data-driven analysis as well as opportunity analysis to define Antioch's current situation, employment centers and sectors, and areas of opportunities to foster economic development implementation. The Economic Development Baseline will assist in identifying priorities, goals and objectives, implementing action with appropriate performance measure, leveraging resources and creating tools that will be needed for effective and efficient economic development. The Economic Development Department was re-established in the summer of 2018, after being absent for several years. The Department is going through the process of establishing best practices and programs that a small staff of two (2) can rely on and implement.

In addition to creating the Baseline, the consultant will be tasked with creating an *Economic Development Strategic Plan* ("EDSP") for the two highest priority employment center areas. Once identified, the consultant will be expected to present detailed information on the industry sector(s) that will thrive in the employment centers. It is critical that these centers are designed with the next generation's workforce and future innovation/industries in mind.



Scope of Work

The scope of work is provided to guide and NOT limit the consultant. The information outlined below is the minimum required. Consultants are encouraged to evaluate the proposed scope of work and recommend/provide revisions to achieve a better final product. While this task does not specifically call out for the creation of a city-wide economic development strategic plan, the final product will be utilized as a component of a future city-wide comprehensive economic development strategic plan. As stated previously, the City of Antioch's Economic Development Department was re-instituted in 2018 and the Base Line is essential in building the department's focus on future economic development efforts.

Prior to Task 1, the Consultant shall attend and speak (if necessary) at the City Council meeting at which the consultant agreement is approved.

Task 1: Data Gathering & Analysis

Prepare a current economic scan profile, including demographics, diversity, income, housing, educational attainment, workforce, economy dynamics, regional influences, transportation, sales tax collections, in a format that can be used as a tool for multiple purposes including measuring economic indicators. This includes but shall not be limited to detailed information on where residents are commuting to by industry and identifying the strength of Antioch's existing industry sectors. It is expected for the consultant to review previous plans that includes the [General Plan](#), [Downtown Specific Plan](#), [East Lone Tree Specific](#)

[Plan](#), and [Hillcrest Station Specific Plan](#). Consultant shall work with staff on determining local stakeholders and conduct data gathering interviews.

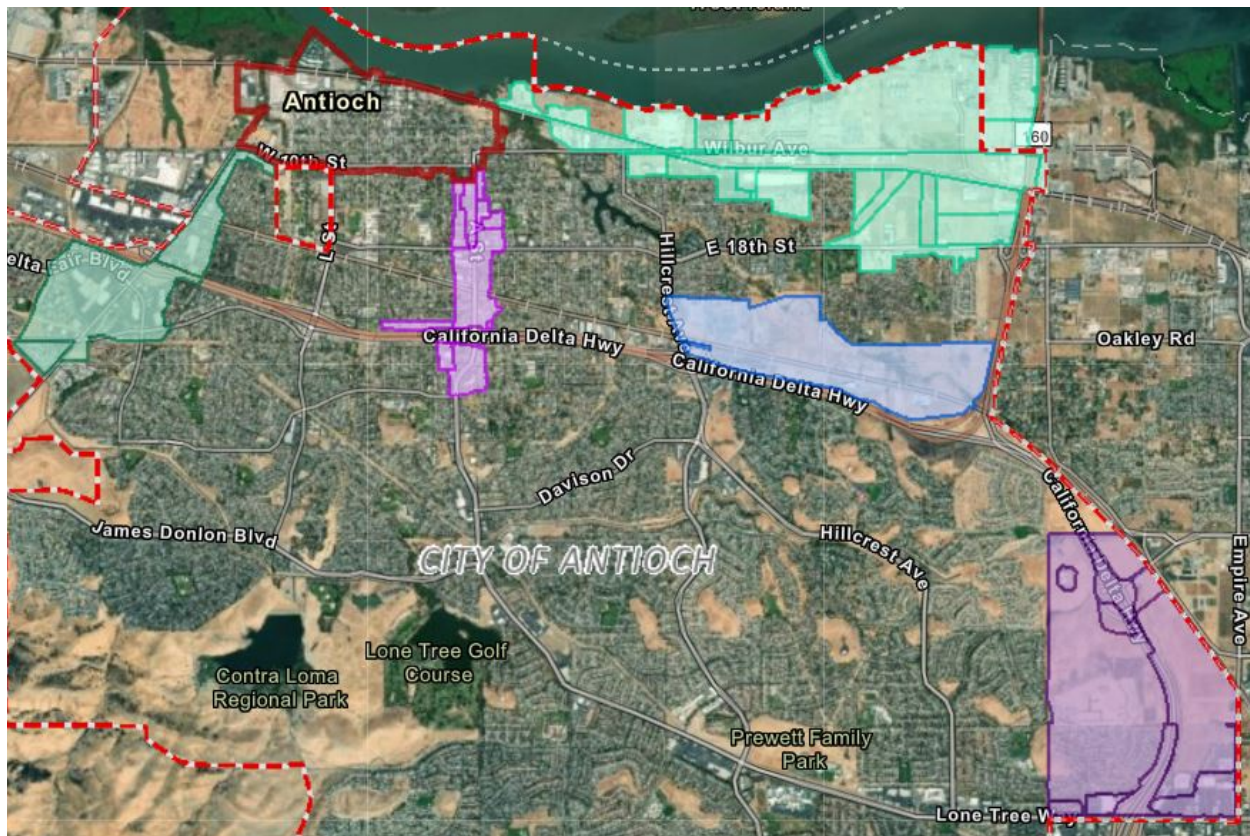
Consultant will work closely with staff to obtain an understanding of the current budget, programs, and tasks that are currently being or planning to be implemented.

