

MAINTENANCE AND TRADE SERVICES AGREEMENT
(identify what it is for here)

THIS AGREEMENT is made and entered into this **Dateth** day of **Month**, 2011 between **Vendor** ("Contractor"), whose address is **Street Address, City, CA Zip**, and telephone number is **phone number**; and the CITY OF ANTIOCH, a municipal corporation ("City").

RECITALS

A. Contractor is qualified and experienced in providing services for the purposes specified in this Agreement.

B. City finds it necessary and advisable to obtain these services from Contractor for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. Services to be Performed. The work for the City of Antioch is described on the attached Quote from 'Contractor' (Exhibit A), which is attached and incorporated to the extent consistent with this Agreement.

2. Compensation. The total compensation under this Agreement shall not exceed, with the details set forth in Exhibit A, which is attached and incorporated to the extent consistent with this Agreement.

3. Term. The term of this Agreement will expire on **Expire, 20XX**.

4. Method of Payment. Payment shall be made within thirty (30) days of receipt of Contractor's invoice and approval by City. Delivery shall not constitute acceptance of any goods.

5. Indemnification. Contractor shall indemnify, save and hold harmless from and defend the City, its officers, agents and employees, against any and all claims, costs, demands, causes of action, suits, losses, expense or liability arising from, or alleged to have arisen, from any acts or omissions of Contractor, its agents, sub-contractors, officials or employees, in connection with the execution of the work covered by this Agreement, as it may be amended, except for the sole negligence or willful misconduct of City. This indemnification includes any claim that the materials or equipment provided under this Agreement, or any tool, article or process used in manufacture of such tools or equipment, constitutes an infringement of any patent issued by the United States. This entire indemnification provision shall survive termination or cancellation of this Agreement.

6. Insurance. During the term of this Agreement, Contractor shall procure and maintain at its own cost and expense the following insurance coverage with insurers with an A.M. Best's rating of no less than A: VII:

a. General Liability and Bodily Injury Insurance. Commercial general liability insurance with limits of at least \$1,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, employees and agents are named additional insureds under the policy. The policy shall state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary

insurance for work performed by Contractor and its subcontractors, and that no other insurance effected by City or other named insured will be called on to cover a loss.

b. Automobile Liability Insurance. Automobile liability insurance with limits not less than \$1,000,000 per person/per occurrence.

c. Workers' Compensation Insurance. Workers' Compensation Insurance for all of Consultant's employees, in strict compliance with State laws, including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.

For services deemed public works, by signing this agreement, Contractor is certifying, pursuant to Section 1861 of the California Labor Code, that: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

d. Certificate of Insurance. Contractor shall file a certificate of insurance and endorsements with the City prior to the City's execution of this Agreement, certificate of insurance shall provide in writing that the insurance afforded by this certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. In addition, the insured shall provide thirty (30) days prior written notice to the City of any suspension, cancellation, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.

e. 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.

7. Independent Contractor. The Contractor is an independent contractor retained by the City. All personnel employed by the Contractor, including subcontractors, and personnel of subcontractors, are not and shall not be employees of the City.

8. Warranty Against Defects. Contractor warrants all work done and goods provided under this Agreement shall meet the following requirements or any manufacturer's or standard industry warranty whichever provides the greatest protection to the City:

- a. Meet all conditions of the Agreement;
- b. Shall be free from all defects in design, material and workmanship; and
- c. Shall be fit for the purposes intended.

If any defects occur within said 12 months following acceptance, Contractor shall be solely responsible for the correction of those defects.

9. Labor Code Prevailing Wage. To the extent applicable, Contractor shall comply with the requirements of the California Labor Code including but not limited to

hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages.

No less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to all workers, laborers and mechanics employed in the execution of the work by the Contractor or any subcontractor doing or contracting to do any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be filed with, and available for inspection, at the City offices. Contractor shall post, at each job site, a copy of the prevailing rate of per diem wages. The Contractor shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor under Contractor.

10. Miscellaneous Provisions.

a. City may terminate this Agreement at any time by mailing a notice to Contractor. Contractor shall be paid for that portion of goods provided work completed when notice is received.

b. Contractor shall not assign or transfer this Agreement.

c. If either City or Contractor waive a breach of this Agreement, such waiver shall not constitute a waiver of other or succeeding breaches of this Agreement.

d. This Agreement constitutes the entire understanding of the parties.

e. This Agreement may only be modified by a writing signed by the authorized representative of both parties.

f. Contractor covenants that it has obtained all certificates, licenses, including a City Business License, permits or the like required by any federal, state or local regulatory agency in order to perform the work under this Agreement.

g. Contractor shall comply with all federal, state and local laws, regulations and rules, including but not limited to applicable safety and environmental laws.

Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous substances and disposal of hazardous wastes.

h. The Contractor will permit the City to audit, examine and make copies of all contracts, invoices, payrolls and other documents or data relating to this Agreement. Such records shall be maintained for three years from the date of final payment under this Agreement.

i. This Agreement shall be governed by the laws of the State of California, with venue for any action under this Agreement in Contra Costa County, California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

CITY OF ANTIOCH:

By: _____
Jim Jakel, City Manager

CONTRACTOR:

By: _____

Title: _____

By: _____

Title: _____

(Second signature required if a corporation)

ATTEST:

Jolene Martin, City Clerk

APPROVED AS TO TERMS:

Lynn Tracy Nerland, City Attorney