



REQUEST FOR PROPOSAL

For

**Facilitation Services for Bridging the Gap Virtual Roundtable
Discussions to Better Understand and Address Racial
Injustice and Police-Community Relations**

PROPOSAL DUE DATE: FRIDAY, JULY 31, 2020 AT 5:00 PM

**CITY OF ANTIOCH
REQUEST FOR PROPOSAL**

For

**Facilitation Services for Bridging the Gap Virtual Roundtable
Discussions to Better Understand and Address Racial
Injustice and Police-Community Relations**

RELEASE DATE: July 18, 2020

CLOSING DATE: Proposals must be received by Friday, July 31, 2020
at 5:00 p.m. PST at the address listed below.

CONTACT PERSON: Ron Bernal, City Manager
925-779-6820
925-779-2002 (fax)
rbernal@ci.antioch.ca.us

Mailing address:

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

Delivery Address:

City of Antioch/City Manager Department
200 H St
Antioch, CA 94509

Office Hours: M-F 8:00 a.m. – 5:00 p.m.

NOTICE TO BIDDERS

Notice is hereby given that the City of Antioch invites sealed bids for Facilitation Services for Discussion Sessions to Better Understand and Address Racial Injustice and Police Community Relations. Each proposal shall be in accordance with the conditions and specifications on file in the Office of the Finance Department, City Hall, 200 H St, Antioch, California 94509, where copies of said conditions and specifications may be inspected or obtained. All bids must be in the format specified, enclosed in a sealed envelope and clearly identified with bid title, name of bidder and date of bid opening.

Sealed bids shall be delivered to the City Managers Department at the above indicated address on or before 5:00 p.m., Friday, July 31, 2020. It is the bidder's responsibility to ensure that bids are received prior to the 5:00 p.m. bid closing time as late bids will not be accepted. The City of Antioch reserves the right to award or reject bids in part or in whole and on any basis it deems in the best interest of the City. Reference is hereby made to said specifications for further details which specifications, general conditions, and this "Notice to Bidders" shall be considered part of any contract made pursuant thereto.

If you downloaded this document from the City of Antioch's website, <https://antiochca.gov/rfps/>, it is the vendor's responsibility to check back with the website for any addenda that may have been issued, prior to the proposal due date.

I. INTRODUCTION

The City of Antioch is seeking proposals from consulting firms and individuals who can provide facilitation services for discussion sessions to better understand and address race relations, social justice and police reforms in the City of Antioch. The goal is to have a facilitator in place by As Soon As Possible who can plan, facilitate, and evaluate a series of discussion that will be conducted in a virtual (Zoom) roundtable format.

II. BACKGROUND

The City of Antioch was incorporated in 1872 as a General Law City operating under the City Council/City Manager form of government. The City Council is responsible for adopting ordinances, resolutions, the budget, appointing commissions and committees, and hiring the City Manager and City Attorney. The City Manager is responsible for implementing the Council's policies, ordinances and directives, for overseeing the day-to-day operations of the City, and for appointing the directors of the City's departments. Antioch is a suburban city providing quality police, water, streets, parks, engineering, planning, and administrative services. The City of Antioch has a population in excess of 112,000 and covers approximately 30 square miles. Antioch is the second largest City in Contra Costa County.

The City of Antioch, in response to concerns by its citizens following the death of George Floyd, is committed to engaging in a series of discussion sessions entitled Bridging the Gap, designed to address the complicated and emotionally charged subject of race relations, social justice, and police reform. Hundreds of public comments were read into the record at City Council Meetings on June 16, 2020; June 18, 2020 and June 30, 2020. These comments along with the City Council's desire to further discuss this matter prompted these discussion sessions. The City Council recognizes the need for a highly skilled, professional facilitator with experience in these specific areas. The Facilitator will work with the City Council and the City Manager to provide professional services necessary to successfully conduct these discussions.

III. SCOPE OF WORK

The successful consulting firm or individual should identify any additional services beyond what is described below that will be needed to meet the City's expectations and explain them in their response. The successful consulting firm or individual must be well versed in the subject of discussions on race relations, social justice and leading police reform. The successful consulting firm or individual will be expected, at a minimum, to provide the following:

Assist in planning and facilitating various Bridging the Gap virtual (Zoom) roundtable discussions to better understand and address race relations, social justice and police reform in the City of Antioch. The discussions will be designed to engage the City Council in a discussion with the public, interested community based organizations including but not limited to non-profits and faith based, and the Antioch Police Chief and department.

