

REQUEST FOR PROPOSAL



Request for Proposals for:

Use of Local Historical Society Deemed Lynn House

THE CITY OF ANTIOCH



RFP Release August 30th, 2019

RFP response due by October 1st, 2019 no later than 4:00 PM

Economic Development Department

City of Antioch

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Request for Proposal

**Use of Local Historical Society Deemed
Lynn House
Located at 809-815 W. First Street in Downtown
Antioch, California**

Ron Bernal
City Manager

Kwame P. Reed
Economic Development Director

August 30th, 2019

For more information concerning this opportunity contact:

***Primary Contact: Lizeht Zepeda, Economic Development Program Manager at (925) 779-6168
Email: lzepeda@ci.antioch.ca.us**

Kwame P. Reed, Economic Development Director at (925) 779-7014
Email: kreed@ci.antioch.ca.us

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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 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 enjoy the San Joaquin River, many hiking trails, biking the foothills of Mt. Diablo and everything else in between. Antioch has a number of structures in its historic downtown known as Rivertown, that date back to its earliest days as a city. Two of the oldest structures called Roswell Butler Hard House, known as the “Hard House” and the Lynn House are owned by the City of Antioch, the buildings date back to the mid to late 1800’s. Both structures share one parcel APN 066-091-015-9. While the Hard House is in a state of disrepair, the Lynn House has been used by organizations and groups over the years. The most recent use of the Lynn House was by the Arts & Cultural Foundation of Antioch, where they used the structure as an art gallery as recent as 2017. The Lynn House is a two-story structure with 2 rooms and 1 bathroom with interior space approximately 1,400 square feet. It has fire sprinklers, an elevator, a detached garage, small kitchen, living room, has a security system, and is ADA compliant.



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- A. The CITY OF ANTIOCH (hereinafter "City") hereby requests Proposals from organizations or companies that have a need for a space and are an allowable use in historic downtown Antioch. Proposals will be received in the Economic Development Department, located at 200 H Street, 3rd, Antioch, CA 94509, due October 1st, 2019 by 4:00 p.m.
- B. SCOPE OF SERVICES. The City intends to enter into a lease agreement for the use of the Lynn House located at 809-815 W. First Street, Antioch, CA. The Lynn House is owned by the City of Antioch. The selected proposal will enter into negotiated lease agreement for a specific period of time.
- C. REQUESTS FOR CLARIFICATION OF THE RFP. If any Respondent has any questions 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 3:00 p.m. September 20th, 2019. A proposal (bid) walk will be scheduled on September 16th, 2019 at 10:00 a.m.
- D. SUBMITTAL OF PROPOSALS. Each Proposal 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 RFP.

- (A) A description of how the Scope of Services will be met (how you plan on using the Lynn House),
- (B) Rent Structure,
- (C) Statement of Qualifications and Experience,
- (D) Terms of Lease Agreement,
- (E) Business Plan including price structure
- (E) References

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 USE OF LOCAL HISTORICAL SOCIETY DEEMED LYNN HOUSE – 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

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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) and experience 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 proposed use.
3. City of Antioch's Lease Agreement *Example* (Attached as "Exhibit 2").
4. The business (non-residential) must be an allowable use within the Downtown Specific Plan zoning area. Link to: [Downtown Specific Plan](#)

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 Lease 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.
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. PROPOSALS 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

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regarding any claim by any third party for the public disclosure of the “Confidential” portion of the Proposal.

TERMS

The initial term of Agreement is to be determined by proposals submitted and approval of the City.

SCHEDULE

Estimated schedule for firm selection:

Issuance of RFP	August 30th, 2019
Proposal Bid Walk Located on site at the Lynn House 809-815 W. First Street, Antioch Ca 94531	September 16th, 2019 at 10:00 a.m.
Request for Clarification of the RFP	September 20th, 2019 at 3:00 p.m.
Proposals Due 200 H Street, 3 rd floor, Antioch, CA 94531 Economic Development Office	October 1st, 2019 at 4:00 p.m.

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Exhibit 1

SCOPE OF SERVICES

The City of Antioch is seeking an experienced firm that can enter into a Lease Agreement for the use of the Lynn House located at 809-815 W. First Street, Antioch, CA. The City is looking for a business that has a need for a space in historic downtown Antioch. The selected proposal will enter into negotiated lease agreement for a specific period of time.

