



**REQUEST FOR PROPOSALS
FOR THE WALMART EXPANSION PROJECT**

DECEMBER 2011

Community Development & Recreation Department

Planning Division

200 H Street

Antioch, CA 94509

(925) 779-7035

INTRODUCTION

The City of Antioch wishes to retain a consultant experienced in preparing CEQA compliant environmental documents to determine if additional environmental review is appropriate based upon an EIR that was prepared and circulated for comment in 2010 but not certified. The project is an expansion of an existing 141,498 square-foot Walmart store by 33,575 square feet, increasing the total floor area to 175,073 square feet (see Attachment "A" for a detailed project description). The project site is located in the Williamson Ranch Shopping Center at the northwest corner of Lone Tree Way and Hillcrest Avenue.

BACKGROUND AND SCOPE OF WORK

In 1998 the City approved a Planned Development, Use Permit, and Design Review for the Williamson Ranch Shopping Center. A Mitigated Negative Declaration was adopted for this project. Grocery sales and general merchandise were part of the permitted land uses and the existing Walmart store was constructed within this shopping center. Walmart desires to expand the store to include grocery sales within the approved building envelope and floor area.

The approval necessary for this project to move forward is Design Review since the building envelope and floor area was approved in 1998. Although the project fits within the scope of the previous approvals, based upon the trial court ruling in *California Healthy Communities Network v. City of Antioch*, the City has decided to determine if additional environmental review is appropriate.

Walmart initially proposed to expand the store in 2005 and an EIR was prepared. That document was not certified and the City did not act upon the project. Walmart amended the project description, which is the subject of the current application.

The City of Antioch engaged a consultant to prepare an Environmental Impact Report for the current project, which was completed and circulated for public comment in 2010. The full text and appendices of the EIR can be found on the City website at <http://www.ci.antioch.ca.us/CityGov/CommDev/PlanningDivision/Environmental-docs.htm>.

The Planning Commission certified the EIR; however, this decision was appealed to the City Council. The City Council found that discretion on a Design Review application is limited and therefore an EIR was not appropriate (see appellate case of San Diego Navy Broadway Complex Coalition v. City of San Diego). The Design Review application was approved and the EIR was not acted upon. Opposition to the project filed suit and the court sided with the opponents.

The City will determine if additional environmental review is appropriate due to the time lapse between the circulation of the EIR and court decision. The City desires to engage a qualified consultant to assist the City in making this determination. The traffic consultant, Kimley-Horn, conducted a recent traffic count and found that the findings in the EIR traffic analysis are

conservative and continue to be valid (see Attachment "B"). The City would like a consultant to review the EIR as well as the conclusions reached by Kimley-Horn and provide the City with an opinion as to whether additional environmental review is appropriate. The consultant will also prepare any necessary documentation.

DELIVERABLES

The consultant will be responsible for preparation of environmental documentation, as appropriate. It is expected that the consultant will provide the following services and work products:

1. Administrative draft document for staff review. (2 hard copies, 1 electronic copy in MS Word and pdf formats)
2. Draft document for public distribution, if required. (15 hard copies, 25 electronic copies in pdf format)
3. Administrative draft Response to Comments, if required (2 hard copies, 1 electronic copy in MS Word and pdf formats)
4. Final environmental document, which may include Response to Comments for public distribution, if required. (15 hard copies, 25 electronic copies in pdf format)
5. Findings and Statement of Overriding Considerations, if warranted.
6. Updated Mitigation Monitoring and Reporting Program, if necessary. (15 hard copies, 25 electronic copies in MS Word and pdf formats)
7. Information on requirements for permits from regulatory agencies with permitting authority for the project, if required. (1 electronic copy in MS Word and pdf formats)
8. Attendance at public hearings, if required - two Planning Commission hearings and, if appeal filed, two City Council hearings (total of 4). Sub-consultants should also attend hearings.
9. Displays as required for presentation at all hearings.
10. Preparation of public notification documents associated with the environmental process for this project, as required, excluding public hearing meeting notices. The City will be responsible for distribution of all notices except for notices sent to the State Clearinghouse, which will be the Consultant's responsibility. (1 electronic copy in MS Word and pdf formats)
11. Submittal of any required documents to the State Clearinghouse.