The virtual roundtable discussions should focus on, but not be limited to:

- History of policing in the United States

- Prevention of excessive use of force by police officers on the public, including banning police from using carotid artery restraints and chokeholds.
- Elimination of military equipment from the police department (Demilitarization).
- Require use of conflict de-escalation approaches by all sworn officers when interacting with the public
- Increase Police accountability, including the process for receipt and review of police complaints against the police for excessive use of force, racial and/or ethnic profiling, and other police misconduct.
- Improvement of police officer candidate recruitment, screening, training, and hiring practices including analysis of policies concerning implicit bias, candidate diversity, and candidate background checks.
- Police department budget appropriations.
- Body worn police cameras
- Antioch Police Department (APD) community programs
- Law enforcement mental health check-ups
- Parental workshops
- Relationship with Antioch Unified School District (AUSD)
- Role of Antioch Crime Prevention Commission
- Systemic racism
- Community programs
- Social services
- Parental workshops

The consultant will need to remain flexible as the process may change as circumstances and outcomes from the discussions require.

IV. PROPOSAL REQUIREMENTS

Each proposal shall include the following information:

- A. Background information on the consulting firm or individual, including details of experience with similar facilitation services, including the number of similar facilitation services performed on this topic; a brief resume of the individual(s) assigned to this project; contact information for references; and sample work products etc. The proposal should include information about the consulting firm's or individual current engagements and an affirmation of the firm's ability to focus on this project.
- B. A cost proposal for the City of Antioch including consulting fees and reimbursable expenses. The City prefers the consultant be contracted on an hourly basis. Payment terms should also be addressed. State any other costs the City may anticipate relating to the public information/press relations services to be provided and reimbursable expenses.
- C. The consulting firm or individual shall review the City's attached sample contract agreement and insurance requirements. The proposal shall specify that the firm will meet the insurance requirements and execute contract if selected.
- D. Additional services offered.
- E. References: Provide a list of three applicable references, include name, title, and contact

information for each reference as well as a brief description of the specific services provided.

- F. Be aware that these Special City Council Meetings will be scheduled by the Council as necessary to accomplish their goals and desired outcomes. They will not be on the regular City Council meeting dates which are the second and fourth Tuesdays of the month.

V. SELECTION PROCESS

A selection committee of the the City Manager, Mayor Wright and Council Member Thorpe will make up the selection committee to perform the evaluation. Each proposal will be analyzed to determine overall responsiveness and qualifications under the Request for Proposal. Criteria to be evaluated may include, at a minimum, the following:

- Prior successful facilitation of similar engagements
- Relevant experience in race relations, social justice and leading police reform
- Responsiveness to this Request for Proposal.
- Education, qualifications, training and experience of the individual(s) assigned to the project.
- Regional, state and national reputation.
- Schedule and availability.
- Cost of Services.
- Reference contact results.

VI. CONTRACT REQUIREMENTS

1. Robbins-Rosenthal Fair Debt Collection Practices Act
The successful contractor(s) must operate in accordance with ethical collection practices and obey all laws, including the Robbins-Rosenthal Fair Debt Collection Practices Act.
2. Insurance requirements: The successful contractor(s) will maintain in force, during the full term of the contract, insurance as indicated starting on page 9.
3. Indemnification Agreement: To the full extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorney fees incurred by City, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever incurred in relation to, as a consequence of or arising out of or in any way attributable in whole or in part to the performance of this agreement. All obligations under this provision are to be paid by the Contractor as the City incurs them.

Without affecting the rights of City under any provision of this agreement or this section, Contractor shall not be required to indemnify and hold harmless City as set forth above for liability attributable to the sole fault of City, provided such sole fault is determined by agreement between the parties of the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely at fault and not in instances where City's fault accounts for only a percentage of the liability involved. In

those instances, the obligation of Contractor will be all-inclusive, and City will be indemnified for all liability incurred, even though a percentage of the liability is attributable to conduct of the City.

Contractor acknowledges that its obligation pursuant to this section extends to liability attributable to City, if that liability is less than the sole fault of the City.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-contractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this agreement or section.