The scope shall include but shall not be limited to:

- Conduct and maintain a successful business in Downtown Antioch
- Business must be an allowable (non-residential) use per City zoning
- Maintain a City owned building
- Pay Rent and other fees in a timely manner
- Maintain an active business license
- Follow terms of lease agreement
- Maintain a successful Business Plan and show an expense report
- Be part of the Downtown Community and maintain an active presence
- Show how the downtown will prosper with your company/firm

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Exhibit 2

LEASE AGREEMENT

This Lease Agreement (the “**Lease**”) is entered into as of _____, 2019, by and between the CITY OF ANTIOCH, a general law city (“**Landlord**” or “**City**”), and _____, a _____ (“**Tenant**”), who agree as follows:

1. **Lease.** Landlord leases to Tenant and Tenant leases from Landlord a portion of the real property located at 809-815 W. First Street in Antioch, California (APN 066-091-015-9) generally depicted and described on attached Exhibit “A” (the “**Premises**”).

2. **Term and Termination.**

(a) **Period of Lease.** The term (the “**Term**”) of this Lease shall be for a period of _____ () years, commencing at 12:01 A.M. _____ (the “**Commencement Date**”), and ending at 12:01 A.M. _____ () years later (the “**Expiration Date**”), or on such earlier date upon which the Term may expire or be cancelled or terminated pursuant to any of the provisions of this Lease.

(b) **Extension of Term.** If Tenant desires an extension of the Term, Tenant shall provide written notice to Landlord no earlier than one hundred twenty (120) days and no later than sixty (60) days prior to the Expiration Date. Landlord, at its election in its sole discretion, may grant Tenant an extension of the Term and, upon such election, shall provide written notice (the “**Landlord Notice**”) to Tenant, at least thirty (30) days prior to the Expiration Date, of the term, Rent and other provisions under which Landlord is willing to extend the Term. Within fifteen (15) days following Tenant’s receipt of the Landlord Notice, Tenant may give Landlord written notice (the “**Acceptance Notice**”) of acceptance of the terms of the extension set forth in the Landlord Notice, in which case the Term will be extended on the terms provided in the Landlord Notice and Landlord and Tenant shall enter into a separate written amendment to this Lease executed by Landlord and Tenant. If Tenant fails to so give an Acceptance Notice, this Lease shall terminate upon the Expiration Date.

(c) **Holding Over.** Tenant agrees to surrender the Premises to Landlord in accordance with the terms of this Lease on the Expiration Date. Tenant shall not hold over after the expiration or earlier termination of the term hereof without the express prior written consent of Landlord. Acceptance of Rent is not Landlord's consent to holdover. Without Landlord's express consent Tenant shall become a tenant at sufferance only at a Rental rate equal to 150% of the Rent in effect upon the date of such expiration. Acceptance by Landlord of Rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal. If Tenant fails to surrender the Premises on the Expiration Date, Tenant shall defend, indemnify and hold Landlord harmless from and against all claims, liability, damages, costs or expenses, including reasonable attorneys’ fees and the costs of defending the same, incurred by Landlord and arising directly or indirectly from Tenant’s failure to timely surrender the Premises, including: (i) any Rent payable by or any loss, costs or damages, including lost profits, claimed by any prospective tenant of the Premises or any portion thereof, and (ii) Landlord’s damages as a result of such prospective tenant’s rescinding or refusing to enter into the

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prospective lease of the Premises or any portion thereof, because of Tenant's holding over. Tenant's indemnity under this Section 2(c) shall survive the termination or expiration of this Lease.

(d) Termination. Landlord has the right to terminate the Lease with 12 months of advance notice to Tenant. Tenant has no right to terminate the Lease during the first 24 months of its Term, and then needs to provide 12 months advance notice of its intent to terminate the Lease.

(e) Abandonment. If Tenant shall abandon or vacate Premises, all personal property left upon the Premises shall be deemed to be abandoned and at the option of the City become the City's property.

3. Condition of, and Improvements to, Premises

(a) Improvements. Landlord shall have no obligation or responsibility, actual or implied, to install, construct, accommodate, or make any improvements to the Premises prior to, or as a condition of, Tenant's occupation of the Premises.

