



The City of Antioch

Request for Proposal Community Website, Social Media Management & Metrics and Analytics Services

Ron Bernal
City Manager

Kwame P. Reed
Economic Development Director

Released Date: November 19, 2018

Due Date: December 21, 2018 at 4:00 pm

***New Due Date: January 4, 2019 at 4:00 pm**

For more information concerning this opportunity contact:
Lizeht Zepeda, Economic Development Program Manager
(925) 779-6168 or Email: lzepeda@ci.antioch.ca.us

About the City of Antioch

The city of Antioch, has a burgeoning population of professionals, a variety of housing, endless outdoor activities and thriving business hubs. Antioch is not only the second largest city in Contra Costa County with a population of over 113,000 residents, it is also one of the oldest cities in California. The area was originally settled in the late summer of 1850 and incorporated as a city in 1872. Antioch has a long rich history that was, and continues to be filled with *Opportunity* for those fortunate to call it home.

Antioch is one of the most diverse cities in the Bay Area. Residents are attracted to Antioch for its open space, market rate housing, water recreation, and schools.

- Population: 113,000 +
- Number of Households: 34,000 +
- Average Household Income: \$77,000
- Education: 32% of residents have Bachelors, Graduate, or Professional degrees

Antioch provides residents and visitors with the *Opportunity* to touch the San Joaquin River in the morning to hiking or biking the foothills of Mt. Diablo in the afternoon and everything else in between. Numerous events and happenings occur that should be mentioned and shared with the residents of Antioch, the region and the world. The City of Antioch wishes to have an active, current, and informative social media presence. This includes but is not limited to the management of the City's *Antioch on the Move* website that performs as home to Antioch Events, Community Calendar, and Community Information. City staff would require guidance on the best practices of municipal organizations uses of social media and bi-weekly to monthly analytics of the outreach efforts.



REQUEST FOR PROPOSAL

The CITY OF ANTIOCH (hereinafter "City") hereby requests Proposals from a firm that specializes in social media and its analytics, and will receive the Proposals in the Economic Development Department, located at 200 H Street, 3rd, Antioch, CA 94509, due ~~December 21, 2018 by 4:00 p.m.~~ **New Due Date: January 4, 2019 at 4:00 pm**

A.

B. SCOPE OF SERVICES. The City intends to enter into an agreement for continued population of the *Antioch on the Move* website, social media guidance, and analytics services outlined in the attached Exhibit "1". The requested services generally include industry best practices for municipal organizations using but not limited to the following: Facebook, Twitter, Instagram, and YouTube. The firm should be experienced in gathering social media analytics reports and present social media metrics to staff in an effort to better understand Antioch's community needs, improve communication and understand areas of improvement. The City would like to increase all its social media audience over time. The firm shall be proactive in their efforts to contact, work, guide, and receive approval from the appointed City staff (s) and department(s) when appropriate and suggest effective ways to reach our targeted audiences.

C. REQUESTS FOR CLARIFICATION OF THE RFP. If any Respondent has any question regarding the meaning of any part of this RFP, the Respondent shall submit to the Economic Development Department, Lizeht Zepeda, Economic Development Program Manager at (925) 779-6168, lzepeda@ci.antioch.ca.us, by 4:00 p.m. December 14, 2018.

D. SUBMITTAL OF QUALIFICATIONS. Each Qualification shall be submitted with:

A signed cover letter by an authorized representative of the Respondents firm and will include: (1) this project by name; (2) the full legal name of the Respondent, along with name of contact person, address, phone number, fax number, and e-mail address; and (3) indicates Respondent's willingness to comply with the procedures identified in this RFQ.

(A) A description of how the Scope of Services will be met,

(B) Schedule of Billing Rates,

(C) Statement of Qualifications and examples,

(D) Terms of Service Agreement is an example of the agreement that a vendor is expected to enter into if the City selects said vendor. It was not the intention to have any vendor submit a completed Terms of Service Agreement with the RFQ. If a vendor cannot agree to the terms in the example found in Exhibit 2 (not including minor modifications), then the City may not be able to enter into an agreement with said vendor. It is not the intention of the City to have any vendor submit a completed Terms of Service Agreement with their RFQ package,

(E) References for similar work with other municipalities, public agencies and private firms.