SUBMITTAL REQUIREMENTS

Please include the following information in the proposal submittal:

1. Cover letter - Signed letter by an individual authorized to negotiate on behalf of the firm and must be binding for a term of 90 days from the date of submittal to the City.
2. Introduction – Provide a brief project description conveying an understanding of the issues.

3. Consultant Team – Detail all individuals to be assigned to the project, their qualifications and respective roles.
4. Scope of Work – Outline sequential specific tasks required to complete the project, describing how each task is to be accomplished, and identifying team members responsible for completion of specific products that will be produced. The City recognizes that the final work product cannot be determined at this time. Therefore, the scope should address the different potential alternatives.
5. Project Schedule – List all tasks, major project milestones, approximate number of weeks to complete each task and anticipated completion timeframe upon notice to proceed. The City recognizes that the final work product cannot be determined at this time. Therefore, the schedule should address the different potential alternatives.
6. Related Experience and References – List similar projects completed by the project manager with a listing of at least three references with current phone and fax numbers. Identify specialized experience and technical competence available in the firm and/or subcontractor consultants identified as participating in the Project.
7. Project Budget – Itemize costs for each task or phase listed in the scope of work. The budget should contain all cost assumptions including the number of hours for each team member, hourly billing rates, estimated costs of other items (travel, printing, etc.), subtotal of fees by task and a grand total (labor and direct costs), to complete the scope of work. The total should reflect costs for additional meetings above those estimated, and a 10% contingency. The City recognizes that the budget will depend on the final work product, which cannot be determined at this time. Therefore, the budget should include a not-to-exceed amount for the initial phase (i.e., reviewing documents and providing an analysis of the type of work that needs to be undertaken to update the EIR, as necessary) and estimates for the different potential alternatives with respect to final work product.
8. Availability – Identify a window of time indicating availability to start the project. The selected firm will be required to enter into a written contract with the City of Antioch in a form approved by the City Attorney. It is expected that work will commence upon award of contract.
9. City's Consultant Contract – Identify any sections of the City's standard consultant contract (Attachment "C") that pose significant concerns and would require negotiation/modification in order to be acceptable to consultant.

SUBMISSION INSTRUCTIONS

One (1) hard copy and one (1) electronic copy of the proposal **must be submitted no later than 11:30 a.m. on January 12, 2012** to:

Tina Wehrmeister
Community Development & Recreation Director
City of Antioch
PO Box 5007
Antioch, CA 94531-5007

Any questions regarding the above should be directed to Tina Wehrmeister at twehrmeister@ci.antioch.ca.us or (925) 779-7038.

ATTACHMENTS

- A: Detailed Project Description
- B: Kimley-Horn Traffic Count Summary
- C: City of Antioch Standard Consultant Contract

ATTACHMENT "A"
ANTIOCH WALMART EXPANSION PROJECT DESCRIPTION

The proposed project consists of the physical expansion of the existing 141,498 square-foot Walmart store by 33,575 square feet, increasing the total floor area to 175,073 square feet. The expanded store will consist of general merchandise sales, grocery sales, grocery sales support, and a number of smaller departments (outdoor garden center, tire and lube express) and tenant spaces (pharmacy, vision center, portrait studio, fast-food restaurant), as well as stockroom/receiving, ancillary uses and back office functions.

Project Development Plan

The project includes a number of physical improvements to the Walmart store and adjacent exterior areas of the site, of which the major elements are listed below:

- Building Expansion. The existing store will be expanded westward, and will include the addition of a new grocery sales area and stockroom, as well as exterior features such as a grocery loading dock, a trash compactor, and two compressor units within a concrete block enclosure. The south/front side of the store will also be modified slightly to include two new entry vestibules, one serving the grocery sales area and the other serving the general merchandise sales area. Modifications to the exterior of the north building area include relocation and replacement of the trash compactor, relocation of the storage areas for pallets and cardboard bales, and relocation of the transformer. No metal containers will be stored on the site.
- Building Design Modifications. The south/front façade of the Walmart store will be completely reconstructed in order to provide a greater degree of articulation and detailing.
- Parking Lot Expansion and Modifications. This mainly consists of construction of additional parking area to the west of the building expansion area. A small portion of existing parking area along the south/front building façade will be reconstructed and restriped to improve handicapped access. The expanded and reconfigured parking lot will provide a total of 918 parking spaces serving the Walmart store, increasing the number of on-site parking spaces by 176 stalls. The provided number of parking spaces meets the Municipal Code requirements.
- Screenwalls. The existing 8-foot high textured block wall which runs along the north/rear property boundary will be extended westward for a distance of about 596 feet along the northern edge of the expansion area to the Walmart western property boundary. Also, a new 10-foot high masonry screenwall will be constructed on the north edge of the existing recessed loading dock near the northeast corner of the building, and a 10-foot screenwall will also be constructed on the north edge of the new grocery loading dock at the northwest corner of the expanded building. An 8-foot masonry screenwall will also be constructed along the north side of the relocated trash compactor. The two new pallet and bale

storage areas along the north site boundary will be enclosed on the west, north, and east sides by 10-foot masonry walls, and the south sides will be enclosed by ornamental steel enclosures with sliding metal gates.

- Landscaping Modifications. The existing landscape trees along the main project entry drive off Lone Tree Way will be augmented, as will the perimeter landscaping along the street frontages. A new landscaped berm will be installed at the southern end of the expansion area. In addition, stormwater collected from the expansion area will be treated by in-ground planters to be installed between the rows of parking and by a bioretention area planned for the northwest corner of the project site.
- Lighting Modifications. All of the existing 40-foot high light standards in the existing parking areas will be replaced with new light standards with a total height of 20 feet, similar to the existing parking lot light standards on the adjacent Orchard Supply Hardware site to the west. The same low-profile light standards will be installed in the expanded parking area to the west of the Walmart store. The lights will include 400-watt energy efficient light fixtures (the existing lights are 1,000 watts), and will be fitted with cut-off shields along the site perimeter to avoid direct illumination spilling beyond the site boundaries. Along the rear of the building, light fixtures will be mounted about 12-feet high on the wall. These lights will also be downward directed, shielded, and fitted with low-wattage light bulbs to avoid direct illumination and minimize the intensity of night lighting.
- Signage Modifications. The expanded and remodeled store will include new signs for the expanded building area as well as updated signage for the remodeled portion of the building. Signage will include directional signs and wall signs, some of which will be internally illuminated. New signs include a store sign and signs indicating store departments such as "Market & Pharmacy" and "Home & Living." A sign program is included as part of the proposed project. No new stand-alone signs are planned, and no structural alterations are planned for the existing monument sign at the main project entrance on Lone Tree Way, although the sign faces will be replaced and updated. A new roof and new colors will be added to the monument sign to match the building design.
- Grading, Drainage and Utilities. Site grading will be required to provide gradients necessary for positive surface drainage throughout the expansion area. Storm runoff within the expansion area will be directed to new catch basins located throughout the proposed parking area and will be conveyed via underground storm drains to the existing Walmart storm drain system, which was designed to accommodate drainage from the expansion area, as required. In order to meet regulatory requirements for treatment of stormwater, as specified by Provision C.3 of the City's NPDES Municipal Stormwater Permit, several in-ground planters will be installed within the expanded parking area, along with a bioretention area in the northwest corner of the site. These features are intended to treat stormwater generated within the 3.7-acre expansion area before it is discharged

to the East Antioch Creek flood control channel. The on-site domestic water, sanitary sewer, electric power, and communications systems will be required to be expanded and modified as necessary to serve the enlarged store and meet the requirements of the City of Antioch and the other service providers.

- Access and Circulation. Primary site access would continue to be provided via existing project entry drives on Lone Tree Way and Hillcrest Avenue, and no new entrances are planned. The internal circulation system would also remain essentially as it is currently, except for the added drive aisles in the expanded parking area. Vehicular connections would also be made available between the west side of the expanded parking area and the common drive aisle that runs along the east side of the existing Orchard Supply Hardware adjacent to the west.