(b) No Warranties. Tenant agrees that it takes the Premises "AS-IS". Tenant expressly waives all implied warranties including implied warranties of merchantability and fitness, if any. Tenant understands and acknowledges that the Premises may be subject to earthquake, fire, floods, erosion, high water table, dangerous underground soil and water conditions and similar occurrences that may alter its condition or affect its suitability for any proposed use. Landlord shall have no responsibility or liability with respect to any such occurrence. Tenant represents and warrants that it is acting, and will act only, upon information obtained by it directly from its own inspection of the Premises.

(c) Surrender. Upon termination of this Lease, Tenant shall surrender the Premises to Landlord in as good condition as when originally received, ordinary wear and tear and damage by fire, earthquake, flood or act of God excepted, and including any repairs or improvements made by Tenant. If Tenant fails to maintain the Premises in good order and repair, after thirty (30) days' prior written notice, Landlord may, at its option, make such repairs, and Tenant shall pay the reasonable cost thereof as additional Rent hereunder within ten (10) days after receipt of a written statement therefor. In the event the giving of thirty (30) days' prior notice may result in additional damage to the Premises, Landlord may make such repairs, at Tenant's expense, without thirty days' prior written notice.

(d) Damage or Destruction. In the case the Premises is damaged by fire or other casualty, Landlord may elect to terminate this Lease. If Landlord is unable or unwilling to repair damage caused by fire or other casualty, Tenant may elect to terminate the Lease.

(e) Inspection by Certified Access Specialist. Landlord discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial

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property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), Tenant acknowledges and agrees that, if Tenant wishes to have the Premises inspected by a CASp: (i) Tenant must notify Landlord on or before the date when Tenant executes this Lease pursuant to the election below; (ii) the inspection will be at Tenant's sole cost and expense; (iii) the inspection must be scheduled through Landlord and in coordination with the Building's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Tenant's responsibility; and (v) Tenant must provide a copy of the CASp report to Landlord on completion. By initialing below, Tenant represents that:

Tenant wishes to have a CASp inspection of the Premises Initials: _____

Tenant hereby waives its right to have a CASp inspection of the Premises Initials: _____

4. **Use Compliance with Laws.**

(a) Purpose of Use. The Premises are to be used by Tenant for the purpose of _____.

(b) Use in Compliance with All Laws. Tenant agrees that its use of the Premises will at all times be in compliance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the Premises, including, without limitation, the law commonly known as the Americans With Disabilities Act and California Code of Regulations Title 8, Sections 3281 through 3299. Tenant shall obtain all business licenses, clearances, and permits required to operate its business prior to opening, maintain such necessary licenses and permits in force during the Term, and shall provide copies of each permit or license within 30 days after the Commencement Date and at any time during the Lease Term upon Landlord's request. Tenant shall post all notices to the public in an accessible and visible place to the public. Such notices may include, but are not limited to, Health Department clearances, business licenses, or cosmetology or other licensure. Tenant shall promptly notify Landlord of any notice of violation, suspension or revocation of any such license or clearance.

(c) Environmental Compliance/Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials, as defined below, to be brought upon, kept, used, discharged, deposited or leaked in or about the Premises or the Property by Tenant or any of Tenant's agents or by anyone in the Premises (other than Landlord or its agents, employees or contractors), except to the extent such Hazardous Materials are cleaning or office supplies customarily kept or used by typical automotive repair business tenants and are kept and used in accordance with all applicable laws. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of any Hazardous Material on the Premises or the Property caused or suffered or permitted by Tenant or any of Tenant's agents or by anyone in the Premises (other than Landlord or its agents, employees or contractors) results in contamination of the Premises or the Property,

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or if contamination of the Premises or the Property by any Hazardous Material otherwise occurs for which Tenant is legally liable, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, damages, costs, liabilities and expenses (including, without limitation, diminution in value or use of the Property, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification shall include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work on or under the Premises. "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local, state or federal governmental authority or by common law decisions, including without limitation (i) all chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos and (iv) polychlorinated biphenyls.

(d) Waste; Nuisance; Quiet Enjoyment. Tenant shall not suffer or commit any waste or nuisance on the Premises, nor shall Tenant interfere with or obstruct the rights of or disturb the quiet enjoyment of any other tenant or occupant of the neighboring properties or injure or annoy them. Tenant shall not use or allow the Premises to be used for any improper, immoral, or objectionable purposes, to be determined Landlord's sole and absolute judgment.