Remittance and Reporting Requirements: The successful contractor(s) will be required to submit to the City of Antioch regular monthly remittances and statements no later than thirty (30) days following the month of collection.

VII. PROPOSAL SUBMISSION INFORMATION

- a. Inquiries concerning the RFP must be submitted via email to Ron Bernal, City Manager, at the following email address: rbernal@ci.antioch.ca.us.
- b. Responses will not be made to telephone inquiries.
- c. Proposal Submittal: An original and three copies of complete proposals are required. The original must be clearly marked and contain original signatures and must be easily reproducible. Failure to clearly mark the original and provide original signatures will result in a proposal being found non-responsive and given no consideration.

The proposal should be submitted no later than **5:00pm on Friday, July 31, 2020** to:

Mailing address:

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

Delivery Address:

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

- d. The City reserves the right to reject any and all proposals submitted, to request clarifications of services submitted, to request additional information from competitors, and to waive any irregularity in the proposal. Finalist candidates or firms may be asked to present their qualifications to the City Manager. Following proposal evaluations, interviews and reference calls, the award of a contract to the successful candidate or

firm will be at the sole discretion of the City Manager.

- e. The City reserves the right to cancel the awarded contract with a 30-day written notice for non-compliance of agreed upon proposed specifications.
- f. The firm chosen by the City will be required to obtain a City business license prior to starting services.
- g. The candidate or firm chosen by the City will be required to execute a Consulting Services Agreement, a template of which is attached as Exhibit A. If the candidate or firm chosen has any questions or proposed deviations to the provisions in this Agreement, those must be set forth in writing in the proposal. Otherwise, the firm shall be deemed to have accepted all provisions of the Agreement.

City of Antioch Insurance Requirements for Consultants

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.

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.

Automotive 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.

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.

Professional Liability (Errors and Omissions) Insurance:

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

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) *Additional Insured Status.* The City, its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

- (2) *Primary Coverage.* For any claims related to the services provided by the Consultant, the Consultant'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 Consultant's insurance and shall not contribute with it.
- (3) *Notice of Cancellation.* Each insurance policy required above shall provide that coverage shall not be cancelled except with notice to the City.
- (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.
- (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.
- (6) *Claims made policies.* If any of the required policies provide claims-made coverage:
 - (i) *The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.*
 - (ii) *Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract work.*
 - (iii) *If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.*

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.

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.

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.

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.

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.

City of Antioch
Indemnification and Consultant's Responsibilities

1. CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend (with council 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.
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.
3. Acceptance by City of insurance certificates or 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.
4. By execution of this Agreement, Consultant acknowledges and agrees to the provision of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

Legal Requirements

1. *Governing Law.* The laws of the State of California shall govern this Agreement.
2. *Compliance with Applicable Laws.* Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
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.
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 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 additions to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
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 the Consultant thereby.

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

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.

EXHIBIT 'A'

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

THIS AGREEMENT for consulting services is made by and between the City of Antioch ("City") and _____ ("Consultant") as of _____.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to the City the services described in the Scope of Work attached as the Request for Proposal (RFP) 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 the Request for Proposal (RFP), the Agreement shall prevail.

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

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed bid pricing in the Request for Proposal (RFP). Total charges for services will be on a price times volume basis, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. 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:

- The beginning and ending dates of the billing period;
- Detail accounting of service billing elements and volume and Total Services Fees.

2.2 Payment Schedule.

2.2.1 The Consultant shall make payments monthly, based on accounts received, according to the Request for Proposal (RFP).

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 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.5 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 insured's 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 coverage's for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insured's.

- 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.

- 5.5 **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 B 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 B 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 to Dawn Merchant, Finance Director ("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:

XXXXX
XXXXX
XXXXX
XXXXX

Any written notice to City shall be sent to:

City Manager
City of Antioch
PO Box 5007
Antioch, CA 94531-5007

10.11 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit B, 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.

(all signatures are on the next page)

CITY:

CITY OF ANTIOCH

Ron Bernal, City Manager

Attest:

Arne Simonsen, MMC
City Clerk of the City of Antioch

Approved as to Form:

Thomas Lloyd Smith, City Attorney

CONSULTANT:

[NAME OF CONSULTANT]

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

[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]