Project Operations

- Truck Deliveries. The existing Walmart store receives approximately 6 to 8 semi-trailer deliveries and approximately 4 to 7 smaller deliveries per day. With the store expansion, these would be increased to 6 to 10 semi-trailer deliveries (of which two would be refrigerated trucks) and 5 to 7 vendor deliveries per day. As required under current City requirements for the existing Walmart store, the delivery times would continue to be limited to the hours of 7 AM to 10 PM. (As discussed below, truck gates along the north side of the building will be closed between 10 PM and 7 AM to prevent vehicular access to the loading areas.) For semi-trailer deliveries, all trailers are currently dropped at the truck docks for unloading, with empty trailers hauled away from the site, as required. This will continue to be the requirement after completion of the planned expansion, and no trailers or metal shipping containers will be allowed to be used as storage containers or kept on the site, as required by previous action of the City of Antioch.
- Hours of Operation. The expanded Walmart store will be open for business during the same hours as the existing store (8:00 AM to 10:00 PM) with extended hours 6 AM to midnight) during the holiday shopping season (from the day after Thanksgiving through Christmas). There is no proposal for 24-hour store operation. As noted, the City has imposed restrictions on outdoor nighttime operations and loading activity in order to reduce noise impacts to the nearby residential area to the north. To implement the City requirement for restricted nighttime access to the loading areas, fencing and gates have been installed at both ends of the access driveway along the north side of the existing Walmart store to prevent ingress and egress by delivery trucks during nighttime hours. The expanded store operation would be subject to the same restrictions on nighttime deliveries, and truck fencing and gates would remain to prevent nighttime deliveries. (The eastern truck fence and gate would remain in place and the western truck fence and gate would be relocated as necessary to accommodate the building expansion.) In addition, overnight parking on the

Walmart site, particularly by RVs, is prohibited, and Walmart has authorized the City of Antioch to enforce this prohibition on the Walmart property.

Security Features

Based on information provided by the applicant, the following security measures will be implemented in the operation of the expanded store:

- Conduct a risk analysis (crime survey) of the area to evaluate the security needs for the store and implement a security plan based upon this analysis.
- Install closed-circuit camera systems (surveillance cameras) inside and outside the store. Digital recording cameras will be used that have scanning and recording capabilities. The cameras used on the exterior of the building will be able to monitor the entire perimeter of the store.
- Provide a third party security company to patrol the parking lot between the hours of 8:00 AM and 10:30 PM for the Walmart store area, which patrol assists customers, ensures safety and takes action to identify and prevent any suspicious activity (such as loitering and vandalism) during hours of operation. The patrol will be available to escort those shoppers who want assistance going to their vehicles. It will have an electric cart or scooter to patrol the parking area and the area behind the store.
- Establish a Risk Control Team, which is a team of associates responsible and trained to identify and correct safety and security issues at the site. The Risk Control Team will be on duty during hours of operation. The Risk Control Team will patrol the inside the store to ensure safety and security. The lead patrol officer will have a phone/device to notify law enforcement quickly of problems at the store.
- Train cashiers to oversee self checkout lines to ensure a smooth checkout process and to prevent minors from making unlawful purchases.
- Provide lighting in the parking area that will ensure public safety.
- Prohibit consumption of alcohol in the Walmart parking lot by having associates regularly "patrol" the parking area while collecting shopping carts, and report any inappropriate activity to the store manager.

Sustainability Features

The entire project will meet the energy efficiency standards of Title 24, at a minimum. The expanded Walmart store will provide reduction of energy consumption by designing the buildings to a building efficiency rating which is greater than the Title 24 requirement. At a minimum, the project will include the following features or their functional equivalents:

Expansion Area Only

- *Daylighting:* The expansion area will include a day lighting system in the grocery area. As daylight increases, skylights will allow the store to dim the lights in the expansion area or even turn them off, reducing the demand for electricity during peak hours.
- *Night Dimming:* The project will include night dimming, via which interior illumination of the grocery area will be dimmed by 65 percent during late night hours.
- *Energy efficient HVAC units:* The project will utilize one of the industry's most efficient heating, ventilating and air-conditioning (HVAC) units available for the expansion area. Per ASHRAE 90.1-2004, retail stores' HVAC equipment is required to achieve an overall minimum Energy Efficiency Ratio (EER) value of 10.3. The HVAC equipment that will be installed in the expansion area has an overall EER value of 12.7, well above the standard.