(e) No Use Affect Insurance Coverage. No use shall be made or permitted to be made upon the Premises, nor acts done, which shall increase the existing rate of insurance on the Premises, or cause the cancellation of insurance on the Premises.

(f) No Residential Use. No residential uses are permitted on the Premises.

(g) Landlord Access. Tenant shall permit Landlord's employees and contractors to enter upon the Property at reasonable times and upon reasonable notice, for the purpose of inspecting the same.

(h) Lighting. During the Term, Tenant shall install lighting to the City's standard induction lighting and keep the Premises well lighted during all evening/night hours.

(i) Security Guard Services. Tenant shall employ security guard services to monitor and patrol the Premises on a regular basis pursuant to the Security and Operations Plan to be presented to the Police Chief annually for approval.

(j) Signage. Tenant shall not construct or install any exterior sign, banner or advertising balloon without the prior written consent of Landlord. Landlord's prior written approval and shall be subject to compliance with any applicable Laws, including local sign ordinances and Historic Preservation laws.

(k) Tenant's Property. All trade fixtures, equipment and personal property of Tenant, if any, located at the Premises will remain the property of Tenant during the Term and may be removed by Tenant at any time. Upon expiration or termination of the Lease, these trade fixtures, equipment and personal property shall be removed from the Premises, unless Tenant is directed otherwise by the Director of Public Works/City Engineer or his/her designee. Tenant, at Tenant's cost and expense, must promptly repair all damage to the Premises occasioned by the removal of its trade fixtures, equipment and personal property.

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5. **Rent/Taxes.**

(a) **Rent.** The initial annual Rent during the term of this Lease shall be \$_____ per month, subject to increase as provided in Section 5(c), below (“**Base Rent**”). Tenant shall, commencing on the Commencement Date and continuing thereafter on the first day of each month during the term of this Lease, pay to Landlord in advance, such minimum monthly Rent, without setoff, deduction or demand. If the Commencement date is on a day other than the first of the month, Rent shall be prorated accordingly based on a 30-day month.

(b) **Additional Rent.** In addition to the Base Rent required to be paid hereunder, Tenant shall pay as additional Rent, all: (i) taxes (including but not limited to possessory interest taxes), assessments (whether general, special, ordinary or extraordinary) of every kind imposed or which relate in any way to the Premises and Tenant’s use of the Premises, (ii) and costs and expenses incurred by Tenant to use the Premises without limitation, including fire protection, telephone service, heating, air conditioning, sewer service, waste removal and other utilities and services supplied to or consumed in or upon the Premises during the Term (Tenant’s “**Operating Expense**”). Tenant’s Operating Expense shall include: expenses assessed, billed or charged separately against the Premises, plus (ii) Tenant’s share of expenses not so separately assessed, billed, or charged in the manner set forth in section 6(f) below.

(c) **Annual Adjustment.** Beginning on the first anniversary of the Commencement Date, Base Rent shall increase annually at the end of each 12-month period by any increase in the Consumer Price Index (“**CPI**”) as determined by the U.S. Bureau of Labor Statistics for all Urban Consumers for the San Francisco/Oakland/San Jose Metropolitan Area over the previous year. Should the CPI be discontinued, the index used for comparison shall be a comparable index as designated by the Bureau. It is recognized by both parties that the Index for any month is not published for approximately two months. Tenant shall, therefore, continue to pay the current rental paid by Tenant until such time as the new rental is calculated and, at that time, Tenant shall pay within ten (10) days of notice of the new Rent the new amount plus arrearages. In no event shall Base Rent ever decrease below the prior year’s Rent even if the CPI is negative. In such event, the Base Rent shall remain the same.

(d) **Security Deposit.** Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord the Security Deposit in the amount of \$_____. The Security Deposit shall be held by Landlord as security for Tenant's performance of the terms of this Lease. Landlord may (but shall not be required to) use all or any part of the Security Deposit to cure any default of Tenant under the Lease (after any required notice and expiration of any applicable cure period) or to compensate Landlord for any loss or damage which Landlord may incur as a result of Tenant's default. Tenant shall not be entitled to interest on the Security Deposit and Landlord shall not be required to keep the Security Deposit separate from its general funds. Where there have been no defaults by Tenant or where all applicable deductions from Security Deposit have been made as hereinabove provided, Landlord shall refund the then existing balance of the Security Deposit to Tenant within thirty (30) days of expiration or termination of this Lease.