There shall be a kick-off meeting with staff and prior to the completion of Task 1, Consultant shall attend a meeting of the City of Antioch's Economic Development Commission ("AEDC") to share draft findings of the data gathering efforts.

Task 2: Employment Centers

Identify and map geographic areas (employment centers) within the City of Antioch based on the past and current economic activity, revenue generation, existing employment, and employment opportunities, including but not limited to:

- Identify potential opportunities for new and expanding businesses within these centers.
- Identify specific properties within the employment centers that have development opportunity as economic drivers – traded sector, population-serving, and visitor-serving
- Identify any improvements necessary to enhance centers' market competitiveness
- Identify key industries or businesses that would be appropriate for the Antioch labor market, region, and mega-region, that would be located here in Antioch



Consultant shall deliver a report on each employment center detailing the information stated above. Consultant shall present the information to City staff and the AEDC (separate meetings).

Task 3: Economic Drivers (Sectors)

Define the dynamics of the economic drivers as it relates to generating revenue, employment and economic impact in the employment centers. Identify sectors/industries for each employment center which can be catalyst for economic growth. Identify any local impediments for economic development that could become opportunities if addressed.

Consultant shall present the economic drivers information to staff and the City Council and/or AEDC.

Task 4: Creation of Economic Development Strategic Plan(s), Economic Development Tools Including Opportunity Zone Review

The development of the Base Line should have an eye towards implementation and creation of economic development tools needed to build a strong and effective economic development program. These tools shall include but not be limited to the creation of Economic Development Strategic Plan(s) for the two highest priority employment centers. Including videos created to visually entice developers and investors to the identified employment centers. The consultant shall create an implementation plan on how staff can incorporate the plans to land owners, developers, and business owners. Incorporate information and data that will help market Opportunity Zones to investors (if applicable).

The consultant shall work with City staff including the Planning department on developing appropriate zoning for the EDSP areas that provide the best means of developing the employment centers. The consultant is NOT responsible for any re-zoning efforts that would be required at the proposed employment centers.

The consultant is expected to present the final Economic Development Strategic Plan(s) to the City Council in up to two meetings and/or study sessions.

Task 5: EDSP Deployment (optional, please identify as a separate budget item)

At the conclusion of the process, staff may request the Consultant to engage the property owner(s) of the proposed employment center areas. Consultant shall have a series of workshops two to four (2-4) per employment center establishing the City's vision based on the final EDSP for the appropriate employment center. The consultant will be responsible for developing the content for the workshops with the property owners.

Proposal Requirements

Firm must submit six (6) proposal copies, one (1) clearly marked "Original" that responds and conforms to the following requirements and an electronic version of the proposal (USB drive or other means).

Include the following sections containing the information requested in your proposal. To facilitate easy and fair evaluation, please follow the sequence

1) Cover Letter

Proposals must include a transmittal letter signed by a person authorized to submit the proposal and bind the firm to contract obligations. Include the individual or firm name, address, telephone number, email, and website. If the individual or firm operates from more than one location, please specify the office to which this project will be assigned. Identify all subconsultants that will be involved.

2) Firm Qualifications

Describe the qualifications possessed to perform the desired services. Include information about pertinent prior experience, special expertise, and resources that the firm can bring to this project. Demonstrate your skill and expertise in the area of data analysis and economic development.

3) Key Personnel

Include the names, qualifications, and experience of personnel to be assigned to this project and what role the individuals will play in providing services. Identify the project manager.

4) Project Approach

Provide an outline and description of how you would approach the scope of services. Include a detailed timeline for completion of each task. Consultants are encouraged to evaluate the proposed scope of work and recommend/provide revisions to achieve a better final product.

5) Fee Proposal

Show total costs for services by task. Specify labor and direct project expenses associated with travel, materials and any other requirements as may be required to complete the work. Include the firm's hourly rates and reimbursement schedule. Provide in a separate sealed envelope clearly marked "**FEE PROPOSAL**"

6) References

Provide a minimum of three (3) references for the prime contract holder and each subcontractor. Reference projects should have been completed within the last five (5) years and be similar in nature to those described in the scope of work. Include the following information:

- Name of client and project
- Name, title, telephone number, and email for client reference
- Brief description of the services provided, objective and scope of the project, date and duration of the project, and any results that may have been realized



7) Conflicts

Describe any existing or potential conflicts of interest that may arrive from this engagement.