Entire Expanded Store

- *Water Heating:* The project will reclaim waste heat from on-site refrigeration equipment to supply 70 percent of the hot water needs for the store.
- *Central Energy Management:* Walmart employs a centralized energy management system (EMS) to monitor and control the heating, air conditioning, refrigeration and lighting systems for all stores from Walmart's corporate headquarters in Bentonville, Arkansas. The EMS enables Walmart to constantly monitor and control energy usage, analyze refrigeration temperatures, observe HVAC and lighting performance, and adjust system levels from a central location 24 hours per day, seven days per week.
- *White Roof:* The entire store will have a "white" membrane roof instead of the typical darker colored roof materials. The high solar reflectivity of this membrane results in lowering the "cooling" load by about 10 percent. No PVC-roofs will be used.
- *Interior Lighting Retrofit Program:* All lighting in the store will be replaced by T-8 fluorescent lamps and electronic ballasts, resulting in a 15-20 percent reduction in energy load.
- *LED Lighting:* All exterior building signage and many refrigerated food cases in the store will be illuminated with light emitting diodes (LEDs). LED technology can provide a 70 percent more energy-efficient operation than fluorescent illumination. Further, with a lifespan of up to 100,000 hours, LEDs significantly outlast fluorescent lamps, allowing for significant reduction in re-lamping and maintenance costs. Additionally, LEDs contain no mercury or lead, perform well in the cold and produce less heat than fluorescent bulbs - heat which must be compensated for by the refrigeration equipment.

Resource Conservation

In addition to the above energy-efficiency features, the project will also incorporate the following programs and practices to facilitate resource conservation:

- *Recycled Building Materials:* The construction of the expansion area will use nearly 100 percent recycled structural steel, which will utilize 50 percent less energy in mining and manufacturing than new steel. All of the plastic baseboards and much of the plastic shelving in the expansion area will be composed of recycled plastic.
- *Waste Recycling:* The existing store recycles all of its cardboard and plastic waste, used tires and batteries, waste motor oil, bottles and cans, cooking oil, single-use cameras, silver from photo labs, and electronic waste. Walmart also works with suppliers to reduce packaging. These practices will be continued with the expanded store.
- *Water Conservation:* In addition to low-flow fixtures and toilets required by the California Plumbing Code, the entire expanded store will use only sensor-activated low-flow faucets. The front restrooms will have these fixtures as listed below.
 - All restroom sinks in the entire expanded store will use sensor-activated ½ gallon per minute high-efficiency faucets. These faucets regulate water flow and reduce water usage by 78 percent compared to mandated 1992 EPA Standards.
 - The entire expanded store will include high-efficiency urinals that use only 1/8 of a gallon (one pint) of water per flush. This fixture yields 87 percent water savings per flush versus conventional one gallon per flush urinals, and requires less maintenance.

Pollution/Greenhouse Gas Reduction

The project will include the following design features and practices which will reduce generation of pollutants, including greenhouse gases.

- *Ozone Friendly Refrigerants:* The existing store uses R-410a as HVAC refrigerant and R404a for refrigeration, both of which have no ozone depletion potential and relatively modest global warming potential compared with older chlorine-based refrigerants. These would continue to be used in the expanded store.
- *Low-Mercury Lamps:* The existing store uses only "low-mercury" lamps which, unlike other fluorescent lamps, are not considered to be a hazardous material. These would continue to be used in the expanded store.
- *Recycled Oil Capture:* The existing tire and lube express will receive an oil filter crusher to harvest maximum oil for recycling and to minimize the potential for spills. The auto center will also likely have installed a prefabricated oil interceptor to further reduce the potential for contamination.
- *Fly Ash in Cement:* Walmart concrete specifications include a requirement for 15-20 percent fly ash content (from coal-fired power generation) in cement, or 25-30 percent granulated slag content (a waste product of steel manufacturing). The use of these materials reduces greenhouse gas emissions from cement production.