(e) **Place of Payment of Rent.** Rent and all other sums which shall become due under this Lease, including but not limited to late charges and additional Rent, shall be

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payable by hand delivery or mail at _____, or at such other place as Landlord may designate from time to time in writing. Mailed payments must be received (not postmarked) by Landlord by the date due.

6. **Maintenance and Operating Expenses.**

(a) **Landlord's Maintenance.** Landlord shall repair and maintain the roof, structural foundations, and exterior walls of the building, unless the need for such repair shall be caused by the neglect, misuse, or misconduct of Tenant, its agents, employees, or invitees, in which case Landlord shall promptly cause the repairs to be made at Tenant's sole expense. Tenant shall promptly reimburse Landlord within thirty (30) days of invoice for the cost of all such repairs and maintenance. Landlord shall not be required to make any repairs to the roof, structural foundation, or exterior walls unless and until Tenant has notified Landlord in writing of the need for such repairs and Landlord shall have had a reasonable period thereafter to commence and complete said repairs.

(b) **Tenant's Maintenance.** Tenant shall, at Tenant's sole cost and expense, maintain the Premises except as noted under Section 6(a), above, in good condition and repair. Said maintenance shall include but not be limited to, the interior of the Premises, exterior doors and windows, all fixtures and equipment, including without limitation, heating and ventilation systems, plate glass, electrical wiring, plumbing fixtures, plumbing drains (from the interior of the Premises to the point of connection of Tenant's drainage system with the sanitary sewer system owned, managed, and/or maintained by the local municipality). Tenant hereby waives California Civil Code Sections 1932(1), 1941 and 1942 and any other applicable existing or future law, ordinance or governmental regulation permitting Tenant to make repairs at Landlord's expense.

(c) **Trash Removal.** During the Term, Tenant shall arrange and pay for trash removal from the Premises. Each morning, Tenant shall inspect the Premises and remove all garbage and litter.

(d) **Landscaping.** Tenant shall install and maintain landscaping, as approved by the Public Works Director/City Engineer or his/her designee. Height of landscaping shall not exceed 30 inches as required by Antioch Municipal Code section 9-5.1602.

(e) **Utilities.** Tenant shall pay for all water and electricity at the Premises, unless due to negligence of the Tenant. Tenant shall pay, before delinquency, for all other utilities or services of any kind supplied to the Premises.

(f) **Operating Expenses.**

(i) Landlord shall reasonably allocate to Tenant portions of Operating Expenses not assessed, billed or charged separately against the Premises. The portion of an Operating Expense so allocated by Landlord to the Premises shall be Tenant's share of such Operating Expense. Operating Expenses shall be invoiced on a monthly basis after Operating Expense have been incurred by Landlord, and shall be due on the first (1st) day of the month following invoice.

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(ii) Operating Expenses shall include all costs to operate, repair, restore, maintain and manage the Property improvements, buildings, roofs, common areas, parking lots, sidewalks, driveways, and other areas used in common on the Property; all costs to supervise and administer said common areas, parking lots, sidewalks, driveways, and other areas used in common by the tenants or occupants of the Property, including such fees as may be paid to a third party in connection with same; and all parking charges, utility charges and surcharges, or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority in connection with the use or occupancy of the Premises or the parking facilities serving the Premises. Operating Expenses include the following costs by way of illustration, but shall not be limited to: general and special real property taxes and assessments (including any tax imposed by changes in laws or which is imposed as a result of this transaction or any transfers hereof), rent taxes; possessory interest taxes; gross receipt taxes (whether assessed against Landlord or assessed against Tenant and collected by Landlord, or both); water and sewer charges; insurance premiums on property and liability insurance maintained by Landlord; any deductible portion of an insured loss; utilities; refuse disposal; painting, and decoration of non-tenant areas; lighting; fire detection systems; security; clean-up; labor; reasonable costs incurred in the management of the Property; air-conditioning and heating; supplies, materials, equipment and tools, including maintenance and repair costs and service contracts; costs of licenses, permits and inspections; maintenance, repair and restoration of the Property, including repair/installation of asphalt overlay, resurfacing, restriping and cleaning of parking areas (all of which parking area expenses shall be non-capital improvements); cost of Landlord's compliance under the Lease; landscaping and gardening; cost of utilities not separately metered; rental value of manager's office; wages, salaries and benefits; and other services to be provided by Landlord that are stated elsewhere in this Lease to be Operating Expenses. All capital expenditures that directly and measurably reduce Operating Expenses or that are required to comply with laws or regulations shall also be included in Operating Expenses. Operating Expenses shall not include depreciation on the Property buildings, loan payments, staff salaries or real estate brokers' commissions.