8) Insurance Requirements

Please acknowledge that you are able to conform to the following or attached insurance requirements.

9) Standard Agreement

A copy of the City's Standard Consulting Services Agreement is included as Exhibit A. Please review this agreement and provide the City with a written statement of your firm's willingness to accept all terms of the agreement. The City will require the selected firm to enter into a Consulting Services Agreement. The firm will be required to provide and maintain all the insurances required by the agreement and a City business license. All insurances and related expenses shall be incorporated into the firm's proposal.

Tentative Project Schedule

August 14, 2019	RFP Released
September 19, 2019	Proposals Due By 3:00PM
October 2019	Project Awarded
April 2020	Project Completed

Selection Process

The City's final selection will not be dictated by any single factor including price. The City of Antioch reserves the right to accept or reject any or all proposals or to waive any defects or irregularities in the proposals or selection process. Upon the City's review of proposals, firms may be invited for interviews if necessary to make a determination. Proposals will be evaluated on the following criteria.

Firm Qualifications

Technical experience in performing similar work; experience working with public agencies; strength and stability of the firm; assessment by client references

Proposed Team and Organization

Qualifications of proposed key personnel; logic of organization; adequacy of labor commitment and resources to satisfactorily perform the requested services and meet the City's needs.

Detailed Work Plan

Thorough understanding of the City's requirements and objectives; logic, clarity, specificity, and overall quality of approach.

Proposed Cost

Reasonableness and competitiveness of pricing.

Submittal Instructions

Proposals must be submitted on or before **SEPTEMBER 19, 2019 by 3:00PM** to:

City of Antioch
Economic Development Department
Attn: Kwame Reed
200 H Street, Third Floor
Antioch, CA 94509-1285

Proposals received after the specified date and time will be returned to offer unopened.

Questions regarding this RFP should be directed to *Kwame Reed, Economic Development Director*, kreed@ci.antioch.ca.us (preferred method), (925) 779-7014.

Proposals shall be prepared and submitted at the respondent's sole expense.

All proposals shall become the property of the City of Antioch and will not be returned. There will not be a public bid opening.

Pre-Contract Expenses

The City of Antioch shall not, in any event, be liable for any pre-contractual expense incurred by proposer firm in the preparation of its proposal. Pre-contractual expenses are defined as expenses incurred in preparing its proposal in response to this RFP, submitting its proposal to the City of Antioch, negotiating with the City of Antioch on any matter related to its proposal, and any other expenses incurred by proposer prior to date of award.

Right to Reject

The City reserves the right to reject any or all proposals submitted, and no representation is made hereby that any contract will be awarded pursuant to this RFP. Receipt of a proposal by the City does not constitute a contract with the City. All costs incurred in the preparation of the proposal and subsequent material will be borne by the proposer. The City will provide only the staff assistance and documentation specifically referred to herein and will not be responsible for any cost or obligation of any kind, which may be incurred by a proposer. All quotes, inquiries, responses correspondence, proposals, reports, charts, displays, schedules, exhibits and other documentation or other information submitted to the City in response to this RFP will become the property of the City and a matter of public record.

The City retains the right to abandon the proposal process at any time prior to the actual execution of a contract with no financial or other responsibility in the event of such abandonment. The City reserves the right to negotiate all final terms and conditions of any agreement entered into.

The specifications included within the scope of work are intended to be as detailed as possible; however, respondents shall not take advantage of omissions or oversights in this document. The successful proposer shall supply products or services that meet or exceed the requirements of this document.

Severability

If any terms or provisions of this Request for Proposal shall be found to be illegal or unenforceable, then such term or provision shall be deemed stricken and the remaining portions of this document shall remain in full force and effect.

Secured Funding Disclaimer

The award of this project is contingent upon an awarding of the Contract at a future City Council meeting. Funds have been allocated towards this endeavor with the approval of the 2019/20 budget.

Assigning/Transferring of Agreement

Any successful firm is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the resulting agreement or its rights, title, or interest therein or its power to execute such an agreement to any other person, company or corporation without prior consent and approval in writing from the City of Antioch.

Exhibit A

***Note: This is a sample contract to show what a City contract may look like.**

*****SAMPLE*****

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

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

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

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

Section 2. COMPENSATION. City hereby agree to pay Consultant a sum not to exceed [REDACTED], notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the

amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth below. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

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

2.2 Payment Schedule.

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

2.2.2 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 [REDACTED] ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

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 P. Cole, Interim 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: _____

*****END SAMPLE*****