ATTACHMENT "B"



Kimley-Horn
and Associates, Inc.

Memorandum

To: Tina Wehrmeister
Antioch Dept. of Community Development
3rd and H Streets
PO Box 5007
Antioch, CA 94531

Suite 370
6130 Stoneridge Mall Road,
Pleasanton, CA 94588-3279

Office: 925-398-4840
Fax: 925-398-4849

CC:
From: Jim West
Date: 22 November 2011
Re: Antioch Walmart Traffic Counts –
2011 Volume Comparison

BACKGROUND

Kimley-Horn prepared a traffic impact study (TIS) in 2009 to evaluate the impacts of a proposed expansion of the existing Walmart on Lone Tree Way in Antioch. The TIS was used as the basis of the traffic and circulation element of an environmental impact report (EIR) prepared by others. Because the EIR was never certified by the City Council, the City has requested Kimley-Horn collect new traffic counts to compare with the original counts and offer an opinion on whether conditions have materially changed or the conclusions of the TIS and EIR are still valid.

This memorandum summarizes the volume comparison and makes a recommendation on the validity of the conclusions from the previously submitted TIS and EIR.

DATA COLLECTION

Kimley-Horn collected AM peak (7-9) and PM peak (4-6) intersection turning movement counts at the following intersections on Wednesday, November 9, 2011:

1. Country Hills Drive/Deer Valley Road
2. Laurel Road/Hillcrest Avenue
3. Country Hills Drive/Hillcrest Avenue



4. Northeast Wal-Mart Driveway/Hillcrest Avenue
5. Southeast Wal-Mart Driveway/Hillcrest Avenue
6. Lone Tree Way/Country Hills Drive
7. Lone Tree Way/Deer Valley Plaza
8. Lone Tree Way/Deer Valley Road
9. Lone Tree Way/Prewett Park
10. Lone Tree Way/Sagebrush Drive
11. Lone Tree Way/Williamson Ranch Plaza
12. Lone Tree Way/Indian Hill Drive
13. Lone Tree Way/Wal-Mart Driveway
14. Lone Tree Way/Hillcrest Avenue
15. Lone Tree Way/Vista Grande Drive
16. Lone Tree Way/Heidorn Ranch Road
17. Lone Tree Way/Canada Valley Road
18. Lone Tree Way/SR-4 Bypass
19. Lone Tree Way/Jeffrey Way
20. Marita Drive/Deer Valley Road
21. Prewett Ranch Drive/Hillcrest Avenue

VOLUME COMPARISON

Volumes from the 2011 turning movement counts were compared to the existing volumes taken from intersection turning movement counts surveyed in 2008 for the Walmart EIR. **Table 1** on the next page summarizes the comparison of the 2008 volumes to the existing 2011 volumes. Volumes in 2011 on average increased by 0.8% in the AM peak and increased by 6.1% in the PM peak.

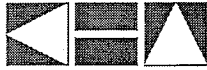
In the EIR, it was assumed that the Walmart expansion would be completed by the year 2010. Year 2008 traffic volumes were projected to 2010 in the EIR based on approved and pending projects expected to be completed at approximately the same time as the opening of the store expansion. Volumes from the 2011 turning movement counts were compared to the proposed project opening day volumes in 2010 (i.e. Near-term volumes) from the TIS. **Table 2** on summarizes the comparison of the Near-term 2010 volumes to the existing 2011 volumes. Volumes in 2011 on average were 23.6% lower in the AM peak and 23.9% lower in PM peak than the 2010 TIS projections. This indicates that the 2010 projections were very