Respondents shall submit (3) copies and (1) USB flash drive of their proposal in a sealed envelope clearly marked on the outside: **“SEALED PROPOSALS FOR– RFP COMMUNITY WEBSITE, SOCIAL MEDIA MANAGEMENT & METRICS AND ANALYTICS SERVICES – DO NOT OPEN WITH REGULAR MAIL.”**

- E. CITY’S REVIEW OF PROPOSALS. After the Proposals are received and opened by the City, the City shall review and evaluate all Proposals for responsiveness to the Request for Proposals in order to determine whether the Respondent possesses the qualifications necessary for the services required. The City may also investigate qualifications of all Respondents to whom the award is contemplated, and the City may request clarifications of Proposals directly from one or more Respondents. In reviewing the Proposals, the City may consider the following:
1. Qualifications (including training, experience, creativity, references, and past performance) of the Respondent and its agents, employees, and sub-consultants in completing projects of a similar type, size, and scope.
 2. The feasibility of the Proposals based upon the methodology of the proposed scope of services, reasonableness of the schedule of billing rates.
 3. Respondent’s understanding of the work being to be completed based upon the clarity of the Proposals and responsiveness to the RFP.
 4. City of Antioch’s Service Agreement *Example* (Attached as “Exhibit 2”).
- F. AWARD OF AGREEMENT. Upon completion of the City’s review, staff will notify those Respondents who will be considered for further evaluation and negotiation. Interviews *may* be conducted with Respondents; no date has been set for interviews at this time.
1. If the City determines, after further evaluation and negotiation, to award the Agreement, an official Service Agreement shall be sent to the successful Respondent for the Respondent’s signature. No Proposals shall be binding upon the City until after the Agreement is signed by duly authorized representatives of both Consultant and the City. A valid City Business License & insurance is required during this time.
 2. The City reserves the right to reject any or all Proposals, and to waive any irregularity. The award of the Agreement, if made by the City, will be based upon a total review and analysis of each Proposal and projected costs.
- G. PROPODALS ARE PUBLIC RECORDS. Each Respondent is hereby informed that, upon submittal of its Proposal to the City in accordance with this RFP, the Proposal is the property of the City.
1. Unless otherwise compelled by a court order, the City will not disclose any Proposals while the City conducts its deliberative process in accordance with

the procedures identified in this RFP. However, after the City either awards an agreement to a successful Respondent, or the City rejects all Proposals, the City shall consider each Proposal subject to the public disclosure requirements of the California Public Records Act (California Government Code Sections 6250, et seq.), unless there is a legal exception to public disclosure.

2. If a Respondent believes that any portion of its Proposal is subject to a legal exception to public disclosure, the Respondent shall: (1) clearly mark the relevant portions of its Proposal “Confidential”; and (2) upon request from the City, identify the legal basis for exception from disclosure under the Public Records Act; and (3) the Respondent shall defend, indemnify, and hold harmless the City regarding any claim by any third party for the public disclosure of the “Confidential” portion of the Proposal.

Term

The initial term of Agreement is one year commencing July 1, 2019 with an optional two – one year extensions or no longer than June 30, 2022, at the City’s discretion.

SCHEDULE for Project

Estimated schedule for firm selection:

Issuance of RFP	November 19, 2018
Request for Clarification of the RFP	December 14, 2018
Proposals Due 4:00 PM 200 H Street, 3rd, Antioch, CA 94531	December 21, 2018 New Due Date: January 4, 2019

Exhibit 1

SCOPE OF SERVICES

The City of Antioch is seeking the services of an experienced firm that can enter into an Agreement for continued population of the *Antioch on the Move* website, social media guidance, metrics, and analytics services. The requested services generally include industry best practices for municipal organizations using but not limited to the following: Facebook, Twitter, Instagram, and YouTube. The firm should be experienced in gathering social media analytics reports and present social media metrics to staff in an effort to better understand Antioch's community needs, improve communication and understand areas of improvement. The City would like to increase all its social media audience over time. The firm shall be proactive in their efforts to contact, work, guide, and receive approval from the appointed City staff(s) and department(s) when appropriate and suggest effective ways to reach our targeted audiences. The ideal firm would regularly and proactively suggest methods to utilize the City's website(s) and social media accounts. The firm shall work closely with the City-identified photographers and/or videographers to obtain additional visual media for use on the City's social media outlets.

The scope shall include but shall not be limited to:

- Drafting/creating content for approval and maintaining the City's website, www.antiochonthemove.com
- Drafting/creating content for approval for all City social media outlets
- Social media management
- Social media guidance
- Creating metrics (website & social media)
- Providing analytics and having knowledge of creating analytics and utilizing metrics to maximize audience
- Knowledge of local events and audiences
- Working with various staff and providing best practices
- Provide a social media strategy plan

Exhibit 2

*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[REDACTED].

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

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

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

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

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

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

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

2.2 **Payment Schedule.**

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

2.2.2 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:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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*****