7. **Insurance.** Tenant shall maintain during the term of this Lease insurance against claims or injuries to persons or damages to property arising from or in connection with Tenant's operation and use of the premises. The cost of such insurance shall be borne by the Tenant. Tenant shall maintain insurance at least as broad as follows:

(a) **Commercial General Liability Insurance** Services Office Form CG 00 01 covering commercial general liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the occurrence limit. If Tenant's operations include work within 50 feet of a railroad right of way, Tenant 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. The General Liability policy is to contain, or be endorsed to contain, the following provisions:

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(i) The City of Antioch, its officers, officials, agents, employees and volunteers are to be covered as additional insureds by endorsement with respect to liability arising out of work or operations performed by or on behalf of Tenant 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 of the Lessee's insurance at least as broad as ISO Form CG 20 10. ISO Form CG 20 11 01 96 is appropriate. The coverage shall contain no special limitations on the scope of protection afforded to the City of Antioch, its officers, officials, agents, employees or volunteers.

(ii) The Tenant's insurance coverage shall be primary insurance with regard to the City of Antioch, its officers, officials, agents, employees and volunteers. Any insurance maintained by the City of Antioch, its officers, officials, agents, employees and volunteers shall be excess of Tenant's insurance and shall not contribute to it.

(b) Property Insurance. The Tenant will also maintain property insurance against all risks of loss to any Tenant improvement or betterment at full replacement costs with no coinsurance penalty provision.

(c) Worker's Compensation Insurance & Employer's Liability. Tenant shall also maintain Workers' Compensation Insurance as required by the State of California with Statutory limits and Employer's Liability Insurance with limits no less than \$1,000,000 per accident for bodily injury or disease.

(d) General Requirements.

(i) Any deductibles or self-insured retentions must be declared to and approved by the Landlord. At the option of the Landlord, the Tenant shall obtain coverage to reduce or eliminate such deductibles or self-insured retentions as respects to the Landlord or its officers, officials employees and volunteers, or the Tenant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses as approved by the City Attorney.

(ii) Insurance is to be placed with insurers with a Best's rating of no less than A: VII.

(iii) Tenant shall furnish to the Landlord certificates of insurance and endorsements as 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 Tenant's obligation to provide them. The Landlord reserves the right to require complete, certified copies of all required Insurance policies, including endorsements, required by these specifications at any time.

(iv) If Tenant maintains higher limits than the minimums above, the City requires and shall be entitled to coverage for the higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(v) Each insurance policy required by this clause shall be endorsed to

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state that coverage shall not be cancelled except after thirty (30) days prior written notice by mail has been given to the Landlord.

(vi) Tenant hereby grants to Landlord a waiver of any right to subrogation which any insurer of the Tenant may acquire against the City by virtue of the payment of any loss under such insurance. Tenant 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.

(vii) Tenant reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstance.

8. **Indemnification.** Tenant agrees to indemnify, protect, defend and hold Landlord harmless from and against any and all claims, losses, liabilities, actions, judgments, costs and expenses (including attorneys' fees and costs) (collectively, "Claims") due to injury to or death of, or damage to the property arising out of or in any way connected to Tenant's use, maintenance and repair of Premises or performance of this Agreement. Negligent or criminal acts by members of the public at the Premises shall not be deemed to be the liability or responsibility of Landlord. The indemnity provision of this section shall survive the expiration or cancellation of this Lease.