Table 1 - Existing 2008 vs Existing 2011 Volume Comparison

#	Intersection	AM Peak			PM Peak				
		2008	2011	Difference	%	2008	2011	Difference	%
1	Country Hills Drive/Deer Valley Road	1908	1939	31	1.6%	1500	1654	154	10.3%
2	Laurel Road/Hillcrest Avenue	1565	1378	-187	-11.9%	1262	1221	-41	-3.2%
3	Country Hills Drive/Hillcrest Avenue	1484	1388	-96	-6.5%	1235	1259	24	1.9%
4	Northeast Walmart Driveway/Hillcrest Avenue	1076	1041	-35	-3.3%	931	984	53	5.7%
5	Southeast Walmart Driveway/Hillcrest Avenue	1145	1118	-27	-2.4%	1134	1184	50	4.4%
6	Lone Tree Way/Country Hills Drive	2533	2637	104	4.1%	2288	2359	71	3.1%
7	Lone Tree Way/Deer Valley Plaza	2075	2217	142	6.8%	1938	1961	23	1.2%
8	Lone Tree Way/Deer Valley Road	3501	3792	291	8.3%	2905	3378	473	16.3%
9	Lone Tree Way/Prewett Park	2425	2294	-131	-5.4%	2076	2187	111	5.3%
10	Lone Tree Way/Sagebrush Drive	2196	2115	-81	-3.7%	2103	2161	58	2.8%
11	Lone Tree Way/Williamson Ranch Plaza	1844	1821	-23	-1.2%	1971	1988	17	0.9%
12	Lone Tree Way/Indian Hill Drive	1923	1929	6	0.3%	1991	2123	132	6.6%
13	Lone Tree Way/Walmart Driveway	1880	1862	-18	-1.0%	1970	2013	43	2.2%
14	Lone Tree Way/Hillcrest Avenue	2471	2385	-86	-3.5%	2787	2822	35	1.3%
15	Lone Tree Way/Vista Grande Drive	2063	1961	-102	-4.9%	2650	2745	95	3.6%
16	Lone Tree Way/Heidorn Ranch Road	1906	1926	20	1.0%	2610	2764	154	5.9%
17	Lone Tree Way/Canada Valley Road	2522	2557	35	1.4%	3552	3639	87	2.4%
18	Lone Tree Way/SR-4 Bypass SB Ramps	2690	2756	66	2.5%	3748	4091	343	9.2%
19	Lone Tree Way/Jeffrey Way	2237	2471	234	10.5%	3495	3879	384	11.0%
20	Marita Drive/Deer Valley Road	1579	1750	171	10.8%	1229	1591	362	29.5%
21	Prewett Ranch Drive/Hillcrest Avenue	329	361	32	9.7%	321	337	16	5.0%
	Total	41352	41698	346	0.8%	43696	46340	2644	6.1%
	Average	1969	1986	16	0.8%	2081	2207	126	6.1%

Table 2 - Near-term 2010 vs Existing 2011 Volume Comparison

#	Intersection	AM Peak			PM Peak				
		2010 (NT)	2011	Difference	%	2010 (NT)	2011	Difference	%
1	Country Hills Drive/Deer Valley Road	2233	1939	-294	-13.2%	1918	1654	-264	-13.8%
2	Laurel Road/Hillcrest Avenue	1821	1378	-443	-24.3%	1604	1221	-383	-23.9%
3	Country Hills Drive/Hillcrest Avenue	1729	1388	-341	-19.7%	1553	1259	-294	-18.9%
4	Northeast Walmart Driveway/Hillcrest Avenue	1290	1041	-249	-19.3%	1211	984	-227	-18.7%
5	Southeast Walmart Driveway/Hillcrest Avenue	1373	1118	-255	-18.6%	1420	1184	-236	-16.6%
6	Lone Tree Way/Country Hills Drive	3061	2637	-424	-13.9%	2959	2359	-600	-20.3%
7	Lone Tree Way/Deer Valley Plaza	2587	2217	-370	-14.3%	2566	1961	-605	-23.6%
8	Lone Tree Way/Deer Valley Road	4584	3792	-792	-17.3%	4274	3378	-896	-21.0%
9	Lone Tree Way/Prewett Park	3146	2294	-852	-27.1%	2939	2187	-752	-25.6%
10	Lone Tree Way/Sagebrush Drive	2917	2115	-802	-27.5%	2966	2161	-805	-27.1%
11	Lone Tree Way/Williamson Ranch Plaza	2616	1821	-795	-30.4%	2907	1988	-919	-31.6%
12	Lone Tree Way/Indian Hill Drive	2681	1929	-752	-28.0%	2904	2123	-781	-26.9%
13	Lone Tree Way/Walmart Driveway	2637	1862	-775	-29.4%	2893	2013	-880	-30.4%
14	Lone Tree Way/Hillcrest Avenue	3391	2385	-1006	-29.7%	3913	2822	-1091	-27.9%
15	Lone Tree Way/Vista Grande Drive	2714	1961	-753	-27.7%	3562	2745	-817	-22.9%
16	Lone Tree Way/Heidorn Ranch Road	2596	1926	-670	-25.8%	3574	2764	-810	-22.7%
17	Lone Tree Way/Canada Valley Road	3511	2557	-954	-27.2%	4948	3639	-1309	-26.5%
18	Lone Tree Way/SR-4 Bypass SB Ramps	3676	2756	-920	-25.0%	5190	4091	-1099	-21.2%
19	Lone Tree Way/Jeffrey Way	3172	2471	-701	-22.1%	4888	3879	-1009	-20.6%
20	Marita Drive/Deer Valley Road	2277	1750	-527	-23.1%	2173	1591	-582	-26.8%
21	Prewett Ranch Drive/Hillcrest Avenue	599	361	-238	-39.7%	519	337	-182	-35.1%
	Total	54611	41698	-12913	-23.6%	60881	46340	-14541	-23.9%
	Average	2601	1986	-615	-23.6%	2899	2207	-692	-23.9%



conservative and therefore actual traffic conditions will be better than reported in the EIR.

CONCLUSIONS

After collecting new turning movement counts in 2011 and comparing them to the opening day, or Near-term 2010 volumes, the 2011 volumes are significantly less than the opening day volumes. Therefore any traffic impacts or mitigations outlined in the TIS or EIR for the opening day scenario are still valid and, if anything, more conservative. Even if the project were to be approved for expansion and completed in the next 1-2 years, actual traffic conditions are likely to be better than identified in the EIR.

ATTACHMENT "C"

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 _____, 200__.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

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

Section 2. COMPENSATION. City hereby agree to pay Consultant a sum not to exceed _____, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth below. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

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

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

2.2 Payment Schedule.

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

2.2.2 City shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.3 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule: _____
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are specified below, and shall not exceed _____ (\$ _____). Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure "occurrence coverage" 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.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the

Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and their officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and their officers, employees, agents, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or their officers, employees, agents, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and their officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- f. The policy must contain a cross liability or severability of interest clause.

4.3 Professional Liability Insurance. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and

expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserve the right to require complete, certified copies of all required insurance policies, at any time.

4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds 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 herein.

4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Consultant may increase such deductibles or self-insured retentions with respect to City and their officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES

5.1. CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend (with counsel acceptable to the CITY) and hold harmless CITY, and its employees, officials, volunteers and agents ("Indemnified Parties") from and against any and all losses, claims, damages, costs and liability arising out of any personal injury, loss of life, damage to property, or any violation of any federal, state, or municipal law or ordinance, arising out of or resulting from the performance of this Agreement by CONSULTANT, its officers, employees, agents, volunteers, subcontractors or sub-consultants, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of CITY.

5.2. In the event that Consultant or any employee, agent, sub-consultant or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, sub-consultants or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

5.3. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

5.4. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this

Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, 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.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in their sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City' remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement; and/or

- 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant in which case the City may charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 **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.
- 9.3 **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.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.2 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any

provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.3 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.4 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.5 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.6 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any official of City in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.7 **Inconsistent Terms.** If the terms or provisions of this Agreement conflict with or are inconsistent with any term or provision of any attachment or Exhibit attached hereto, then the terms and provisions of this Agreement shall prevail.
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:

Any written notice to City shall be sent to:

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

10.11 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, and all other attachments, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

CITY:

CONSULTANT:

CITY OF ANTIOCH

[NAME OF CONSULTANT]

Jim Jakel, City Manager

[NAME, TITLE]

Attest:

[NAME, TITLE]

L. Jolene Martin, City Clerk

Approved as to Form:

Lynn Tracy Nerland, City Attorney