9. **Default and Landlord's Remedies.**

(a) **Default and Cure by Tenant.** Tenant shall be in default under this Lease: (a) in the case of any obligation requiring the payment of money by Tenant to Landlord, Tenant fails to make such payment within the time specified in this Lease, or otherwise within five (5) days following written notice from Landlord; and (b) if tenant fails to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this lease and Tenant fails to cure such default within thirty (30) days following written notice from Landlord, provided that if the nature of the alleged default is such that it cannot reasonably be cured within thirty (30) days, Tenant shall have a reasonable time in which to cure such alleged breach or default.

(b) **Rights and Remedies of Landlord.** Upon the occurrence of a default by Tenant under this Lease, Landlord shall have the following remedies in addition to all other rights and remedies provided by law or equity, to which Landlord may resort cumulatively or in the alternative.

(i) **Remedies under Civil Code § 1951.2.** Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall so elect to terminate this Lease, then Landlord may recover from Tenant: 1) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus 2) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rental loss Tenant proves could have been reasonably avoided; plus 3) the worth at the time of award of the amount by which the unpaid

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Rent for the balance of the term after the time of award exceeds the amount of such Rental loss that Tenant proves could be reasonably avoided; plus 4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and 5) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

(ii) Remedies under Civil Code 1951.4. In the event of the vacation or abandonment of the Premises by Tenant, or in the event that Landlord shall elect to reenter as provided herein or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then Landlord shall have the remedy specified by Civil Code Section 1951.4, in which Landlord may from time to time recover all Rental as it becomes due or relet the Premises or any part thereof for the account of Tenant on such term or terms and at such Rental or Rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. In the event that Landlord shall elect so to relet, then Rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness, other than Rent due hereunder, owed by Tenant to Landlord; second, to the payment of any cost (including commissions) of such reletting; third, to the payment of the cost of any alterations and repairs to the Premises; fourth, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same may become due and payable hereunder. Should that portion of such Rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord upon demand. Tenant shall also pay to Landlord, as soon as ascertained, any and all costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the Rentals received from such reletting

(c) Landlord's Right of Re-entry. In the event of default by Tenant, Landlord in addition to other rights and remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from Premises. Such property may be moved and stored in a public warehouse or elsewhere at the cost of, and for the account, of Tenant. Landlord shall store this property for Tenant for a period of thirty (30) days, after which time Landlord may dispose of the property in any manner in its sole discretion if the Tenant does not accept responsibility for the property. No reentry or taking possession of the Premises by Landlord pursuant to this Section shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

10. Notices. Except as otherwise provided, all notices required or permitted to be given under this Lease must be in writing and addressed to the parties at their respective notice addresses set forth below. Notices must be given by personal delivery (including by commercial delivery service) or by first-class mail, postage prepaid. Notices will be deemed effectively given, in the case of personal delivery, upon receipt (or if receipt is refused, upon attempted delivery), and in the case of mailing, three (3) business days following deposit into the custody of the United States Postal Service. The notice addresses of the parties are as follows:

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If to Landlord: City of Antioch
PO Box 5007
Antioch, California 94531
Attention: City Manager

With a copy to: City Attorney
City of Antioch
PO Box 5007
Antioch, CA 94531

If to Tenant: _____

11. **General.**

(a) Interpretation. The titles to the sections of this Lease are for convenience of reference only and are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. Any exhibits attached to this Lease are, however, a part of this Lease. In construing this Lease, none of the parties to it shall have any term or provision construed against it solely by reason of its having drafted the same.

(b) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California, without regard to any otherwise governing principles of conflicts of law. Any litigation concerning this Lease shall be subject to jurisdiction in Contra Costa County or the Northern District of California for federal court.

(c) Severance. Any provision of this Lease that is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating, diminishing or rendering unenforceable the rights and obligations of the parties under the remaining provisions of this Lease.

(d) Waiver; Accord and Satisfaction. No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such right or be construed as a waiver. The receipt and acceptance by Landlord of delinquent Rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular Rent payment involved. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

(e) Time is of the Essence. Time is of the essence of this Lease as to the performance of all terms, covenants, and conditions stated herein.

(f) Recordation. Tenant shall not record this Lease or a short form

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memorandum hereof without Landlord's prior written approval.

(g) No Third Party Benefit. This Lease is a contract between Landlord and Tenant and nothing herein is intended to create any third party benefit.

(h) Written Amendment. No term or provision of this Lease may be amended or modified, except by an instrument in writing signed by the parties to this Lease.

(i) Entire Agreement. This Lease and all exhibits attached to it constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements (whether written or oral) with respect to that subject matter.

(j) Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(k) Attorneys' Fees. If either party hereto brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in such action, on trial or appeal, shall be entitled to reasonable attorneys' fees to be paid by the losing party as fixed by the court.

(l) No Mechanic's Lien. Tenant shall at all times keep the Premises free from any liens arising out of any work performed or allegedly performed, materials furnished or allegedly furnished, or obligations incurred, by or for Tenant. Tenant agrees to indemnify and hold Landlord harmless from and against any and all claims for mechanics', materialmen's or other liens in connection with any Improvements, repairs or any work performed or allegedly performed, materials furnished allegedly furnished or obligations incurred or allegedly incurred, by or for Tenant.

(m) No Assignment. Tenant shall not assign or sublet this Lease without the prior written consent of the City Manager, which consent shall be in City Manager's sole and absolute discretion. Any such assignment or sublease without consent shall be void and, at the option of Landlord, may terminate the Lease.

(n) No Personal Liability. No member, official or employee of Landlord shall be personally liable in the event of any default or breach of this Lease.

(o) No Relocation Benefits. Tenant agrees that its use of Property or this Agreement shall not entitle Tenant to any relocation benefits pursuant to federal, state or local law and waives any such claim against Landlord.

(p) Revenue & Taxation Code Section 107.6 Possessory Interest Tax. Tenant acknowledges that Contra Costa County may impose a possessory interest tax for the use of Premises, and if such tax is imposed, that Tenant will be responsible for its payments

(q) Authority. Each of the persons executing this Lease on behalf of Tenant warrants and represents that Tenant is a duly organized and validly existing entity, that Tenant has full right and authority to enter into this Lease and that the persons signing on behalf of Tenant are authorized to do so and have the power to bind Tenant to this Lease. Tenant shall

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provide Landlord upon request with evidence reasonably satisfactory to Landlord confirming the foregoing representations. The approval of Landlord, wherever required in this Lease, shall mean the approval of the City Council or City Manager.

(r) Brokers. The parties represent that there are no brokers involved in the negotiation of this Lease or otherwise entitled to a commission or fee in connection with the transactions contemplated in this Lease. Each party hereby indemnifies, defends and holds the other party harmless from all loss, cost and expense (including reasonable attorneys' fees) arising out of a breach of its representation set forth in this Section 11(r). The provisions of this Section 11(r) shall survive the termination of the Lease. This Section 11(r) is for the benefit of Landlord and Tenant only and is not intended to give any third person, including Broker, any right of subrogation or action over or against any party to this Lease.

(s) City Municipal Powers. Landlord is entering into this Lease in its proprietary capacity, and not in its regulatory or governmental capacity. Nothing in this Lease shall be construed as restraining, impairing or restricting the City Antioch in its regulatory capacity, or granting any rights upon the Tenant with respect to the use, occupancy or operation of the Premises in a manner inconsistent with Law. This Lease does not grant any development rights upon the Tenant with respect to the Premises and any such development shall be subject to all applicable provisions of the Antioch Municipal Code.

(t) Subject to Approval. This Lease is subject to approval by the City Council for the City of Antioch and shall not be binding upon the City of Antioch until the City Council passes a resolution approving City's entering into this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first set forth above.

LANDLORD:
CITY OF ANTIOCH

TENANT:

By: _____
Rowland Bernal
City Manager

By: _____
Name: _____

Title: _____

Attest:

Arne Simonsen, City Clerk
City of Antioch

By: _____

Name: _____

Title: _____

Approved as to Form:

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By: _____
Thomas Lloyd Smith, City Attorney

(signatures to be notarized)

Attachments:

EXHIBIT "A"
Depiction of the Premises

Exhibit A

Site Map

APN # 066-091-015-9 City Property Description



General Description of the Premises:

The leased Premises for the Lynn House only will be limited to the area within the City Property, for a total area of approximately 1,400 square feet interior and 4,807 square feet perimeter. The general location of the Premises will be approximately within the outlined area shown on the above site map. The Premises include the right of reasonable ingress and egress over the City Property to access, operation, maintenance and removal purposes.